

Consultation on April 2019 National Minimum Wage rates

Submission to the Low Pay Commission

Chartered Institute of Personnel and Development (CIPD)

June 2018

Introductory comments

Our response does not address all the questions in the Low Pay Commission's consultation but we have indicated the questions that we are responding to.

Our submission is based largely on our Spring 2018 Labour Market Outlook survey (LMO), our quarterly survey of 1000+ employers about their recruitment and pay intentions over the next 12 months, as well as previous editions of the LMO and other CIPD research.

Our response

About you

1. Please provide some information about yourself or your organisation. If possible, include relevant details about your location, the occupation or sector you are involved in, your workforce if you are an employer (including number of NMW/NLW workers), and anything else you think is relevant.

The CIPD is the professional body for HR and people development. The not-for-profit organisation champions better work and working lives and has been setting the benchmark for excellence in people and organisation development for more than 100 years. It has over 145,000 members across the world, provides thought leadership through independent research on the world of work, and offers professional training and accreditation for those working in HR and learning and development.

Our membership base is wide, with 60% of our members working in private sector services and manufacturing, 33% working in the public sector and 7% in the not-for-profit sector. In addition, 76% of the FTSE 100 companies have CIPD members at director level.

Public policy at the CIPD draws on our extensive research and thought leadership, practical advice and guidance, along with the experience and expertise of our diverse membership, to inform and shape debate, government policy and legislation for the benefit of employees and employers, to improve best practice in the workplace, to promote high standards of work and to represent the interests of our members at the highest level.

Economic Outlook

2. What are your views on the outlook for the UK economy, including employment and unemployment levels for, the period up to April 2019, and the period up to April 2020?

The labour market has proved remarkably resilient over the year to the first quarter of 2018, with very strong employment growth comparing the final quarter of 2017 and the first quarter of 2018. This growth is consistent with the increase in optimism among employers about future hiring intentions recorded in the CIPD's latest Spring 2018 Labour Market Outlook (LMO).¹ Indeed, the net balance between those who expected to cut staff numbers and those who expected to increase them was at +26 the highest since the survey was first introduced in 2012-2013 and significantly up on the previous survey in Winter 2017 when the net balance stood at +16. The increase was broad-based, covering the private, public and voluntary sectors.

The expansion of the labour market stands in stark contrast with other indicators – most notably the GDP statistics which have been confirmed as showing the economy grow by only 0.25 per cent between the final quarter of 2017 and the first quarter of 2018. Why there should be such a marked difference is puzzling. With unemployment falling and real wage growth recovering, it may be GDP figures are somewhat understating the underlying strength of the economy. It may be the first quarter's figures are a blip rather than the start of a more sustained trend.

The combination of strong employment growth and weak economic activity has however meant that the productivity recovery that seemed to be taking place in the second half of 2017 has gone into reverse, with productivity measured by GDP per hour worked falling in the first quarter of 2018. It is however too early to conclude that this recovery, like those before, is fizzling out on the basis of what may prove to have been an exceptional quarter. At the moment we would advise caution in revising economic growth forecasts for 2019 and 2020 downwards until there is a clearer picture on what is happening to GDP growth and productivity in the second half of 2018.

3. What has been your experience of wage growth and inflation in the last year and what do you forecast for the next couple of years?

The current position of wage growth measured by average weekly earnings of 2.8 per cent is unsustainable with falling or very low productivity. With a sustained productivity recovery it is likely that wage growth will continue to edge upwards. However, the extent of movement up or down will be strongly influenced by the impact of skill and labour shortages.

¹ CIPD (2018). *Labour Market Outlook: Spring 2018*. London: Chartered Institute of Personnel and Development. Available at: <https://www.cipd.co.uk/knowledge/work/trends/labour-market-outlook> [Accessed 1 June 2018].

The aggregate employment statistics are so far ambiguous. A continued fall in the unemployment rate means that in increasing swathes of the country we are effectively operating at full employment, which would be expected to push wages higher. That said, the big increase in employment in the latest quarter suggests that most employers are still able to attract the labour they need, at least in the short term, despite the fall in employment among EU nationals and reduced net flows of EU nationals to the UK in recent months. These are very small changes to the overall pool of EU labour still available to UK employers, and employers overall also seem to have been successful in turning to native labour to fill new hires. Over the past twelve months employment of UK nationals has increased by nearly 420,000.

Employers may be turning to more disadvantaged groups who they would not normally consider. They may also be more willing to take on lower quality labour than they would like. However, the share of employers saying they were dropping standards in response to recruitment difficulties has not significantly changed since our Autumn 2017 survey.² It should also be remembered that there are significant numbers of people of working age – just over 2 million – who are currently economically inactive (not in work or actively seeking work) who say they would like a job. Some would struggle to enter the labour market either quickly or without additional support, but there will still be substantial numbers who could be enticed back to work relatively easily through better wages or conditions. Universal Credit may also have facilitated more movements from inactivity into work than would otherwise be the case.

The survey evidence from the CIPD LMO shows that the share of firms reporting recruitment difficulties has steadily increased, from 49 per cent in Spring 2016 to 56 per cent in Spring 2017 and 61 per cent in Spring 2018. There has been some upward pressures on pay setting as a result. The share of employers who said that part of their response would be to increase wages has increased from 24 per cent in Spring 2016 to 28 per cent in Spring 2018, although upskilling the workforce remains the most common response of employers with recruitment difficulties, at 38 per cent in both surveys.

We conclude that while pressure on wages from recruitment difficulties has increased, it has as yet had a modest impact on the willingness of employers to pay more. Overall, it is not too surprising therefore that the latest LMO suggests no great change in mean basic pay awards over the next twelve months, though average basic awards have increased slightly from 1.8 per cent to 2.1 per cent. It is possible that basic pay awards will start to tick upwards in response to a tighter labour market in the second half of 2017 with annual average earnings growth settling between 2.5 and 3 per cent.

² CIPD (2018). *Labour Market Outlook: Autumn 2017*. London: Chartered Institute of Personnel and Development. Available at: <https://www.cipd.co.uk/knowledge/work/trends/labour-market-outlook> [Accessed 1 June 2018].

4. What has been the impact of the NLW since April 2016? The rate was set at £7.20 in 2016, rose to £7.50 in 2017 and will rise to £7.83 in April 2018. Our critical interest is views or data on the effects on employment, hours and earnings. We are also very interested in evidence on pay structures (including premium pay) and benefits, outsourcing, differentials, progression, job moves, training, contract type, business models, productivity, prices or profits

The CIPD's Spring 2018 LMO finds that half of the 1,000 employers surveyed plan to increase base pay over the next 12 months (41% are unsure whether they will increase, freeze or cut pay). Among those planning to increase salaries 32% plan to increase them by 2% or more. The most common explanations amongst these are: the 'going rate' of pay rises elsewhere (34%); recruitment and retention issues (32%); movement in market rates (28%) and the current official rate of inflation (28%).

By contrast, just 17% of respondents say that the national living and minimum wages are a reason why they think salaries will increase by more than 2% in the coming year. However, this reason is more common in the voluntary sector (26%). While only 16% of employers in the private sector site the national living wage as a driver of pay growth, this explanation is more common in the hotels, catering and restaurants / arts, entertainment and recreation industries.

Among those organisations planning to increase base pay by less than 2%, the most common explanations for this are: restraint on public sector pay (36%); the organisation's inability to pay more (35%); and uncertainty about future access to the EU market (15%). Just 11% report that the national minimum and living wages are dampening future pay increases. This explanation is more common in the private sector (18%), especially in wholesale, retail and real estate and manufacturing

5. To what extent has the NLW particularly affected certain occupations or industries, types of firms (small, large etc), regions or groups (for example women, ethnic minorities, migrant workers etc)?

Among those who say that the national minimum and living wages are driving pay above 2%, those based in the north and the midlands are more likely to say this than those in the south, especially in London.

16. What factors do employers consider when deciding whether to employ a young person or apprentice; and equally, what factors do young people consider when weighing up their options?

Our research has shown that employers consider a range of factors when deciding to hire a young person and that these can differ depending on the stage (i.e. application,

interview, and selection).³ Initial screening of applications typically include selection criteria based on qualifications. With most employers interviewed for our research linking their screening criteria to a minimum standard in qualifications, so UCAS points, GCSEs in Maths and English (above C), A-levels (above C).

However, when employers are asked about what they are looking for in particular, they often mention recruiting for attitude and values and looking for the 'right fit', rather than technical skill and educational attainment and previous work experience. Yet, decisions on 'fit' are made during the interview and selection process. There are, however, differences based on size of organisations with SMEs, on one hand, valuing previous work experience more than larger employers, and larger employers, on the other hand, much more likely to filter and select applicants based on qualifications.

Young people have different expectations of work and therefore consider a variety of factors when weighing up job opportunities. Our research suggests that in particular young people value jobs 'with meaning' and work-life balance. In terms of pay, our qualitative research suggests that some young people can be put off taking up development opportunities, such as apprenticeships, due to the initial sacrifice in earnings potential.

Compliance and enforcement

21. What comments do you have on HMRC's enforcement work? What is your opinion on the quality and accessibility of the official guidance on the NLW/NMW?

The CIPD supports the rigorous prosecution of those employers that deliberately flout the law. However, we recognise that there are circumstances where employees breach the regulations unintentionally. For this reason, we would recommend that HMRC explore new ways of reaching out to employers about what they should take into account and what should be excluded when calculating the minimum and living wage rates, such as working with employer and professional bodies.

22. What more could be done to improve compliance with the NLW/NMW?

We recommend a national 'know your rights and responsibilities' campaign to improve awareness among employers about what they are required to do, and among employees about to what they are legally entitled. For instance, roadshows, webinars, tweets, etc. Such measures will be especially important if the LPC recommends the introduction of a premium rate for workers on zero hours contracts, which we comment on in more detail below.

³ CIPD. (2013) *Employers are from mars young people are from Venus*. London: Chartered Institute of Personnel and Development. Available at: <https://www.cipd.co.uk/knowledge/work/skills/jobs-mismatch-report> [Accessed 1 June 2018].

The Taylor premium and hours/income volatility

24. What is the scale and nature of the problem described in the Taylor review – that is low-paid workers who face uncertain, unpredictable and volatile work schedules? Does it affect particular workers or parts of the economy?

To help explore this and some of the other questions in this consultation, the CIPD's Spring 2018 LMO explored some of the employment policies used by organisations. Among the 1,008 employers that we questioned in March, 29% of make use of flexible employment arrangements (such as zero-hours contracts, short-hours contracts or agency work) for low-paid workers. We define low-paid workers as those paid at or close to the national minimum or living wages.

By region, such an approach is more likely in the south west of England (42%) and in the Midlands (35%). By employment, large firms (32%) are more likely to do this than small- and medium-sized enterprises (20%).

Among our sample of 29% respondents, the proportion of their workers on flexible employment arrangements that are low paid is 10% (as measured by the median). The mean figure is 29%, indicating that some organisations use flexible employment arrangements to a significant extent for low-paid workers.

By sector, such employment policy is more prevalent in the private sector (25% as measured by the median), especially in hotels, catering and restaurants / arts, entertainment and recreation, and in manufacturing. By size, workers are more likely to be on this type of employment in large firms (40% median) than in SMEs (10%).

26. Are there examples of particularly good practice in the use of flexible employment arrangements for low-paid workers? That is, ways of working that manage to balance flexibility and security for workers but also work for employers?

One way of helping low-wage workers on flexible employment arrangements is if employers pay them more money for hours worked beyond contracted hours (e.g. a premium for zero-hours contracts), overtime or short notice shifts. Among those employers we have surveyed, 40% currently pay more for hours worked beyond contracted hours, 53% do not, while 7% are unsure. However, among those employers that make use of flexible employment arrangements for low-paid workers this proportion 48% currently pay more for hours worked beyond contracted hours, 44% do not, while 8% are unsure.

Another way to help this group of workers, is to give them sufficient notice about their future work schedule. Among those employers that employ low-paid workers on flexible employment contracts, the most common approach (17%) is to give these individuals a day or less advance notice of their work/hours schedule, followed by giving them: between

four and seven days (15%); more than one week but less than two (13%); and between one and three days (10%).

Public sector employers (23%) are more likely to give this group of workers just a day or less advance notice to their low-paid workers on flexible employment contracts of their work/hours schedule, than organisations in the private (15%) sector. Sectors that are more likely to use this notice period include healthcare and manufacturing firms.

Another way that the low-waged with flexible contracts can be helped is to give them a minimum shift length. Among those organisations that do employ these kinds of individuals, 54% provide a minimum shift length, 18% do not, while 14% don't use shifts (a further 14% of respondents are unaware if their employer provides a minimum shift period).

Among the 54% that do give a minimum shift length, 44% guarantee at least 4 hours or more while 10% offer less than this amount.

We have also asked those who employ low-paid workers on flexible employment contracts to tell us how typically variable are the weekly hours of this group. The most common response (37%) is that they typically work similar hours each week (demand for labour is fairly steady).

A further 16% of these employers report the hours of this group of workers are fairly regular week to week but vary seasonally for example regular peaks during the year (e.g. Christmas, over the summer months or at other regular predictable periods of high demand), such as education services.

For the rest, there is more variability with hours typically fluctuating by:

- a few hours each week - demand is slightly variable, (12%);
- four to eight hours a week - demand is quite variable) (13%); and
- more than 8 hours a week - demand is highly variable/difficult to predict (10%).

Just over half (52%) of organisations that employ low-paid workers on flexible employment contracts provide no compensation if shifts are cancelled at little or no notice, though some of these employers don't because they don't have shifts. By contrast 26% do pay compensation (for example one or two hours' pay in lieu or travel expenses), while the rest of respondents are unsure.

27. What policies or approaches might tackle this problem and/or encourage existing good practice? How might these work in practice? What would their effect be on employers and workers? What compliance issues would need to be considered?

If employers were required to give:

- at least 24 hours or more notice of their work schedule, this would have a greater impact in on employers operating in manufacturing and healthcare than those operating in other sectors.

We recommend employers should provide the maximum possible notice to workers of their work schedule with a minimum of 24 hours' notice except due to emergencies or unforeseen circumstances.

- a minimum shift length of at least four hours, this would impact more on SMEs (19%) than large firms (3%).

We recommend that requiring a minimum shift length of at least 4 hours would be a proportionate measure

- compensation for shifts that are cancelled at little or no notice, this could have more of an impact on employers operating in the private sector service economy.

We recommend that employers should pay compensation to those workers who have had their shift cancelled at little or no notice. To establish an appropriate rate, research should be carried out.

The suggestion that the Government should introduce a right for workers on flexible employment arrangements to request a more stable contract after a certain period of time, has been favourably received by 67% of all respondents. By contrast, 19% have objected to this right while 14% do not have an opinion.

Among those organisations that just employ low-paid workers on flexible employment contracts, again 67% support this idea. However, while the proportion of respondents who don't know drops to 9% the percentage of employers who are opposed to this suggestion increases to 24%.

Amongst those employers that support the idea of a right for low-paid workers on flexible employment arrangements to request a more stable contract, 41% think that individuals should have 12 months of continuous service with an organisation before they are able to request it. By contrast, 32% think such workers should have at least six months of continuous service, 20% think it need be no longer than 3 months, while 6% think it should be after 2 years. There isn't much change in these percentages when we just look at the responses from those employers that actually employ low-paid workers on flexible employment contracts.

We would recommend that workers on flexible employment arrangements should have the right for to request a more stable contract after 12 months.

28. The LPC has been asked to consider the impact of Matthew Taylor's idea of a higher minimum wage for hours that are not guaranteed as part of the contract. What impact would this have on workers? Would it achieve greater stability of hours/income for workers and/or compensate them for the volatility of their work schedules? Are there any trade-offs, for example more predictable hours in exchange for fewer hours overall?

See below

29. How would employers respond to a higher minimum wage for non-guaranteed hours? In particular, would they seek to offer more fixed/predictable hours to workers or pay it to maintain their flexibility? What about changes to overall hours worked or employment, or more use of self-employed labour or technology?

Whatever the merits of the Taylor proposal in isolation, it is important that it does not undermine the effectiveness of the NMW by introducing additional complexity. The NMW owes some of its success to the fact that the rates are relatively easy to understand and apply across the employee workforce, which in turn makes enforcement more effective. Having a different rate for one group of employees with atypical contracts compromises these broad objectives, and once introduced, it will be harder to resist proposals to extend similar premia to other groups of employees in atypical working arrangements.

In addition, it is important that the implications and unintended consequences of introducing a wage premium for non-guaranteed hours are thoroughly thought through. The overall weight of evidence suggests that the majority of individuals on flexible employment arrangements actively choose to work in this way and are broadly satisfied with their work. For example, CIPD's 2018 Working Lives survey finds that zero-hours contract workers and agency workers have at least comparable job satisfaction to those in permanent employment, with less satisfaction with job security and opportunities to train and progress being offset by greater satisfaction with their work-life balance, less exposure to excessive pressure and fewer negative effects from their work on their mental and physical wellbeing.⁴

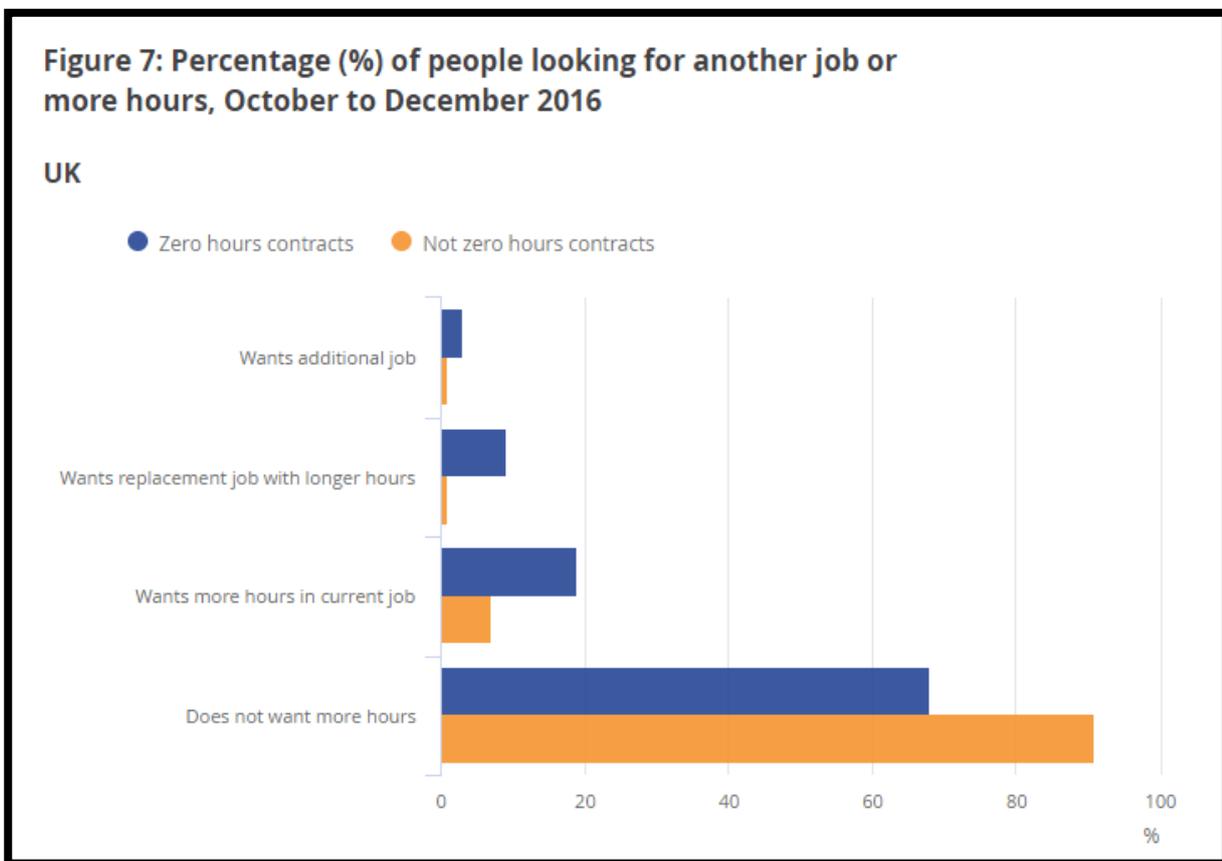
CIPD's research on zero-hours contracts in 2013 finds that zero hours contract workers are nearly twice as likely to express satisfaction (47%) than dissatisfaction (27%) with having no guaranteed hours.⁵ CIPD's research is supported by data from the Office for

⁴ CIPD. (2018) *UK Working Lives*. London: Chartered Institute of Personnel and Development. Available at: <https://www.cipd.co.uk/knowledge/work/trends/uk-working-lives> [Accessed 1 June 2018].

⁵ CIPD. (2013) *Zero hours contracts: myth and reality*. London: Chartered Institute of Personnel and Development. Available at: <https://www.cipd.co.uk/knowledge/fundamentals/emp-law/terms-conditions/zero-hours-reality-report> [Accessed 1 June 2018].

National Statistics (ONS) Labour Force Survey (2017) *People in employment on a zero hours contract*.⁶ This shows that about two-thirds of zero-hours contract workers don't want more hours, while under a fifth want more hours in their current job and less than a tenth of such workers want a replacement job with longer hours (See Figure below).

Both the CIPD and the ONS data suggest that while a minority of zero-hours contract workers want a guaranteed hours contracts or to work more hours, a significant majority don't and are broadly satisfied with these arrangements. This is because many people on flexible employments arrangements value them because of their individual circumstances, for example the need to study, caring responsibilities, health reasons or because they are getting older and want to downshift and work more flexibly as they get older.



Source: Office for National Statistics, Labour Force Survey (2017): People in employment on a zero-hours contract: March 2017

Another reason that caution needs to be exercised in introducing a wage premium for on guaranteed hours is that it could reduce the proportion of individuals with full employment rights. CIPD zero-hours contract research found that almost two thirds of employers that

⁶ Office for National Statistics (ONS). Labour Force Survey: People in employment on zero-hours contract: March 2017. Available at:

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/articles/contractsthatdonotguaranteeaminimumnumberofhours/mar2017> [Accessed 1 June 2018].

use zero-hours contracts categorise the people that use these arrangements as employees, with just 18% of employers saying that individuals on zero hours contracts are workers. See Table 23 from the report below

This means that if the effect of the introduction of a wage premium discouraged employers from using zero-hours contracts and encouraged them to use other forms of flexible employment arrangements, such as more use of self-employed contractors or more short-term use of agency workers to cover peaks and troughs in demand, there could be a reduction in the proportion of people on some forms of flexible employment arrangements with full employment rights.

Table 23: The proportion of employers that classify their zero-hours staff as 'employees', 'workers' or self-employed (%)

	All	Private	Public	Non-profit*
Employees	64	73	43	60
Workers	18	18	18	21
Self-employed	3	4	1	–
A combination of workers and employees	6	0	17	9
We have not classified their status	7	7	4	10
Don't know	7	3	20	–

Base: All organisations that employ zero-hours workers (n=232)
*Care needs to be taken when analysing figures in this column because of the small number of respondents in this category.

Source: CIPD, Zero hours contracts: myth and reality (2013)

Data from our Spring 2018 Labour Market Outlook survey which asked employers that engage low-paid workers on flexible employment contracts how they would respond to the introduction of a wage premia report a range of likely responses, some of which could benefit such workers, while others could disadvantage them.

For example, among those employers that use flexible employment arrangements for low-paid workers, a third (33%) would pay the higher minimum wage to maintain flexibility and 24% would increase the number of hours that are guaranteed as part of a contract and therefore avoid the premium, while 21% would utilise other forms of flexible working (e.g. annualised hours).

However, on the more negative side for such workers, 20% of employers would reduce hours overall for workers on these arrangements, 16% would use more workers on short-hours contracts, and 13% would use more temporary staff where possible, for example hiring agency staff on guaranteed hours over a period of high demand. A further 11% of employers would respond by reducing employment overall and just under a tenth (9%) would outsource tasks.



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If such a premia is introduced it must be accompanied by greater campaigning efforts to make sure that both employers and employees are aware of the new rate and the circumstances in which it might apply. The term zero-hours has no meaning in employment law and may not therefore appear in many contracts of employment, so it will be important to make sure employers understand which contracts might be covered and which may not and that employees are fully aware that they might be entitled to a higher rate. Careful definition will be needed to help minimise unnecessary disputes and mistakes.

CIPD

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