

Evidence on the National Minimum Wage (including the National Living Wage): Scottish Social Services Council (SSSC) response (June 2017)

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 SSSC is the regulator for the social service workforce in Scotland. Our work means the people of Scotland can count on social services being provided by a trusted, skilled and confident workforce. We protect the public by registering social service workers, setting standards for their practice, conduct, training and education and by supporting their professional development. Where people fall below the standards of practice and conduct we can investigate and take action.

We:

- publish the national codes of practice for people working in social services and their employers
- register people working in social services and make sure they adhere to our Codes of Practice
- promote and regulate the learning and development of the social service workforce
- are the national lead for workforce development and planning for social services in Scotland.

Our purpose is to raise standards and protect the public through regulation, innovation and continuous improvement in workforce planning and development for the social service workforce. We also have a responsibility for workforce data and intelligence. We produce workforce data, information and intelligence for employers and other stakeholders to support the development of the sector. We develop and publish official and national statistics on the workforce. We do not routinely collect or publish pay data.

Social service workers provide care and support for some of the most vulnerable people in Scottish society. The sector employs approximately 203,000 people in Scotland.¹ These workers deal with complex care needs and make a real difference to peoples' lives.

The SSSC is an accredited Living Wage employer.

We are responding to questions 2, 3, 4, 7, 8, 12, 14, 15 and 16.

¹ SSSC (2016) Scottish Social Services Sector: Report on 2015 Workforce data. Unless otherwise stated all workforce data statistics in this response are taken from that report.

Impact of the National Living Wage and National Minimum Wage

2. What has been the impact of the NLW since April 2016? The rate was set at £7.20 in 2016 and rose to £7.50 on 1 April 2017. Our critical interest is views or data on the initial effects on employment, hours and earnings. But we are also very interested in evidence on:

- **pay structures (including premium and age-related pay) and benefits**
- **age structure of the workforce**
- **outsourcing**
- **differentials**
- **progression**
- **job moves**
- **training**
- **contract type**
- **business models**
- **productivity**
- **investment**
- **prices and**
- **profits.**

Impact of the national living wage and living wage on social service employment

Our response focuses on the National Living Wage (NLW) and the Living Wage.²

We welcome the intention behind the NLW. We have reservations about the term. The NLW is effectively an enhancement of the National Minimum Wage (NMW) for workers aged 25 and over.³ We welcome the overall focus on increasing wages but would like to see a similar rate for younger workers.

It may be too early to determine the impact of the NLW on the social service workforce. As of December 2015 the sector employs approximately 203,000 workers in Scotland, or 1 in 13 of all workers. The workforce grew by 1.8% during the previous year. The 2015 workforce figure is the highest since we began publishing data in 2008. We will publish updated information shortly which will inform our understanding of the workforce. It is important to bear in mind that the sector's workforce may continue to grow as it has a critical part to play in the development of Scotland's economy. For example, the Scottish Government's labour market strategy notes that the expansion of learning and childcare is leading to substantial employment demand.⁴ In addition, the integration of health and social care is partly about delivering services in the community. These policies are driving workforce growth.

Addressing pay levels is a key challenge in social services. The Scottish Government's vision and strategy for this workforce highlights the importance of addressing this issue.

² The rate set annually by the Living Wage Foundation.

³ We return to this subject in our response to question 14.

⁴ Scottish Government (2016) Scotland's National Labour Market Strategy

'Pressures on pay and conditions and workload impacts on morale, recruitment and on the quality of care and support provided. The economic contribution made by the sector is significant and it is a matter of concern that parts of it have developed a reputation as low-wage/low skill which impacts negatively on the workers and potentially on public confidence. Action to address low pay would enable a more positive narrative to emerge about the sector and encourage people to see it as a good career choice.'⁵

There is wide variation in contract types in the social service sector.

- 51% of workers are in full-time roles
- Around 80% are on permanent contracts
- It is believed that at least 10% of the workforce are on zero hours or no guaranteed hours contracts.

In addition to low pay there are issues around filling vacancies in this sector. In December 2014, about 34% of services with vacancies reporting problems filling them. This figure represents a 6% increase on the previous year.⁶ The reasons for these issues are not limited to low pay and include a lack of experience or qualified applicants. A recent survey of adult social care workers highlights low wages as a key barrier to recruitment.⁷

The need to address pay pressures is also prominent in studies of the early years and childcare (ELC) workforce and the out of school care workforce. A recent study of the ELC workforce estimates that around 80% of practitioners and 50% of supervisors in partner settings earn less than the living wage.⁸

There is some concern about the impact of the NLW on the financial viability of social care providers. One economist uses an example to illustrate the point.

'The built-in increases in the National Living Wage provides a benefit to front-line staff but at the same time adds to the financial pressures on employers. As an illustration, if wages account for around 60% of total expenditure of the 30 largest Scottish-based care providers, their total turnover would need to rise annually by around 2% in real terms by 2020 just to meet these cost pressures alone.'⁹

⁵ Scottish Government (2015) Social Services in Scotland: A Shared Vision and Strategy 2015-2020

⁶ Care Inspectorate submission to the Scottish Parliament's Health and Sport Committee into recruitment and retention, <http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/100621.aspx>

⁷ Scottish Care (2016) Voices from the frontline

⁸ Scottish Government (2016) Financial review of early learning and childcare: the current landscape

⁹ Armstrong (2016) Scotland's social care sector: the financial evidence that is driving change

A living wage for adult social care workers

In 2016 the Scottish Government indicated that adult social care workers would be paid the living wage rate of £8.25 per hour from October 2016. This commitment covers workers who are directly involved in the provision of adult social care, as defined within the SSSC's workforce data report.¹⁰ The Scottish Government subsequently confirmed that adult care workers will receive a revised £8.45 hourly rate from 1 May 2017. It also confirmed that adult day care workers and personal assistants would receive this rate.¹¹

The vast majority of the adult social care workforce is covered by the Scottish Government's living wage commitments. The commitment does not cover workers in auxiliary roles such as domestic or catering staff.¹² The extent to which workers in these latter roles receive the NLW is unclear.

We welcome moves to ensure care workers receive at least a living wage. However, we have concerns about the potential for a gap between workers directly involved in the provision of care and those who are not. There are also some concerns about the impact on pay differentials.

A living wage for ELC workers

There have been moves to address low pay in the ELC sector. The Scottish Government is committed to extending the provision of free ELC for 3 and 4 year olds (and some vulnerable 2 years olds) by the end of this parliament. This commitment will lead to a significant investment in the workforce. The Government has also indicated that by the end of this parliament, 8,000 existing and all additional ELC staff will be paid at least the Living Wage.¹³

Future increases to the living wage

On 6 November 2017 the Living Wage Foundation (LWF) will announce the new living wage rates. The Scottish Government is not currently committed to using the Living Wage as a benchmark. The Scottish Government have indicated that they may increase the rate in future. The current commitment matches the living wage announced in November 2016.

¹⁰ Scottish Government, Convention of Scottish Local Authorities (COSLA), Coalition of Care and Support Providers in Scotland (CCPS) and Scottish Care (2016), Guidance to support delivery of the living wage commitment to care at home and housing support

¹¹ Our understanding is that all Scottish local authorities pay a Living Wage for their staff. This means that these commitments will have a greater impact on the private and voluntary sector.

¹² See footnote 10.

¹³ 'The end of this parliament' refers to the current Scottish Parliamentary term. See <https://news.gov.scot/news/fair-pay-at-heart-of-childcare-expansion>

Procurement

The majority of social service workers in Scotland are employed by the private or voluntary sector. The private sector makes up just over two fifths of the workforce. These figures vary throughout Scotland. For example, the public sector continues to employ the majority of workers in Orkney and Shetland.

Procuring care and support is a complex process. Statutory guidance under the Procurement Reform (Scotland) Act 2014 was published in October 2015.¹⁴ The document provides guidance to public bodies on evaluating fair work practices (such as the Living Wage) when selecting tenders and awarding contracts. The guidance identifies a need to consider whether fair work practices are relevant to the quality delivered under a contract. For example, it indicates that commissioners should consider the implications of failing to pay wages for travel time within the working day. It also indicates they should consider whether there is evidence that working conditions may hinder recruitment and retention.

3. 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)?

The impact of the NLW on the Scottish social service sector is unclear at this stage. The sector employs people in every local authority and area of Scotland. The size and scope of organisations in the sector varies considerably. For example, some organisations employ thousands of staff across multiple local authority areas. Others will employ a small number of staff at one site. Approximately 70% of providers employ fewer than 30 people.

The vast majority of people working in this sector are women. The Scottish Government notes that increased wage levels may encourage more males to work in the sector.

'Our consultation suggests that improved pay and conditions in the sector will help to attract more men into careers in Early Learning and Childcare.'¹⁵

4. What has been the effect of the minimum wage and the NLW on workers aged 21-24, particularly their employment prospects?

We do not collect data which suggests that the NMW, NLW or living wage are having a negative impact on workers aged 21-24. Any impact may be greater in the ELC sector where the median age of a worker is lower than the equivalent figure for the overall sector. For example, the median age of a worker in the private day care of children sector is 28. The number of workers in this sector will increase as the Scottish Government expands the provision of free ELC. We noted earlier that the Scottish Government intends to introduce the living wage for this workforce by the end of this parliament.

¹⁴ Scottish Government (2015) Statutory guidance on the selection of tenderers and award of contracts. Addressing fair work practices including the living wage, in procurement.

¹⁵ Scottish Government (2017) A blueprint for 2020: the expansion of early learning and childcare in Scotland

We note the findings from a English care home study which suggests the NLW is having positive 'spill-over effects' for workers aged 25 or under.¹⁶ The extent to which this will be the case in Scotland may be limited. We have already noted that all adult social care workers receive the living wage. The potential for young social service workers to receive a rate below the NLW in Scotland would particularly apply to other groups such as the ELC workforce and staff who are not directly involved in the provision of care. Our hope would be that the majority of providers are taking a uniform approach whereby they pay at least the Scottish Living Wage to all workers irrespective of age.

7. What has been the effect of the Apprentice Rate on pay, provision and take-up of places, and training volume and quality?

We welcome the recent increase in the Apprentice Rate. We would like to see this move closer to the NMW or NLW rates. Moving the apprentice rate closer to the rate for 16-17 year olds is a welcome step. Anecdotal evidence suggests that some employers pay at least the NLW to apprentices and younger workers. We welcome this approach.

8. What has been the impact of the Apprenticeship Levy and the new funding model (introduced in April 2017 in England)?

We have concerns about the impact of the Apprenticeship Levy on the ability of Scottish providers to ensure their staff meet the qualification requirement of registration with the SSSC. This impact could be greater on adult care providers who tend to be larger employers. Significant numbers of their workforce are due to register from October 2017.

Workers who are registered with us must have achieved, or be working towards, appropriate qualifications. These qualifications are usually paid for by employers. As many employers will now be liable to pay the Apprenticeship Levy, money budgeted to cover the cost of registration may be diverted to pay the levy. There are approximately 100,000 people on the SSSC's register. A further 50,000 care at home and housing support workers are expected to join the register over the next three years. We expect that many of these workers will require qualifications.

The levy may also have an impact on employers in the childcare sector. The expansion of early learning and childcare in Scotland will lead to an increase in the number of workers in the sector working towards qualifications so that they can be registered with the SSSC. The increased use of the NLW may also lead to more employers crossing the £3 Million threshold and being required to pay the levy.

One voluntary sector provider has indicated that they will be due to pay approximately £130,000 in 2017-18. They indicate that the levy will have an impact on training income.¹⁷

¹⁶ Giupponi et al (2016) The Impact of the National Living Wage on English Care homes

¹⁷ Third Force News, 16 May 2017, Apprenticeship Levy will cost us £130,000 this year, <http://thirdforcenews.org.uk/blogs/apprenticeship-levy-will-costs-us-130000-this-year>

12. What is your assessment of the effects of the UK's decision to leave the EU, since the referendum in June 2016 and in the future? Has it or will it affect you?

A recent survey suggests that nationals from the EU 27 countries (excluding the UK) make up approximately 3% of all employment across health and social care.¹⁸ The implications for social services following the UK's decision to leave the EU are unclear at present.

The Scottish Government's Programme for Scotland 2016-17 highlights the critical contribution of staff from across the EU and EEA. It notes that they value their contribution and aims to retain their right to stay and work in Scotland.¹⁹ In February 2017 Ministers reiterated this commitment and repeated it in the draft national workforce plan for health and social care.²⁰ Some reports suggest Brexit is having a major impact on the wider workforce. Two examples follow.

- In March 2017 Scottish Care indicated that at some of their members are cutting back their approaches to recruitment in the wider EU.²¹
- In June 2017 the Nursing and Midwifery Council released figures which suggest that there has been a 96% drop in the number of nurses from the EU registering in the UK.²² There are approximately 6,000 nurses working in the Scottish social service sector. Many are working in care homes for adults.

14. What are your views on future rates of the minimum wage (the current structure covers workers aged 25 and over, 16-17 year olds, 18-20 year olds, 21-24 year olds, apprentices, and the accommodation offset)?

We welcome the drive to implement a living wage for all adult social care and early learning and childcare workers in Scotland. These commitments do not differ by age. We are concerned about the continuation of rates which allows the payment of a lower rate to workers below the age of 25. We are aware of the UK Government's position on this.

¹⁸ Office for National Statistics (2015) Annual Population survey 2015. There is a margin of error in this estimate.

¹⁹ Scottish Government (2016) A plan for Scotland: the Government's programme for Scotland 2016-17

²⁰ Scottish Government (2017) National Health and Social Care Workforce Planning: discussion document

²¹ Home Affairs Committee (2017) Oral evidence, immigration, HC 864

²² BBC News, 12 June 2017, EU Nurse applicants drop by 96% since the Brexit vote: <http://www.bbc.co.uk/news/health-40248366>

'It (the UK Government) argued that it wants to increase pay for workers, but for younger workers the priority is to secure work and gain experience, which is already reflected in the existing NMW rate structure. In order to maximise the opportunities for younger workers to gain that experience, the NLW will only apply to workers aged 25 and over.'²³

We would prefer the delivery of a fair wage for all workers irrespective of age. As a first step we would like to see a living wage paid to all workers. The SSSC's regulatory requirements – in common with other professional regulators - do not draw distinctions based on age. All eligible social service workers must register with the SSSC or an equivalent regulatory body. These workers must hold or be working towards appropriate qualifications. A failure to provide the NLW for younger workers may have an impact on their morale and recruitment. It may also devalue their critical role.

The current wage structure incorporates different rates for older workers, younger workers and apprentices. We believe that it is overly complicated for employers. The increasing drive towards self-directed support and direct payments means many people who receive care are now employing staff. Employing workers can be complex. The proliferation of rates adds to the complexity.

Delivering a minimum of the living wage would support efforts to promote the social service sector as a positive career choice for younger workers. Promoting social services as a lifetime career also helps to address recruitment and retention issues. The Scottish Government has highlighted evidence which suggests that an increased wage may encourage more males to consider a career in early learning and childcare. Male workers play a critical role in the development and care of children.

We are unaware of any use of the accommodation offset in social services.

15. What issues are there with compliance with the minimum wage? Has the NLW affected compliance and enforcement? Are there any other trends, for example in particular sectors or among particular groups?

There is a particular need to make sure that all workers in the social service sector receive their entitlement to the National Minimum Wage (NMW). The Low Pay Commission has consistently highlighted this issue. Two examples follow.

'The evidence suggests that some groups are at greater risk than others of not receiving their entitlement to the NMW. Of particular concern is social care: HMRC's report on their recent investigations supported other evidence which had indicated that NMW non-compliance in this sector was higher than average.'²⁴

²³ Low Pay Commission (2016) National Minimum Wage - Low Pay Commission Report Spring 2016

²⁴ Low Pay Commission (2014) National Minimum Wage: Low Pay Commission report 2014

'We remain concerned about workers in social care, where reports continue of non-payment of travel time and sleepovers and the introductory rate of the National Living Wage (NLW) presents significant affordability challenges.'²⁵

There are continued issues around non-compliance following the ruling by the European Court of Justice that 'the journeys made by workers without fixed or habitual place of work between their homes and the first and last customer of the day constitute working time'. This issue is particularly relevant in care at home services.

We are aware of proposals in Wales to 'curb' zero hours contracts and to differentiate between travel time and care time.²⁶ We make no comment on the proposals but will follow them with interest.

Another issue is 'sleepover' pay. There are reports of voluntary sector organisations that are unable to pay the NLW for workers who sleep over at their place of work.²⁷ In December 2016 the Scottish Government noted that as minimum sleepovers should be consistent with HMRC guidelines. It reiterated that this is for a transitional period with the ambition that all hours are paid at the rate of the living wage. The Scottish Government will continue to monitor the implementation of this commitment.

The previous UK Government indicated that it will review guidance on travel time and sleepover rates and explore whether they can be improved.²⁸ We would welcome further moves by the UK Government to address non-compliance.

16. What more could be done to improve compliance? What more could be done to encourage or enable underpaid workers to make a complaint via the formal channels?

We welcome the UK Government's advertising campaign to raise awareness of workers' rights around the NLW and NMW, including travel time.²⁹ We would welcome any further moves to improve compliance.

One option would be to encourage or require employers to print the number of hours an employee has worked in a pay period on their pay slip. This would allow them to calculate their hourly rate. It may also promote transparency and confidence in the system.

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²⁵ Low Pay Commission (2016) National Minimum Wage - Low Pay Commission Report Spring 2016

²⁶ <http://gov.wales/newsroom/health-and-social-services/2017/zero-hours/?lang=en>

²⁷ <http://thirdforcenews.org.uk/tfn-news/living-wage-saga-uncovers-cracks-in-scotlands-social-care-system>

²⁸ Department for Business, Innovation and Skills (2015) National Minimum Wage: Government Response to the Consultation on the draft Consolidated Regulations

²⁹ <https://www.gov.uk/government/news/campaign-launched-to-increase-low-paid-workers-knowledge-of-national-minimum-and-national-living-wage-rights>