

Evidence submission



Low Pay Commission's Consultation on April 2022 National Minimum Wage rates

Response by the Latin American Women's Rights Service (LAWRS)

17 June 2020

About Latin American Women's Rights Service (LAWRS)

LAWRS is a by-and-for, feminist and human rights organisation addressing the practical and strategic needs of Latin American migrant women displaced by poverty and violence. LAWRS' mission is to provide Latin American migrant women with tools to assert our rights and pursue personal empowerment and social change. We directly support more than 5,000 women annually through culturally and linguistically specialist advice, information, counselling and psychotherapy, advocacy, development programmes, and workshops.

LAWRS is based in London but supports Latin American women throughout the UK.

Contact:

Dolores Modern, Policy and Communications Coordinator on Employment Rights,
dolores@lawrs.org.uk

Introduction

LAWRS welcomes the opportunity to contribute to the Low Pay Commission's consultation on the 2022 National Minimum Wage rates and the live-in domestic worker exemption. Countless migrant workers performing essential tasks have risked their health and their lives during the COVID-19 pandemic in the past year. Yet, many have done so while earning meagre salaries in low-paid sectors and having no alternative.

Domestic workers are a particularly vulnerable group of workers, composed mainly of migrant women, who have been pushed further underground during this time. They belong to one of the most invisible and exploited workforces in the UK and elsewhere, and we are pleased to provide evidence to challenge outdated regulations that in practice have acted as loopholes in the law that allow for exploitation and modern slavery to develop.

Our evidence is based on information gathered from our frontline services of the experiences of Latin American migrant women working primarily in low-paid sectors where exploitation is ripe, namely cleaning, hospitality and domestic work.

Consultation questions

Economic outlook

2. What are your views on the economic outlook and business conditions in the UK for the period up to April 2022? We are particularly interested in:

- **the conditions in the specific sector(s) in which you operate.**
- **the prospects for economic recovery from the effects of the Covid-19 pandemic.**
- **the effects of Government interventions to support the economy and labour market.**
- **the current state of the labour market, recruitment and retention.**
- **your experience of wage growth and inflation in the last year, and forecasts for the next couple of years.**

As restrictions ease and more businesses reopen, LAWRS is concerned about the challenge that a sudden increase in demand for services will present, in addition to the reported shortages of

staff¹, which might lead to fewer workers bearing the brunt of the pressure to keep up.

Sectors where migrant workers tend to be employed in high proportions, such as cleaning, domestic work and hospitality, continue to be invisible, and the communities that make up this workforce and their needs are not fully understood.

In addition, the anti-immigration rhetoric that has thrived in the midst of the hostile environment has led migrants to become more vulnerable, and many employers less likely to hire them for fear that their immigration status will be problematic. On the other hand, employers who are prone to exploitative practices, often seek out migrants who are unaware or uncertain of their rights. With the deadline for the EU Settlement Scheme (EUSS) looming, it is expected that this vulnerable workforce will increase.

3. To what extent have employers been affected by other major trends in the economy and labour market: for example, Brexit, the shift to homeworking or any changes in the numbers of migrant workers in the UK.

LAWRS has supported Latin American migrant women with dual citizenship who have applied to the EUSS and have waited many months for a decision. Without confirmation on their status, they have been unable to obtain a National Insurance Number, and consequently, unable to get jobs, as employers refuse to hire them without one.

The impending deadline for the EUSS will also bring about a series of concerning changes. As employers are required to conduct checks on the immigration status of workers, and no physical proof or status or ID is given to EU migrants, digital literacy and digital access will be a challenge both for workers and employers.

EU migrants who have not applied to the EUSS by the 30th of June will have the opportunity to apply late provided that they have a valid reason for not having done it in time. However, beyond the deadline, those migrants will lose their status and therefore their right to work, rent and access services or support. This presents a problem not only for the migrants themselves, but for employers who will be committing a crime if they continue to employ them.

4. What is your experience over the past year in the following areas?

- **Prices and profits**

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<https://www.aljazeera.com/economy/2021/5/17/as-they-ready-to-re-open-british-eateries-short-on-staff-survey>

- **Productivity**
- **Pay structures and differentials**
- **Wider benefits available to workers (including premium pay and non-pay benefits across the workforce)**
- **Quality of work, including contract types, flexibility and work intensification (e.g. greater expectations for workers to work more flexibly, with greater effort, to higher standard etc)**

During the pandemic, LAWRS saw the demand for employment rights advice increase by over 100%. The majority of enquiries responded to issues such as dismissal or loss of hours; inability to take sick leave or access statutory sick pay; increase of work without increase in pay; lack of personal protective equipment, among others. In addition, domestic workers with underlying health issues and with childcare responsibilities were being asked to work even when displaying symptoms of COVID-19. A number of them were asked to move into their employers' residence during the lockdown, and were threatened with dismissal if they did not comply².

Case Study 1

Tamara is an Ecuadorian migrant who has been living in the UK under an Overseas Domestic Worker's visa. She takes care of two children, cooks and cleans in a home. After the COVID-19 pandemic outbreak, Tamara's employer informed her that she would have a significant pay cut (paying below the NMW), because she could no longer afford her full salary due to her own working situation. Her employer works in an office in Central London, and has continued working from home. Tamara felt she could not complain about this cut, as she depended on her employer to reside in the UK and had no recourse to public funds.

Case Study 2

Laura is originally from Bolivia and is an EU passport holder. She works as a cleaner and has diabetes and asthma. After the COVID-19 pandemic outbreak, her manager asked all cleaning staff to continue working despite some members of staff being in the high-risk group. Laura expressed concern for her safety and asked her manager to provide her and her colleagues protective gear to continue working safely, but the manager denied her request. She has also dismissed a few of Laura's colleagues for refusing to work due to having ill family members, being ill themselves or having caring responsibilities after schools were closed. Only Laura and another colleague remained working, doing the job of five cleaners by themselves. Laura could not afford to stop working, as she needed to pay rent

² LAWRS (2020). *Women and Equalities Committee – Unequal impact: Coronavirus (Covid-19) and the impact on people with protected characteristics*. Available at: <https://lawrs.org.uk/wp-content/uploads/2020/12/2020-LAWRS-Women-and-Equalities-Committee-call-for-evidence-COVID-19.pdf>

and send money to Bolivia to support her parents.

5. Apart from the minimum wage, what other factors affect workers in low-paying sectors and occupations? Among other things, we are interested in evidence and views on:

- **The effect on workers of Universal Credit and other rules around benefits and tax.**
- **The relationship between the minimum wage and weekly income.**
- **Access to transport and the effects this has on working life.**

o Lack of support

The Job Retention (Furlough) Scheme reached a limited number of migrant women in low-paid employment, as it was dependent upon the employer's willingness to register their employees. Many simply chose to dismiss their employees instead. Many who were in fact registered, found that receiving 80% of a salary which was low to begin with, in particular for those with few hours of employment, left them without sufficient means to survive.

The Self-employment Income Support Scheme applied only to those who earn the majority of their salaries from being self-employed, when many workers in cleaning, hospitality and domestic work are employed by more than one employer and have different conditions of work with each one. They often are self-employed with some, and have an employee or worker contract with others.

In the case of those with no recourse to public funds (NRPF), the inability to complement their low or inexistent income with government support through Universal Credit, meant that they were, and in many cases still are, dependent on food banks and the help of voluntary organisations to survive.

A number of them are also not able to apply for Universal Credit because they are not able to pass the 'habitual residency test', a necessary step for EU migrants, who need to prove they have a 'right to reside' in the UK in order to claim welfare benefits such as Universal Credit.

Finally, not able to receive any support from the government, undocumented women have been fully unprotected from the abuses described above. They have had to choose between continuing to work in abusive conditions, or destitution.

o The effect on workers of Universal Credit and other rules around benefits and tax.

Universal Credit has been a vital support for many workers during the pandemic. It has meant the difference between relying on foodbanks or being able to put food on the table, the difference between keeping a roof over the family or becoming homeless.

However, countless migrant workers have not been able to access this invaluable support, such as those with a NRPF condition attached to their visa, undocumented migrants, and EU citizens who migrated around the end of 2020 and whose application to the EUSS has been delayed.

o The relationship between the minimum wage and weekly income.

LAWRS often supports service users who are offered the NMW, however during their working period they might be requested or offered to work hours beyond what they have agreed, only to find that at the time of receiving their payment, those hours have not been taken into account, effectively taking the payment for the actual hours worked below the NMW.

o Access to transport and the effects this has on working life.

Transport and travelling time are a significant issue for migrant women in low-paid sectors. Oftentimes, the salary is not enough to cover the cost of transport, and the fragmented hours means that a cleaner, for instance, might have different jobs in opposite sides of the city on the same day, making her travelling time excessive and expensive.

“I have so few hours for cleaning at the moment. It takes me an hour and a half to get there and an hour and a half to get back, and to be honest, I spend all the money I make on transport, but I have to keep doing it because that way I can continue to get Universal Credit until I can find more hours.”

Mariela, LAWRS' service user

The National Living Wage

7 - To what extent has the NLW affected different groups of workers, particularly those with protected characteristics (for example women, ethnic minorities) and migrant workers?

The majority of Latin American migrant women supported by LAWRS do not earn the NLW.

Compliance and enforcement

18 - What issues are there with compliance with the minimum wage and what could be done to address these?

In LAWRS' experience, workers are unaware of the role of HMRC and would not know to contact them for assistance in recovering unpaid wages. When advice is sought, it is generally with unions or specialist voluntary organisations which will provide holistic support and respect confidentiality, and which can provide assistance in the worker's own language.

It is often the case, in normal circumstances, that workers prefer to change employment rather than confront their employer if issues are not easily resolved.

To improve compliance, LAWRS recommends the following:

- Easily accessible information by HMRC, translated to different languages for migrant workers, and an informative campaign creating awareness of what the agency can do for them.
- Increase in inspections, provided that these are separate from immigration enforcement.
- End to data sharing, as migrant workers will not come forward to report until they know it is safe for them to do so. It is not only undocumented migrants who would not want to report, it is also those who do not want to put their colleagues at risk, those who are unsure about their rights, those who after Brexit have been told have no rights in this country.

Live-in domestic workers

21 - Under section 57(3) of the National Minimum Wage Regulations 2015, work done by a worker in relation to an employee's family household is exempt from the NMW if the worker lives with the employer and is treated as a member of the family. What evidence do you have on the use of this exemption? We are particularly interested in evidence on the characteristics of workers affected; and the prevalence of its use.

Originally designed to fit the role of *au-pairs*, for which a visa is no longer available in the UK, the NMW exemption does not contemplate the real experiences of domestic workers on whom it is applied today, and is problematic for several reasons.

In LAWRS' experience, domestic workers often work between 10 and 12 hours a day as a minimum, most regularly 6 days a week. Residing in the family home means that they are permanently available in the eyes of employers, even during their time and days off, and being treated 'as a member of the family' often means that the employer can ask the worker to perform particular tasks as a favour, extending her working day without the corresponding increase in pay. However, unlike a member of the family, domestic workers are unable to refuse to perform a task requested by their employer, regardless of the time of day or whether that task was agreed upon before the employment started or not. This even extends to periods when they are ill, when, very often, they are not allowed to take time off.

As wages for domestic workers are generally fixed per week or per month, but based on normal hours of work, their long working hours mean that even when the wage is calculated to cover the NMW for a normal working week, their wages tend to fall below it. This practice particularly affects live-in domestic workers, whose working hours tend to be longer than other workers'.³

The vagueness of the argument of a worker being treated 'as a member of the family' permits employers to exploit the law to their advantage. In reality, this exemption, as well as the accommodation offset, are rarely explained to the domestic worker before she accepts the job, or included in a contract. In contrast, they are used only as a legal defense when a worker tries to recover unpaid wages by bringing a claim to the Employment Tribunal.

Due to the nature of the work, it is almost impossible for a domestic worker to present evidence on the hours that she worked or the treatment she received, or to present witnesses, as the work is performed in a private residence and witnesses tend to be family and friends of the employer.

The Domestic Workers Convention 2011 (No. 189) explicitly calls upon member States to "take measures to ensure that domestic workers enjoy minimum wage coverage, where such coverage exists, and that remuneration is established without discrimination based on sex." (Art. 12(2))⁴. In contrast, the exemption has been found by the Employment Tribunal in *Puthenveetil v Alexander & George, & Others* 2361118/2013⁵ to be indirectly discriminatory on the grounds of sex, as domestic work tends to be performed by women, and these women are excluded from earning the NMW. It is also discriminatory on the grounds of race, as domestic

³ Forthcoming ILO report (2021).

⁴ ILO, Domestic Worker Convention, 2011 (No. 189). Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:2551460:NO

⁵ Ms K P K Puthenveetil v Mr S Alexander and Others: UKEAT/0165/17/DM. Available at: <https://www.gov.uk/employment-appeal-tribunal-decisions/ms-k-p-k-puthenveetil-v-mr-s-alexander-and-others-ukeat-0165-17-dm>

workers are most often minoritised women who have migrated to the UK. For these women, there is an increased vulnerability and extra barriers to accessing information and justice, as they often do not speak English. Thus, justice is seldom achieved for vulnerable domestic workers who are exploited by their employers.

The Tribunal also concluded in *Puthenveetil v Alexander & George, & Others* 2361118/2013 that the fact that there is an unusual working relationship between the employer and the domestic worker who is treated 'as a member of the family', does not demonstrate there is a need to limit payments beneath the NMW.

Paragraph 14 of the Domestic Workers Recommendation 2011 (No. 201) adds that, if domestic workers are required to live in, no deductions from the remuneration for accommodation should be allowed, unless agreed to by the worker. Overall, such payments in kind should not unduly diminish the remuneration necessary for the needs of domestic workers and their families.⁶

The exemption has been found to increase workers' vulnerability, as it renders them more dependent on the employer, and reduces the workers' ability to provide for their family and to generate savings. As leaving an employer requires funds to cover accommodation and meals until a new job is found, live-in domestic workers paid below the NMW tend to be at higher risk of staying in exploitative employment.⁷

Case study 4

Elsa came to the UK in 2018 because a friend told her of a job as a domestic worker. At the interview she was told she would be working as a housekeeper, earning £1350 a month, living with the employer and her two teenage daughters. Her tasks in the house included cleaning, cooking, looking after the children, washing and ironing, shopping, driving the children to school and the employer wherever she needed to go, mowing the lawn, and looking after their pet, among others. On the weekends, the employer often organised parties for which Elsa would have to cook and clean. Her working day started at 7 AM, finishing sometimes at 7 PM, sometimes later. She had 2 hours off a day, which in practice she could never take as she would be requested to perform different tasks. On her 2 days off a week, the employer would still make Elsa work if she was in the house, or call her to come back when she was out.

Elsa had no contacts here and did not speak English. The employer refused to help her enroll in a class, claiming she did not need to learn.

⁶ ILO, Domestic Worker Convention, 2011 (No. 189). Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:2551460:NO

⁷ Forthcoming ILO report (2021).

When her own daughter was going to come and live with her, Elsa wanted to rent a room, but found it was impossible because she did not have a contract, despite repeatedly asking her employer for one. The employer offered Elsa to bring her daughter to live with them, and she would deduct £350 from her pay. As a result, she earned £1000 during the last year of employment.

Without a contract and little savings, Elsa found it impossible to leave her employment as she could not rent a room for herself and her daughter. Finally, she decided to seek help and contacted LAWRS, and was able to leave. She was referred to the National Referral Mechanism and received a positive reasonable grounds decision.

LAWRS firmly believes that, given its current use as a legal resource for employers who underpay domestic workers often working in exploitative conditions, the exemption should have no place in today's labour market and society. Furthermore, it undermines any efforts to fight trafficking and labour exploitation, and is therefore at odds with the governments' commitments in this sense.

Case study 3

Adela was brought to the UK by her employer with the promise of employment as a housekeeper. She was told her duties would be to clean, iron and occasionally cook. She would have health insurance and earn £200 a week, working from 10 AM to 6 PM. She accepted without knowing what this amount meant or what the NMW was in the UK.

When Adela got to the country, she was not given a contract. She asked about her insurance number and was told she did not need one as she did not need to pay tax. She does not speak English so did not have access to information on her rights and responsibilities.

She found herself working a minimum of 10 hours a day, 6 days a week, cleaning a house with 7 bedrooms and bathrooms, 3 living areas, kitchen, dining room and service area, as well as doing the gardening, ironing, cleaning the swimming pool and a barn.

She was told she had been registered with a GP, but she never went to an appointment. As a result, she was not taking medication that she needed to take regularly. She did not know how to get an appointment or the fact that she could request an interpreter.

During the pandemic, she was told by her employer that they would be paying her £100 because they were not doing well financially. When the employer found out Adela had signed up for an online English course, she changed her working days making it impossible for her to attend, saying it was not necessary for her to learn.

Adela finally left her employment and is currently seeking retribution for her unpaid wages.