

Additional Low Pay Commission Evidence

Citizens Advice Scotland (CAS): September 2021

Scotland's Citizens Advice Network empowers people in every corner of Scotland through our local bureaux (CAB) and national services by providing free, confidential, and independent advice. We use people's real-life experiences to influence policy and drive positive change. We are on the side of people in Scotland who need help, and we change lives for the better.

Summary

Following CAS' initial 2021 submission to the Low Pay Commission, we had further engagement from advisers in the Citizens Advice Bureau Network's Employment Specialist Forum. Advisers shared additional insight and evidence from their frontline experience on issues for low paid workers, including:

- › Low pay and non-payment of statutory minimum wage rates
- › Furlough and Covid-19 changes
- › Social security
- › Enforcement of employment rights

Low pay

One adviser from our Employment Specialist Forum expanded on problems with couriers and wage deductions from the original consultation response:

There has been a definite increase in requests for help from drivers during the pandemic, which I guess is partly because so many more drivers have been recruited during the pandemic and are now finding the drawbacks from the contracts they have signed. Examples: A driver started work in January. By March his employer had made so many deductions from his wages that he was (allegedly) in debt to the company and was receiving no pay at all. In another case a driver who had been offered around £650 per week received, over a four week period, an average pay of less than £150 per week after deductions. One employer holds back £500 in wages to guarantee the driver will pay any deductions, and adds another £250 held back if a driver leaves without working a period of notice (him a self-employed subcontractor too).

Other typical deductions are £180 per day if a driver is off sick; £1,000 excess on all vehicle insurance that can be held back in the case of any accident; excessive charges for damage repairs (eg £1,500 for a repair that actually cost around £120. The driver won that one back).

Another adviser highlighted the hospitality sector as a particular offender for unpaid wages:

I noticed a trend latterly for employers in the hospitality sector (mainly bars) to simply fail to pay any wages at all. Employees would leave after about four weeks and consult us.

HMRC has power to take enforcement action against such employers to recover unpaid wages on behalf of employees.

However they decline to use that power at present-on the relevant part of the HMRC website you are forcibly re-directed to ACAS, which of course has zero enforcement power, and can only invite the employer to engage.

This is a very successful tactic by employers, and I would not be surprised if they share experiences via social media.

Furlough and other Covid-19 changes

One adviser from our Employment Specialist Forum expanded on this from the original consultation response:

There have always been cases of apparent fraud over furlough payments, but as people start going back to work we are starting to get more cases where employees find there are oddities with furlough pay. A common one is to find some staff have received furlough pay and some have not, even when the business has been ostensibly closed. In some cases employees believe their employers have claimed furlough for them but never paid it out. Example: An office manager who has not been paid for months and believes she is owed around £4,000 has found that her employer has been claiming furlough for her. When she tried to claim this money she was told there was nothing available, and was offered £200 with more to come 'sometime'. (This one is currently with ACAS early conciliation).

CAB have also reported some confusion among clients with COVID changes to employment rules:

An East of Scotland CAB reports of a client who feels they have lost out on untaken holiday entitlement. Client understands that a new Covid-related rule allows her to carry forward up to four weeks entitlement into the following two holiday years. Adviser had to explain that while there was indeed a Covid-related change in the rules (April 2020), this was designed to facilitate employers with specific pandemic-related business pressures and who wished to prevent employees from taking their full entitlement during the current year. It was not an automatic right. Adviser states this is the second such enquiry they've had recently and is concerned people could be throwing away annual entitlement thinking it's being automatically carried forward.

Social security

Latest SG figures show an increase in working UC claimants:

The largest increases over the past year, subsequent to the initial surge in caseload in March 2020, were in the 'Working - no requirements' group, which comprises people with higher household earnings. This group increased by around 33,000 (68%). Consequently, this group represented 17% of the total UC caseload in April 2021, compared to 13% in April 2020.

The 'Working - with requirements' group (comprising people with lower household earnings) and the 'No work requirements' group (comprising people who cannot do paid work due to health conditions or caring responsibilities) also saw large increases.

As a result, UC claimants are less likely to be searching for work than they were in April 2020, though this remains the largest conditionality group for UC claimants and still increased by 23,000 over the past year. This group represented 38% of the total UC caseload in April 2021, compared to 44% in April 2020.¹

In its recent report the In-Work Progression Commission suggested necessary reforms to UC to encourage in-work progression for low paid workers, including reforms to conditionality, work allowances, and the taper rate.² Research has found that people on have low awareness generally of how work allowances and the taper rate operate.³ The application of the work allowance to household rather than individual earnings was singled out as a disincentive for second (normally female)

¹ SG, [UC Dashboard May 2021](#), page 6.

² In-Work Progression Commission, [Supporting progression out of low pay: a call to action](#), July 2021: "**Recommendation 2.2:** The Department for Work and Pensions should consider ways to incentivise claimants to reach milestones on their individual progression and learning pathways. For example, for every milestone that a claimant reaches on their individual progression and learning pathway, they could be 'awarded' with credits which they can put towards training or certification costs, or childcare or transport costs to allow them to reach their next milestone."; "**Recommendation 2.4:** The Department for Work and Pensions and HM Treasury should consider how the design of Universal Credit, especially the taper rate and work allowances, can best support progression incentives." The Commission also made recommendations around improving work coach support for those in-work: "**Recommendation 2.1** Jobcentres need to have an established, credible in-work offer for all working benefit claimants. This could include, for example, annual, high quality, progression-focused career conversations. To realise this, Jobcentres need to invest in specialist expertise in progression. This will include acting as a specialist hub for expertise on local labour markets in close partnership with local actors including employers, local authorities and skills providers, amongst others."

³ See DWP, [Universal Credit Full Service Omnibus Survey](#), February 2019, page 11: "Awareness of work allowance eligibility and taper rate were very low and similar to wave one: just two per cent of claimants were able to correctly identify both of the groups eligible for a work allowance, and three per cent knew the taper rate. Seven in ten claimants (68%) did not know whether they qualified for a work allowance, with claimants who were doing some paid work equally ill informed. Many (72%) of those who thought they qualified for a work allowance did not know how much they could earn before UC payments are affected."

earners to progress in work as their additional income would immediately be subject to the 63% taper rate.⁴

The Commission also referred to the findings of the Institute for Policy Research, University of Bath, who highlighted that as support for the cost of childcare is also absorbed within the monthly payment and tapered away as earnings rise, some working households are unable to pay their childcare fees and get into debt as a result.⁵

Long-standing issues with UC continue to cause problems for clients:

An East of Scotland CAB reports of a client affected by the benefit cap. If client was paid monthly her UC would be benefit capped and the monthly reduction would be £6.11 per month or £73.32 per year. C is paid weekly resulting in 4 months a year where the benefit cap does not apply but 8 months when the cap reduction is £27.30 per month or £218.40 per year. By being paid weekly and the inflexibility of UC's monthly schedule, is approx. £150 worse off a year by being paid weekly.

Enforcement

One employment specialist adviser commented on enforcement:

I did have a client who came in bearing a tribunal order for payment (of compensation for unfair dismissal). Employer declined to pay. How did client get his money? Sadly that involves considerable expense up front (sheriff officers fees for a start) with no way of knowing the prospects for recovery of anything.

The government is presumably footing the bill either way through the benefits system.

This adviser followed up further on enforcement:

The UK government [website](#) on enforcing the Minimum Wage was updated in April this year. So now there is a form you can complete and send off for amongst other things non-payment of the NMW.

⁴ In-Work Progression Commission, [Supporting progression out of low pay: a call to action](#), July 2021, page 25, citing Evidence submitted by the Institute for Policy Research, University of Bath to the In-Work Progression Commission's Call for Evidence, published 12 October 2020; further information about the findings of the Institute for Policy Research's research into Universal Credit and In-Work Progression at <https://www.bath.ac.uk/projects/couples-balancing-work-money-and-care-exploring-the-shiftinglandscape-under-universal-credit/>; and Submission by the Union of Shop, Distributive and Allied Workers (USDAW) to the In-Work Progression Commission's Call for Evidence, published 12 October 2020.

⁵ Evidence submitted by the Institute for Policy Research, University of Bath to the In-Work Progression Commission's Call for Evidence, published 12 October 2020.

Regarding a UK wide enforcement body, that would seem appropriate while employment remains a reserved matter. However it would be interesting to see data on success rates since April on recovery of unpaid wages.

On enforcement – the UK Govt response to consultation on a single enforcement body is rather non-committal on improving this enforcement:

*Enforcement of employment tribunal awards (Q9) Most of those who expressed a view thought that more should be done to enforce employment tribunal awards. BEIS currently run a penalty scheme for unpaid employment tribunal awards which involves government fining a respondent for late payment. As a minimum, this scheme would transfer over to the single enforcement body to administer. However, we recognise that a significant proportion of employment tribunal awards still go unpaid and this undermines individuals' ability to get redress. **We will work with the Ministry of Justice to consider whether the single enforcement body could do more to support individuals to pursue enforcement of their awards through existing routes.**⁶*
[emphasis added]

CAB also report of certain types of clients, such as agency workers, facing more difficulties enforcing their rights:

A West of Scotland CAB reports of a client facing an unexplained dismissal from her job after a period on maternity leave. Client is a Romanian national with pre-settled status and limited English. Adviser suspects there may be discrimination behind her dismissal, either on the basis of her maternity leave or her immigration status, but as the client is an agency worker she cannot challenge her dismissal.

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