

National Minimum Wage

A response from Citizens Advice Scotland to the
Low Pay Commission



**Based on the evidence of
Citizens Advice Bureaux
clients across Scotland**

by Alizeh Hussain
Social Policy Officer

September 2010

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Citizens Advice Scotland

Scottish Association of Citizens Advice Bureaux



National Minimum Wage

Consultation Response

Citizens Advice Scotland and its 81 CAB offices form Scotland's largest independent advice network. CAB advice services are delivered through 222 service points throughout Scotland, from the islands to city centres.

The CAB service aims:

to ensure that individuals do not suffer through lack of knowledge of their rights and responsibilities, or of the services available to them, or through an inability to express their need effectively

and equally

to exercise a responsible influence on the development of social policies and services, both locally and nationally.

The CAB service is independent and provides free, confidential and impartial advice to everybody regardless of race, sex, disability or sexuality.

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Citizens Advice Bureaux traditionally help vulnerable people in their communities, although clients come from every section of society. An Ipsos Mori poll in 2009 found that one in five members of the public in Scotland had visited a bureau for advice in the last three years. In 2008/09, more than 250,000 clients brought new issues to bureaux in Scotland.

Gender

The majority of bureau clients are female (60%) with 1 in 9 clients being female and between the ages of 45 and 59.

Age

Just over half of clients are between the ages of 35 and 59. Around 1 in 10 clients are young people under the age of 25.

Relationship status

Over half of clients seeking advice are single – divorced, widowed, separated or have never been married. Compared with the Scottish population, bureau clients are twice as likely to be either divorced or separated.

Housing status

Nearly half of clients are owner occupiers, although bureau clients are significantly less likely to be owner occupiers than the adult Scottish population. Clients are more likely than the Scottish population to be in social or private rented accommodation.

Caring responsibilities

The majority of clients (60%) do not have any caring responsibilities, although a third are looking after children. One in ten clients are looking after a member of their family who has a disability.

Household type

Compared to the Scottish population, clients are more likely to be single, are almost three times as likely to be a single parent, but only half as likely to be a single pensioner. One in seven clients is from a single parent household.

Employment status

Almost half of bureau clients (47%) are in employment. Compared to the Scottish population, bureau clients are four times as likely to be unable to work due to ill health or disability, five times as likely to be unemployed, but half as likely to be retired or looking after family.

Table of Contents

Table of Contents	3
Introduction	4
Young People	6
National Minimum Wage and Underpayment:.....	6
National Minimum Wage and wage payment:	7
Apprenticeships and the National Minimum Wage.....	9
Migrant Workers	11
Non Migrant Workers	13
Underpayment:	13
Non Payment of Wages:	13
The National Minimum Wage and Benefits:	14
Enforcement of monies owed:.....	14
Conclusion	16
Recommendations:	16

Introduction

1. Citizens Advice Scotland (CAS) is the umbrella organisation for Scotland's network of over 80 Citizens Advice Bureau (CAB) offices. These bureaux deliver frontline advice services through more than 200 service points across the country, from the city centres of Glasgow and Edinburgh to the Highlands, Islands and rural Borders communities.
2. There are 2,200 volunteers in the service who provide almost 13,000 hours of their time each and every week. Paid staff provide a further 15,200 hours of work each week in management, support, administration and specialist advice work.
3. There are citizens advice bureaux in 30 of the 32 local authorities in Scotland, making the network the only independent advice body in the country with truly national on the ground coverage.
4. In 2009/10 CAB across Scotland dealt with 545,715 new issues, over 56,000 of which were on employment. Almost two thirds of employment issues concern in work problems including wage payment, entitlements, working conditions, working hours, and terms and conditions of employment. One in five employment issues handled by bureaux were on pay and entitlement, and one in six were on terms and conditions of employment. Six percent of pay issues related to the national minimum wage, while 2% of terms and conditions issues related to apprenticeships.
5. Citizens Advice Scotland welcomes the opportunity to respond to the Low Pay Commission's consultation on the national minimum wage. Bureaux across Scotland report of young clients who are not receiving the national minimum wage, apprentices who are not being transferred into full time employment due to the higher wage rate, and clients who are not being paid their wages at all.
6. In April 2009, 242,000 jobs in the UK were paying below the national minimum wage, 58,000 of these were jobs held by young people under the age of 22¹.
7. In March 2009 HM Treasury advised the Scottish Affairs Committee that non compliance with the National Minimum Wage has been identified in the trade sectors such as "Hairdressing, Nurseries, Hotels, Cleaning, Restaurants, Clothing retail, Motor vehicle repair, Retirement homes"². According to the Committee's investigations 15% of under-paid workers were employed by companies that have their headquarters in Scotland.³
8. Citizens Advice Scotland's response is based on client evidence received since the beginning of 2009. In our previous responses to the low pay commission we have highlighted issues relating to the national minimum wage experienced by young people, apprentices, migrant workers, and by clients working in certain trades⁴. The most recent client evidence received from bureaux in Scotland

¹ ONS, 'Low Pay Jobs', 12th November 2009 <http://www.statistics.gov.uk/cci/nugget.asp?id=591>

² Scottish Affairs Committee, 'Enforcement of the National Minimum Wage in Scotland', 2008/09 <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmsscota/380/380.pdf>, p6

³ Ibid.,p8

⁴Citizens Advice Scotland's responses: Low Pay Commission consultation response 2003 <http://www.cas.org.uk/nationalminimumwageconsultation.aspx>; Consultation on the National Minimum

suggests that clients who fall into these groups continue to experience difficulties in getting the national minimum wage – issues that are exasperated by the recession.

9. This response will be looking at the experience of young people, apprentices, migrant and non migrant workers with the national minimum wage and employer behaviour.

Young People

10. Young people report experiencing problems in obtaining work, and those in work report issues with pay and contract. With the recession, clients are more vulnerable to having their rights infringed upon and to experiencing in work problems.
11. According to the Office of National statistics, 24% of under paid jobs are held by young people under the age of 22. In Scotland 355,000 young people between the ages of 16 and 24 were in employment in 2009 – 20,000 less than the year before⁵. Client evidence suggests that unemployment is a growing problem for young people in Scotland, some of whom are in a position where they have to work for less or for nothing at all.
12. As mentioned in our response to the Low Wage Commission's consultation in 2008⁶, young people can be more vulnerable to low pay or be underpaid due to a lack of knowledge about their rights and employer's responsibilities and because of their need to earn money and/or gain work experience. Employers may be unaware of the National Minimum Wage requirements for young people though some of these may be rogue employers looking to take advantage of a young person's situation.
13. We welcome the new minimum rate for apprentices coming into effect as of October 1st 2010. A number of young people are unable to exercise their rights and ask for a minimum wage because they are in an apprenticeship or are trying to leave one. Employers sometimes use apprenticeships to pay a lower wage to a worker capable of earning a national minimum wage or higher. These employers are more likely to resist moving young people in apprenticeships to full time employees due to the increase in wages.

National Minimum Wage and Underpayment:

14. CAB across Scotland report of young people who are entitled to a national minimum wage but are paid less. In a number of cases the wage rate has been unclear due to a lack of clarity about whether the client is an apprentice or a regular worker. These clients often are paid less than half of what they may legally be entitled to.

A West of Scotland CAB reports of a 17 year old client who is paid below the National Minimum Wage (NMW) as she trains to be a hairdresser. It is legal for official apprentices to be paid less than the NMW, but the client is not an apprentice. The client works a 51 hour week for a wage of £90. The bureau advised the client that she should be earning £3.53 an hour until she turns 18.

⁵ ONS, Labour Market Statistics: Scotland, August 2010
<http://www.statistics.gov.uk/pdfdir/lmsscot0810.pdf>

⁶ Keith Dryburgh, 'CAS: National Minimum Wage consultation', 2008
<http://www.cas.org.uk/nationalminimumwageconsultationresponse.aspx>

An East of Scotland CAB reports of a 16 year old client who is receiving just over £2.00 an hour for a 38 hour week in a hair salon. The client is not on a government apprenticeship scheme, so should be paid the national minimum wage.

A West of Scotland CAB reports of a young client with a part-time job as a waitress whose tips are being used to make up her wages. When the client took the employment, all the tips were pooled and shared between staff, but the employer now takes the tips because business is poor.

A West of Scotland CAB reports of a 21 year old client who used to be an apprentice but is now a qualified mechanic. The client approached his employer about receiving the national minimum wage but was refused. The client is currently earning £4 an hour. The client's employer is also deducting payment for damage caused to a car from the client's wages.

An East of Scotland CAB reports of a client who has worked for a Hair and Beauty salon for over a year. The client started working at the salon at 16 straight after school. She understood that she would be paid the National Minimum Wage however in over a year she has been paid a rate of just over £2.00 per hour. She has had no deductions from her wages either. The client has been assessed by someone from Dundee College as part of an SVQ.

A North of Scotland CAB reports of an 18 year old client who is employed as a hairdresser for 40 hours a week, earning £80 a week. The client originally started working for her employer on a skillseekers programme but has now completed her initial training and has since received a certificate and is no longer serving an apprenticeship.

National Minimum Wage and wage payment:

15. Any increases to the national minimum wage are welcomed by CAS. Unfortunately, in these economic times bureaux not only see issues about the payment at the national minimum wage rate, but also issues to do with non payment of wages. This can be particularly difficult for young people who are in their first job or have just started working towards their choice of career.
16. Some employers are knowingly or unknowingly illegally withholding pay from young people. Some young people have been refused wages after asking about their employment rights, or changing employment. Others have left their job after not receiving any wages for a period of time. Clients who have been dismissed or who have left their work are most concerned about not being able to receive their wages owed.

A North of Scotland CAB reports of a client whose daughter aged 15 and a half is keen to be a hairdresser and has sought temporary work after school. The client's daughter agreed to work for a hairdresser from 4pm to 6pm after school and worked

Tues, Wed & Thurs for a wage of £3.73 per hour. The daughter has decided to work for another salon and her former employer refuses to pay her.

A South of Scotland CAB reports of a client aged 19 who worked at a holiday park. The client left the job after she failed to be paid. She had not received a contract nor any wage slips. The client thinks she is owed about £400 in unpaid wages. The CAB adviser says she is one of many in similar circumstances and that she can never get hold of the employer based in England.

An East of Scotland CAB reports of a client who worked for a franchised sandwich shop and was dismissed without warning after 3 weeks of work. The manager of the sandwich shop told the client that the decision had been made by the franchise owner. The client is owed £218 for 45 hours of work. He spoke to the franchise owner about the unpaid wages and was told that an enquiry is ongoing regarding money missing from the till and that he would not be paid until the enquiry is completed. According to the client, the franchise owner has treated staff similarly on many other occasions.

An East of Scotland CAB reports of a 17 year old client who was recruited by the area manager of a well known fast food eatery for a position as a casual worker. The client had a 4 hour trial after which he could commence full time work the next day. The client completed the trial but was dismissed from work five days later. The client has yet to be paid and feels he was bullied and harassed. The client was not given any formal agreement nor details of the job. The client wants to know how to go about getting paid for the work he did.

An East of Scotland CAB reports of a client in education who worked in a shop for five months, 15-20 hours per week. The client was dismissed with no notice and has not been paid

A West of Scotland CAB reports of a 20 year old client who recently lost her job. The client was told that her employer was going into receivership. The client was not paid holiday pay, nor the increased hourly rate that had been agreed to a few months prior. According to the client's calculations she was only paid £5.50 per hour. The client states that the owner of her former workplace still has his internet business and another shop and that the Head Office was still open, therefore the Manager/owner cannot be bankrupt. The manager had previously intimated to her that the business was now a different name.

17. Some young clients are agreeing to contracts where they would not be paid—choosing to gain the experience if the employer is unable to pay wages. This is unfortunate as these clients are likely to be working in positions that otherwise are paid at least the national minimum wage if not higher:

A West of Scotland CAB reports of a client who has finished his law degree and has agreed to work for a solicitor for free. The client works full time and is not sure whether he is in an apprenticeship or internship but knows that it will last two years. The employer has advised that he would normally pay for this position but because he is short of cash is unable to do so.

A West of Scotland CAB reports of a client who has been offered a six month unpaid work placement with a reputable company. The client sees this as an excellent long

term career opportunity - though initially this was a paid position but because of the recession has had to be changed into an unpaid one

Apprenticeships and the National Minimum Wage

18. The new apprentice rate at £2.50 an hour is welcome, particularly as CAB across Scotland report of clients who are on apprenticeships and are unclear about a fair rate of pay. We would however welcome a higher apprentice rate as under the new conditions apprentices would earn an average of £350 a week and may continue to experience financial, social and in work problems, tying them to unsustainable wages and the lowest standard of living.

A West of Scotland CAB reports of a client who is an apprentice with a take home pay of £813 per month. The client lives in rented accommodation with his partner who is 5 months pregnant. The client is struggling to meet his basic expenses.

19. A number of young clients experience difficulty in moving out of apprenticeships and into regular employment, with employers taking advantage of the low paid position. These young clients often do not have a contract of employment and are unsure of their rights as an apprentice or trainee, and their right to full time employment.

A West of Scotland CAB reports of a young client who works at a salon and refused to sign a form which would have tied her to an hourly wage of £2.26. The client used to be an apprentice but has completed her course at college and is entitled to minimum wage now. She was told not to come back to work. The client wants to know about unpaid wages she is owed and what her status is if the employer has not officially fired her but she has been told not to come back to work.

A West of Scotland CAB reports of a 16 year old client who works weekends at a hair salon. The employer approached the client saying that they could get her a training place if she left school and came to work full time. The client agreed and began full time work and training. The client works approximately 40 hours per week and is at present receiving £70.00 per week - £1.75 an hour. The client has not received any contract of employment.

A North of Scotland CAB reports of a client who is in college and is on an approved apprenticeship as a Vehicle Body & Paint Operator. The client is paid by the garage but all his travel, and accommodation is made by the Council. The client is starting his second year apprenticeship working 40 hours for £65 week - £1.62 an hour. The other students at his college cannot believe he would work for such a low wage, stating that when they started their first year in apprenticeship they earned more than £2.50 an hour.

A North of Scotland CAB reports of a 17 year old client who is an apprentice hairdresser, but has no written contract or agreed wage. The client is paid a varying wage from week to week and does not receive any pay slips

A North of Scotland CAB reports of a client who is 18 and currently receiving £50.95 in JSA. The client responded to an advert for a skill seeker job as a child carer at a school. The client has since been told that there was a mistake in the advert and that

she would be expected to work 35 hours for £55. She thinks this is unfair. The client is concerned that if she turns the job down her JSA will be stopped.

20. Young clients remain vulnerable to employer practices and a lack of information about rights and responsibilities can put them in a precarious position. In the recession some young clients are made to feel that they should be grateful for whatever opportunity they get even if their rights are not being met.

A West of Scotland CAB reports of a client in her 20s who has been working for her employer for 6 weeks and reports unfair deductions on her wage slip resulting in non payment of wages. The client has brought this up with the main office who advised the client that she could not explain the deductions and that the client should be grateful for being in employment when thousands of people aren't. The client continued to ask about her wages, and was dismissed immediately. The client has still not received her wages owed.

21. Young people are vulnerable to employer behaviour, particularly as they may be less aware of their rights and much more keen to gain work experience. The underpayment of wages by employers has been an issue seen by the CAB service since the introduction of the minimum wage. Bureaux continue to report clients who have been taken advantage of by their employers due to a lack of clarity about the terms and conditions of employment and the transition from apprenticeships to full time employment. Issues with employer responsibility and the enforcement of employee rights have increased with the recession and the subsequent non payment of wages owed.

Migrant Workers

22. Citizens advice bureaux in Scotland report that 25% of employment issues raised by migrant workers were in relation to pay and entitlement, while 15% concerned the terms and conditions of employment.
23. Migrant workers like non migrant workers experience in work problems including issues with pay and wage discrimination. These problems however may be exasperated by language barriers as well as by employers trying to get away with paying a lower wage, as these clients may be less aware of their rights and employers' responsibilities in the UK.

An East of Scotland CAB reports of a client who is originally from Italy and has been working as a waiter for the past three months. The client was supposed to work 32 hours per week at £5.80 per hour. The client has realised that his payslips do not include the hours worked. He has kept a record of his hours and entitlement himself, and states that he is being paid £5 an hour instead. The client does not receive any holiday pay either.

A North of Scotland CAB reports of clients who work at a local firm that is only taking on drivers if they are prepared to be self employed (contractors but without a contract in writing). The drivers are mainly Polish and are being paid below the minimum wage. The employees also have to arrange their own tax contributions and national insurance contributions and have no rights regarding sick pay and holiday pay. The employer's attitude seems to be that if you don't like the job leave as there are plenty of people looking for work. The employees do not wish to make a fuss in case they lose their jobs.

A North of Scotland CAB reports of a client from Latvia who worked for a cleaning company for several years at £5.73 an hour. The client has never received holiday pay from the company and has not received her last two weeks wages after being made redundant. The client has found out that the company has hired new employees to fill her previous position.

24. According to Government the number of immigrants coming to the UK from the A8 accession countries⁷ declined in 2009, with 55% less A8 migrants coming to the UK compared to the year before⁸. Twenty two percent fewer migrant workers from the A8 accession countries were registered under the Worker Registration Scheme (WRS) in March 2010 compared to March 2009⁹.
25. In our previous responses to the National Minimum Wage consultation we identified the issues faced by migrant workers including piece work, unmeasured employment, apprenticeships, a lack of knowledge about their rights and responsibilities particularly with workers registration and the issues that have ensued as a result. Client evidence from the past year shows that even though migrant workers continue to experience in work employment issues including issues with pay, the number of national minimum wage issues brought to

⁷ Directgov, 'European Workers in the UK', http://www.direct.gov.uk/en/Employment/Understandingyourworkstatus/Migrantworkers/DG_181870

⁸ ONS, 'Migration Statistics, Quarterly Report', March 2010

<http://www.statistics.gov.uk/cci/nugget.asp?id=591>

⁹ Ibid.,

bureaux in Scotland appears to have decreased since 2008. This may be due to the fewer numbers of migrant workers coming to the UK from the A8 accession countries - particularly as established migrant workers are more likely to be aware of their rights after having worked in the UK for a while.

Non Migrant Workers

26. Although young people and migrant workers may be more vulnerable to employer practice of withholding pay or underpaying their employees, a number of adult non migrant workers are also susceptible to being underpaid, often being unsure of the national minimum wage rate and their rights.

Underpayment:

27. In some cases the underpayment has been found out as a result of the recession's impact on the business and the resulting changes in terms and conditions of employment.

A North of Scotland CAB reports of a client who works part time at an average of 50 hours a month. The client came into the bureau concerned about his employer withholding pay from all staff over Christmas and New Year - saying that he was introducing a lie week. Holiday pay was not received either. The adviser looking into the issue found that the client was not being paid the national minimum wage either.

An East of Scotland CAB reports of a client who works as a waitress and earns £4.40 an hour. The client's employer has reduced her hours from 40 to 12-18 hours per week owing to less business in the restaurant. The client wanted to check her rights but also says that she likes her work and wants to stay and hopes business picks up.

An East of Scotland CAB reports of a client whose employment contract with the restaurant he works at states that he will be paid £4.50 p/h and with tips up to £6.00 an hour. His holiday pay would be at the minimum wage of £5.73. On asking the employer for information about how the tips were shared, the client was dismissed with one week's notice pay and holiday pay to be paid out.

28. Clients who receive a monthly gross rate of pay are more vulnerable to becoming underpaid, particularly if they work more hours in a given week or month. These clients often do not realise that they are potentially being paid at less than the national minimum wage – and these are people who because of their minimum wage rate are already financially vulnerable.

An East of Scotland CAB reports of a client whose wife is in receipt of disability living allowance. The client produced a certificate of earned income covering a period in October 2009. When the adviser calculated the information supplied, a monthly gross rate of £1,100 for a 45 hour week, the hourly rate appeared to be less than the (then) current minimum wage rate of £5.80.

Non Payment of Wages:

29. In the recession a number of clients have reported not being paid the wages they are owed. These clients are subsequently put in a position where they do not know if they will ever receive their wage particularly if the employer says that

they do not have the funds. Others have to deal with rogue employers who refuse to pay wages owed. In real terms their annual wage rate has subsequently been lowered without any official changes to the terms and conditions of their contract.

A North of Scotland CAB reports of a client who did not receive pay for 100 hours of work and was told that this was because he had voluntarily left employment. The client insists that this was not the case and that she has effectively been dismissed without receiving any pay whatsoever.

A West of Scotland CAB reports of a client and some of her co workers who have worked around 90-100 hours overtime in the last 6 weeks but are not getting paid regularly. The pay is coming in slowly and there is no note of what days they have been paid. The client does not have a written contract.

The National Minimum Wage and Benefits:

30. Clients who are looking to receive help through the welfare system may not qualify for the assistance they need because their wage rate is at the national minimum. National insurance payments are only deducted and credits given if clients earn at least the minimum set in the lower earnings limit for national insurance contributions¹⁰. Clients earning minimum wage and working part time may not qualify which puts them in a further complicated and disadvantageous position, particularly if they receive financial assistance from family or friends.

A North of Scotland CAB reports of a client with four children and who looks after her parents as well. The client works 16 hours on minimum wage. She also receives voluntary maintenance from her ex-husband to cover the mortgage payments. The client was caring for her mother up to her death and now her father is unwell and twice a week requires blood transfusions at the hospital. The client is finding it difficult to cope with her work and caring for her father and phoned the bureau to enquire if she would be entitled to statutory sick pay if her doctor signed her off with stress. The client was advised that the minimum wage is set at a level that is below the lower earning threshold for National Insurance credits and therefore she is not entitled to statutory sick pay and other contributory benefits.

Enforcement of monies owed:

31. The enforcement of wages owed can be challenging for clients, particularly as it can become resource intensive and financially stressful. Some clients have reported issues encountered when they have won their case as some employers continue to avoid payment.

An East of Scotland CAB reports of a client who is due redundancy money, but her former employer refused to pay. The client took the issue to court and was advised that the debt is enforceable. The client unfortunately cannot afford to pay the Sheriff Officers and has given up.

¹⁰ Advice Guide, Benefits-In Scotland,
http://www.adviceguide.org.uk/scotland/your_money/benefits/national_insurance_contributions_and_benefits.htm

An East of Scotland CAB reports of a client who was dismissed from employment and successfully challenged the employer's decision through ACAS. The client agreed to a settlement of £5000, which his former employer has not complied with. He has been informed by ACAS that he can now either sue the employer in the Sheriff Court or ask the Employment Tribunal to relist the case for a hearing. Sheriff Officers have tried to enforce the arrestment of the former employer's bank account, however the employer's bank have advised that the employer does not appear to maintain a bank account with them in Scotland. The client is suffering from depression because of issues with his employer.

32. The economic climate has brought about uncertainty for employees and employers. Clients report not receiving the wages owed to them for hours they have worked, for being under paid and for being at a disadvantage with the benefits system because they are earning minimum wage. These in work problems often evolve into out of work problems as well, as clients may have to leave work, they are dismissed or made redundant and have to chase wages owed which can be challenging.

Conclusion

33. Young clients are vulnerable to employer behaviour and the differences in national minimum wage and what used to be the non rate for apprentices. The recession has aggravated the employment problems already faced by young people, particularly with regards to underpayment of wages, the non payment of wages and the lack of clarity in the terms and conditions of employment.
34. CAS welcomes the new apprentice rate which comes into effect on October 1st, 2010, however we would like this to be monitored regularly to see if the minimum apprentice rate is sustainable for apprentices and if it needs to be increased in line with the national minimum wage rate.
35. Migrant workers, like young people, are at times taken advantage of by employers due to their lack of knowledge about their rights and their employers' responsibilities. Since our last response to the Low Pay Commission, our case evidence on national minimum wage issues faced by migrant workers has decreased, however this may be due to the decrease in the number of migrant workers moving to the UK.
36. Non migrant workers have been affected by the recession and may be unaware of their rights to the national minimum wage, particularly if they receive a gross monthly pay or because of they are in a line of work where the national minimum wage may be subsidized by tips. The non payment of wages that has become more prominent in the recession also puts workers at a disadvantage, and has the potential of decreasing their annual wages and subsequently the average wage rate paid.

Recommendations:

37. The UK Government should monitor and review the new apprentice rate and ensure that it is at a sustainable level for apprentices.
38. The UK Government should establish an enforcement agency, a 'Fair Employment Commission'¹¹, to oversee employer activity, investigate complaints and take enforcement action against rogue employers.
39. The UK Government should work with relevant stakeholders and provide adequate resources to proactively educate employers and employees about their rights and responsibilities

¹¹ Rooting out the Rogues: Why vulnerable workers and good employers need a "fair employment commission",
Citizens Advice England & Wales and Citizens Advice Scotland December 2007

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The CAB service is independent and provides free, confidential and impartial advice to everybody regardless of age, disability, gender, race, religion and belief and sexual orientation.

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