



## Consultation on the National Minimum Wage

A response to the Low Pay Commission

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Citizens Advice Scotland and its 76 CAB offices form Scotland's largest independent advice network. CAB advice services are delivered through 208 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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# Introduction

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1. Citizens Advice Scotland (CAS) is the umbrella organisation for Scotland's network of 77 Citizens Advice Bureau (CAB) offices. These bureaux deliver frontline advice services throughout the country, from the city centres of Glasgow and Edinburgh to the Highlands, Islands and rural Borders communities.
2. Citizens Advice Scotland welcomes the opportunity to respond to the latest Low Pay Commission consultation on the National Minimum Wage (NMW), as they review the system in place and make recommendations for changes to the minimum wage in October 2009 and October 2010.
3. In 2006/2007, bureaux in Scotland handled a total of 444,122 new enquiries. Problems relating to employment accounted for 50,388 of these enquiries, with just under half of these – 23,636 (47%) - specifically relating to terms and conditions, which includes enquiries about the National Minimum Wage.
4. In October 2007, it was estimated that around 110,000 workers (4.3% of all workers) in Scotland receive the NMW, and that around 41,000 workers (1.8% of all workers) are paid below the NMW. This is the highest rate of any of the regions in the UK implying that Scottish workers need better protection against employers paying them illegally low wages.<sup>1</sup>
5. Our response is based on the experiences of CAB clients, made anonymous and presented as client case evidence. This is made possible by the Service's social policy feedback mechanism. Bureaux throughout Scotland highlight the problems in their area by sending in specific case examples that are indicative of the wider issues. This information is collated and analysed by Citizens Advice Scotland in conjunction with bureaux social policy statistics.

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<sup>1</sup> House of Commons Research Paper – Economic Indicators 2007

6. In our consultation response<sup>2</sup> to the Low Pay Commission in September 2005, we highlighted the changes that had occurred as a result of the introduction of a NMW for 16-17 year olds, the guidelines on apprenticeships, the accommodation offset, and on the experiences of migrant workers.
  
7. In the client evidence gathered since then it is clear that there are specific client groups that are still experiencing difficulties in receiving the level of wages that are due to them. These groups include vulnerable young people and migrant workers, with most cases concerning specific industries such as hairdressing, agricultural work, and hospitality & catering. These cases will be examined in detail in the following paragraphs.

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<sup>2</sup> <http://www.cas.org.uk/lowpaycommissionconsultationonthenmw.aspx>

## Young people

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8. Young people can be particularly vulnerable to low pay and poor working conditions. This can be due to a lack of knowledge of employment rights and responsibilities combined with a need to earn money whatever the circumstances. It can also be due to a lack of employer understanding of NMW rates for young people, and also unscrupulous employers taking advantage of young workers.
9. Government statistics estimated in 2007 that 21% of workers (61,000) in the UK being paid below the NMW were under the age of 21. Around 2.8% of workers aged under 21 are paid below the NMW compared with 1.0% of workers aged 22 or over. This was an increase from an estimate of 2.5% in 2006.<sup>3</sup> However, these statistics include apprentices who can be paid lower than the minimum wage under NMW guidelines, so not all the low pay is illegal.
10. The NMW guidelines apply to workers over the age of 16 with separate rates for 16-17 year olds and 18-21 year olds. However, the NMW doesn't apply to 16-17 year olds in apprenticeships, or over 18's in the first year of their apprenticeships. A young person experiencing their first employment is unlikely to be aware of the guidelines, so it is difficult for young people to know what wage they are entitled to.

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<sup>3</sup> <http://www.statistics.gov.uk/pdfdir/lpay1107.pdf>

## Apprenticeships and the NMW

11. There are a number of cases in which young workers aged 16-17 are paid below the minimum wage on the basis that they are in an apprentice role. This is included in the NMW guidelines<sup>4</sup> which allow for organisations to pay below the minimum rate for 16-17 year old trainees who are employed as an apprentice.
12. However, there is evidence to suggest that young workers may be designated as an apprentice by the employer although they are not officially employed as one. In order to be an apprentice, a young person must be part of a government scheme or have a traditional contract of apprenticeship. It may be the case that some young workers are apprentices in relation to their wages only, as they often do not have a written contract and therefore no official route to passing their apprenticeship.
13. It may not be clear to the young person whether they are on an official traineeship scheme which is exempt from the NMW regulations. In some cases, young people are being paid a very low wage for undertaking the same role as a standard worker, and are not receiving the training that would be expected under an apprenticeship.
14. Examples of these problems are shown in the following cases:

A West of Scotland CAB reports of a client who is concerned about the level of wages that her daughter receives. Her daughter is 16 years old and works 39 hours a week at a hairdressing salon. She only receives £1.65 per hour for her work and does not have a contract of employment. The bureau advised the client that the National Minimum Wage for a sixteen year old is £3.40 per hour. The client's daughter may be a trainee and therefore not entitled to the minimum wage, however she does not have written terms to state that this is the case. The bureau commented that it would be impossible for a young person to maintain this employment, which was worth just over £3,300 per annum, if they didn't have support from family.

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<sup>4</sup> <http://www.berr.gov.uk/employment/pay/national-minimum-wage/index.html>

An East of Scotland CAB reports of a 17 year old client who worked for less than the minimum wage before being dismissed for taking sick leave. The client is paid in cash in an envelope, with no pay slip, and gets £80 for a 40 hour week. Her employer says that she is a hairdressing apprentice, but she has no contract saying this and no written terms and conditions. The client took a day off sick, and when she called her employer, she was told that she was dismissed. The bureau advised that the client should receive a written reason for dismissal and report that she had been paid below the national minimum wage for her age.

15. The majority of cases involving NMW and apprenticeships involve 16-17 year olds, but it is not restricted to this age group. Any worker aged over 18 may receive less than the minimum wage for the first year of their apprenticeship. As with the younger age group, these workers can experience very low pay when they are not officially apprentices. This is shown in the following cases:

A North of Scotland CAB reports of an 18 year old client who is paid at a level far below the minimum wage for her age. The client works a 38 hour week as a trainee hairdresser and is paid £1.38 per hour. She queried this level of pay with the manager of the shop who told her that it was correct. She is not on a government training scheme and has no contract of employment. The client was advised that the minimum wage for 18-21 year olds was £4.10 per hour which she should be receiving as she is not on a training scheme and is a worker being paid by an employer. The client recently turned 18, but is receiving less than half of the minimum wage for a 16 year old.

A West of Scotland CAB reports of a 19 year old client who is paid significantly less than the national minimum wage as a nursery nurse assistant. The employer is paying for the client to undertake a SVQ, but her contract of employment does not state that she is a trainee nor does it mention training or apprenticeships. The client works 40 hours a week for £3,900 per year, which equates to around £1.90 an hour. The national minimum wage for a 19 year old was at this stage £4.10 an hour. The client is not managing to live on this wage and came to the bureau to ask if she was entitled to a higher wage than this.

16. The clients in these cases have been told that they are apprentices, but have not been given a contract to state that this is the case, leaving them vulnerable. Without a traditional contract of apprenticeship or a place on a government scheme, these young workers are not officially apprentices and are entitled to the NMW.

## **Apprenticeship pay and the NMW**

17. Young people can be paid low wages on the basis that they are ostensibly employed as apprentices. Regardless of whether the designation of apprentice is correct, our case evidence shows that wages can sometimes be less than half the NMW for the age group. Our case examples showed an average wage of £1.64 per hour for apprentices, or around £3,300 per annum, which is less than half of the amount that a 16 year old would receive being paid the NMW. Compared with full-time adult workers, the weekly wage of these apprentices is less than 10% of the average weekly wage in the UK.<sup>5</sup>
  
18. While it is undoubtedly true that the apprenticeship exemption from NMW allows for more employment opportunities for young people – employers may not be able to afford the wage costs otherwise – it is also the case that this exemption allows for young people to be paid a very low wage that is less than half what they would be due as a 16 or 17 year old employee under NMW. These wages are unsustainable for young people without substantial support from family which is not available to everybody.

## **Changes in employment terms and conditions due to NMW**

19. Young workers can also experience changes in the terms of their employment as a result of being entitled to higher wages under the NMW guidelines. For example, an employee turning 18 is legally entitled to a higher minimum wage, which may cause the employer to take action to lower their costs. Young workers can also be reluctant to question decisions related to their employment for fear of losing their job.

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<sup>5</sup> National Statistics Online (ONS) - <http://news.bbc.co.uk/1/hi/technology/7508842.stm>



A West of Scotland CAB reports of a client who has had her hours of work reduced due to her entitlement to a higher wage when she turned 18. The client has worked as a nursery nurse for the past year, but does not have a written contract. Her employer has told her that her hours have been cut from 40 to 25, as the employer could not afford to pay the client higher wages. The client has accepted this as she doesn't want to 'rock the boat' and antagonise her employer. The client has also been told her entitlement to paid holidays will be reduced.

20. Finishing an apprenticeship does not always mean receiving a higher wage; in some cases, it can mean redundancy. In some instances, employers end the employment of the apprentice shortly before the young person is due to complete their training to avoid increased wage costs, which is obviously of detriment to the apprentices' careers.

A West of Scotland CAB reports of a client who was made redundant on his 18<sup>th</sup> birthday. The client worked as an apprentice and was only a month away from completing the course. However, as the client turned 18, he was informed that there was no available work and was made redundant. The client is distraught that he will not be able to complete his apprenticeship. The bureau suspect that the employer did not want to pay the minimum wage for an 18 year old who has passed his apprenticeship, and would prefer to pay a far lower wage to another young person at the start of their apprenticeship. The employer did not even acknowledge that he had left the client unable to complete his qualification when he was so close to achieving it.

A North of Scotland CAB reports of a 17 year old trainee hairdresser who had her employment terminated before she finished her apprenticeship. The client was paid £50 for a 40 hour week, which is legal under the conditions of the NMW. The client was employed at this low rate of pay to wash hair and sweep the floor, but received little training as part of her apprenticeship. The client's apprenticeship was ended shortly before she was scheduled to complete her training.

21. Our evidence shows that sometimes the NMW can actually work against a young person as some employers cannot afford or choose not to pay the increased wage. This could indicate a problem in the NMW guidelines: Employers may continually employ apprentices rather than paying a trained young worker what they are legally entitled to receive.

## Refusal to follow NMW guidelines

22. While some employers pay young people reduced wages on the basis of apprenticeships – correctly or incorrectly - other employers simply deliberately flout the legislation:

A West of Scotland CAB reports of a 17 year old client whose employer arbitrarily lowered her wage to well below the NMW. The client was hired on the basis that she would be paid £5.05 for a 32 hour week. However, the employer has since dropped her wages to £3.10 per hour. The employer's explanation was that he thought that this was an appropriate wage for the client, and that the NMW, which he was well aware of, was too high. The client left the employment for another job.

23. Bureaux have also highlighted clients who have completed their apprenticeships but are still being paid below the minimum wage level, even when this is pointed out to the employer.

A West of Scotland CAB reports of a 19 year old client who recently completed her training as a hairdresser, but is still being paid less than the national minimum wage. Following her training, the client was given an increase in her wage up to £2.75, but approached the bureau to check what the minimum wage was. For a 19 year old, the minimum wage is £4.60. The bureau advised the client to speak to her employer, but to be non-confrontational due to the risk of dismissal. The client returned to the bureau to advise that she had left work voluntarily as she could not agree with her employer over her wages.

## Summary

24. The evidence from bureaux shows that young people are a client group that are particularly vulnerable to being paid less than the NMW. Their lack of awareness of their employment rights and responsibilities, and the willingness of young people to put up with poor working conditions in order to receive a much needed income, mean that young people are often unable to enforce their own rights regarding NMW.
  
25. Some employers may be taking advantage of the apprentice exemption for NMW by wrongly designating young people as apprentices in order to pay low wages. There is also evidence that employers end the employment of apprentices to avoid paying age related higher wages and instead replace them with younger workers.
  
26. Young people employed as apprentices are receiving wages that are unsustainable and far below the NMW. In many cases, the young people are being paid a low wage that is half the minimum for their age.

## Migrant workers

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27. Our case evidence demonstrates the need for the enforcement of pay and employment rights for migrant workers. Although the issues raised by migrant workers coming to the CAB service are similar to those raised by British workers, there are further complications due to language barriers and the implications of immigration legislation for workers, particularly for those from the newest members of the European Union.
28. There is a clear need to target industries employing workers from abroad, to ensure both that they know their responsibilities and that they are applying them. Consideration should also be given as to how to best target migrant workers who move to Scotland to work, so that they are fully aware of their employment rights in regards to pay and conditions. The cases below illustrate the difficulties that migrant workers can face in receiving the minimum wage:

An East of Scotland CAB reports of a Polish client whose employer refused to pay the minimum wage or any holiday pay. The client works in a takeaway and is paid £160 for a 42 hour week. This equates to £3.80 per hour, which is considerably less than the national minimum wage of £5.52 per hour. The client has not received any holiday pay since she started work. The client had an emergency operation during her employment and gave her employer medical certificates. However, the employer says that he will pay her only £100 in total for the period in which she was ill. The bureau helped the client to draw up a letter about her SSP and holiday pay and advised her to complain to the NMW helpline. Her employer then terminated her employment by telephone and paid her nothing.

An East of Scotland CAB reports of a Polish client working as a waitress who is being paid significantly less than the national minimum wage. The client works 58 hours per week for which she is only paid £150. She is paid in cash, often in small amounts at a time. She has applied for a N.I. Number and was told by her employer to state that she wasn't working. Other employees at the same restaurant doing the same job receive a higher wage than she does. The client approached the bureau for help with getting money due to her. She is aware that she will probably lose her job.

29. Bureau evidence shows that migrant workers who are paid less than the minimum wage are at risk of dismissal if they try to take action to receive the wage that they are due. These workers may not be able to afford to lose their employment, which puts them in a Catch 22 situation.
30. Migrant workers are less likely to know their employment rights than other workers, and consequently can be taken advantage of by unprincipled employers.

An East of Scotland CAB reports of a client who was working 60 hours per week for a wage of £150 – below the NMW. The wages were paid in cash and no payslips were given, which led the clients to believe that no tax or national insurance payments were being made. When the client queried the low pay the employer stated that he had to pay extra tax and National Insurance because the client was Polish.

A South of Scotland CAB reports of a Polish client who was paid less than half the minimum wage as a waitress in a restaurant. The client was given no wage slips, holiday pay, or a contract, and was paid only £150 for 58 hours work per week. This equates to around £2.60 per hour compared to the national minimum wage of £5.52 per hour. The client was told that she was not due holiday pay as she had not worked for them for a year.

31. Our case evidence shows that lack of knowledge amongst migrant workers regarding their employment rights can lead to unscrupulous employers taking advantage of the situation. Eastern European clients in particular often experience illegally low wages, no written terms and conditions, long hours, no holiday pay, wages paid in cash, and dismissal for making a complaint.
32. Many of these clients are under the radar in the sense in that they are not officially employed: they do not have a national insurance number, taxes paid on their behalf, or pay slips. Migrant workers from A8 countries should be registered under the Workers Registration Scheme, but many are not and can slip through the net. This makes many of these clients hard to identify, and emphasises the importance of migrant workers knowing their rights and responsibilities, as well as reporting employers when these rights are not adhered to.

## Piece-workers

33. A number of migrant workers are employed in the agricultural sector, with fruit picking a common source of employment. These workers are often paid for the amount of fruit they pick – known as piece work – but must be paid at least the minimum wage for doing so. Under the NMW guidelines, these workers are entitled to the minimum wage for all hours worked, or a ‘fair’ piece rate that allows an average worker to receive the minimum wage. ‘Fair’ piece rates have to be multiplied by 1.2 for the rate to be considered ‘fair’, so workers who are slightly slower than the average will still receive the NMW.<sup>6</sup>
34. Bureaux in Scotland have reported a number of cases in which migrant workers are receiving less than the minimum wage for the piecework they are undertaking.

An East of Scotland CAB reports of a client from the Czech Republic who is being paid less than the national minimum wage for picking fruit. The client and about 200 other workers are paid depending on how much fruit they pick (‘piece work’) which means that they are often paid below the minimum wage. The client works 6 days a week and regularly works 55 hours per week. The bureau advised that workers should be paid the minimum wage for hours up to 39 hours a week, and then higher overtime pay for hours after this. The bureau reports that this appears to be a common situation among fruitpickers, who are mostly migrant workers. Most workers are too nervous to complain as they do not know employment regulations and are concerned that they would be dismissed if the employer knew that they had complained. The client returned to report that two workers had been sacked on the spot for making a complaint.

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<sup>6</sup> <http://www.berr.gov.uk/files/file11677.pdf>

## Unmeasured workers

35. A number of migrant workers find employment as housekeepers or similar, in which they are provided with accommodation, but are expected to be on call to work at any time. These clients can be termed as 'unmeasured workers' where they are paid to undertake certain tasks, but there are no fixed hours of work. The employee works when required or when work becomes available.<sup>7</sup>
36. In these circumstances, an employer must elect whether to pay an unmeasured worker for every hour worked or to enter a 'daily average' agreement that will state the realistic daily average number of hours to be worked. However, our case evidence shows that in some cases migrant workers are being paid below the minimum wage for long hours.

An East of Scotland CAB reports of a couple from South East Asia who are being paid far less than the minimum wage working as housekeepers for a monastery. The couple receive living quarters, but work very long hours for little pay. The advisers found that they were each working a 75-90 hour week as housekeepers and were paid a joint wage of £7,800 per annum. The accommodation offset, the maximum limit that can count towards pay, is £30.10 per week. Based on a 35 hour week (including the accommodation offset), this would be a wage of £2.57 per hour each. Based on the 75 hour week they were working, this is a wage of £1.20 per hour each, well below the NMW. The written contract stated that "you are employed on a flexible basis and the hours are variable. The post requires you to be on call for 24 hours per day, 52 weeks per year, working Monday to Sunday according to the requirements of the post". The bureau pointed out that the contract was illegal and unenforceable, and that the clients were protected from wrongful dismissal. The bureau felt that the couple were being exploited by their employers.

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<sup>7</sup><http://www.businesslink.gov.uk/bdotg/action/detail?type=RESOURCES&itemId=1074404084>

## Summary

37. The number of migrant workers approaching bureaux in Scotland, especially from the A8 countries, such as Poland and the Czech Republic, who joined the EU in 2004, has increased in recent years. Migrant workers in Scotland have approached bureau with a myriad of issues, but working terms and conditions is the most common single issue. In research we recently undertook with A8 migrant workers, we found that 12% of all queries were related to employment conditions, and that migrant workers were twice as likely as the general CAB population to make a query regarding employment.
38. Migrant workers are vulnerable to low pay as they often have a poor understanding of their employment rights and responsibilities. This can be combined with poor English and a lack of knowledge of advice sources which precludes them from easily finding out their rights.
39. Allied to this, unscrupulous employers can be willing to take advantage of this lack of awareness of workers rights to give migrant workers poor employment terms and conditions. This can include paying migrant workers below the NMW. Bureau evidence suggests that migrant workers are often deliberately and illegally underpaid in certain industries, such as agriculture, food and catering, and hospitality industries.
40. Many of these clients are under the radar in the sense in that they are not officially employed: they do not have a national insurance number, taxes paid on their behalf, or pay slips. This makes many of these clients hard to identify, and emphasises the importance of migrant workers knowing their rights and responsibilities, as well as reporting employers when these rights are not adhered to.



# Conclusion

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41. The evidence from bureaux on the NMW suggests that most groups of workers are being paid the minimum wage for their employment. However, certain groups of workers and those in some sectors, namely hairdressing, hospitality and catering, and agriculture, remain vulnerable to being paid a low wage that is below the NMW. This is particularly the case for vulnerable groups of workers, including young people and migrant workers.
42. Where this is through lack of knowledge, more must be done to promote those rights and make them available in a variety of languages, to both employees and employers. Where it is the case that employers ignore their responsibilities to workers there needs to be targeted enforcement of those responsibilities to prevent employers from exploiting their workers.

## Recommendations

- Citizens Advice Scotland continues to call for the enforcement of employment rights relating to pay and conditions. This can be done through a 'fair employment commission' to help vulnerable employees secure their rights at work and better enable them to take up and sustain employment. CAS called for the establishment of such a commission in the 'Rooting out the Rogues' report in December 2007.
- Young people, especially those aged 16-17, are receiving wages well below the NMW when they are wrongly designated as apprentices. Young workers who are not officially an apprentice, ie. do not have a standard contract of apprenticeship and are not on a government scheme, are due the NMW and this needs to be enforced.

- The wages paid to apprentices are often too low to be sustainable and can be as little as half the NMW for the age group. CAS recommends the extension of the NMW to all apprentice workers whatever the age or stage of their apprenticeship. This would ensure that young people are paid a sustainable wage and that apprentices are not at risk of losing their employment at the end of their training.
- Finally CAS draws attention to migrant workers, who are particularly vulnerable to exploitation. It is important that effort is made to ensure that migrant workers are aware of their employment rights and responsibilities, and that industries and employers that deliberately breach these rights are identified and made to comply with the guidelines. This can be done through the existing Low Pay Commission or through a Fair Employment Commission that would enforce employment rights relating to pay and conditions.