

Low Pay Commission Consultation on April 2020

National Minimum Wage Rates

Response from Citizens Advice Scotland

June 2019

Citizens Advice Scotland (CAS), our 59 member Citizen Advice Bureaux (CAB) and the Extra Help Unit, form Scotland's largest independent advice network. Advice provided by our service is free, independent, confidential, impartial and available to everyone.

In 2017-18 the Citizens Advice Service network helped over 295,100 clients in Scotland and dealt with almost 800,000 advice issues. With support from the network clients had financial gains of over £138 million and our self-help website Advice in Scotland received approximately 3.2 million page views.

Introduction and Context of response

Citizens Advice Scotland (CAS) welcomes the opportunity to respond to the consultation. In 2017-18, Scotland's CAB network advised clients on a total of 47,254 issues related to employment. Of those, the largest proportion related to Pay and Entitlements (13,697), with Scottish CAB advising clients on 454 issues specifically related to the National Minimum Wage or National Living Wage.

CAS would consider the following to be particularly key points for consideration in determining the minimum wage rates for 2020, but also in developing the policy beyond that point:

- Citizens Advice Scotland has seen rising levels of in-work poverty over the past five years which indicates that the current minimum wage rates are not sufficient.
- Incomes of our clients are also being affected by wider factors such as a reduction in the value of social security support and rising costs. If the UK Government is to meet its aim of making work pay, then the minimum wage must be increased to meet the independently-calculated Living Wage.
- The national minimum wage should also be equalised for all ages, to reduce unfairness, and reduce complexity in the system.
- CAB regularly advise clients who have been paid less than the national minimum wage. Particularly common are cases involving non-UK nationals, and workers who are paid 'cash in hand' or not given written contracts or payslips.
- Consideration should be given to changing the name of the 'National Living Wage' to avoid confusion and better distinguish it from the 'Real Living Wage'.

Economic Outlook

2. What are your views on the outlook for the UK economy, including employment and unemployment levels, for the period up to April 2020?

In terms of the wider outlook, there are a number of factors that have caused CAB clients, both in and out of work, to seek advice because they are struggling to pay for essentials.

Income shocks, benefits freeze and rates – Citizens Advice Scotland has seen a considerable rise in the need for advice regarding food banks and other forms of crisis support since 2012. On-going analysis of CAB case evidence has suggested that an increasing number of clients were experiencing periods of no income and unable to afford essentials, as well as a number of clients who presented at bureaux having not eaten in a number of days.¹

CAS research found that changes to the benefits system, benefit rates not keeping pace with inflation, low pay, insecure work and rising costs of living all contribute to people's increasing lack of resilience to income shocks, and consequently a period of no income and a need for crisis support. As a result CAS recommends that the freeze on working-age benefits should be lifted and benefits should increase in line with inflation and the Consumer Price Index. Additionally, working-age benefit rates for under 25 year-olds should be the same as the rates for those 25 or over.²

Since the research was published, the benefit freeze has continued, putting further pressure on wages to prevent people from destitution, as well as causing particularly issues for people under the age of 25.

Roll-out of Universal Credit – Citizens Advice Scotland has consistently raised a substantial number of issues associated with the rollout of Universal Credit that have caused stress, detriment or hardship to CAB clients. The rising level of in-work poverty during the last five years has also been a concern for CAS.

These issues, which have affected in-work, as well as out of work clients, include³:

- An in-built five week delay before people receive their first UC payment
- Administrative delays which have prolonged this waiting period further, or have resulted in elements missing from clients' UC payments
- Clients struggling to make and manage a claim entirely online
- Increased rent arrears amongst tenants receiving Universal Credit

¹ Living at the Sharp End: CAB Clients in Crisis – Citizens Advice Scotland, July 2016
<https://www.cas.org.uk/publications/living-sharp-end>

² Ibid.

³ CAS briefing – Social Security and In-Work Poverty – Citizens Advice Scotland, April 2019
<https://www.cas.org.uk/publications/cas-briefing-social-security-and-work-poverty>

- Direct deductions to repay advances, overpayments or historic debts being taken at levels that leave people in hardship
- Difficulties making an initial appointment at the Jobcentre as part of the claim process (in particular, for clients who are working during the jobcentre's usual business hours)

Rent arrears and housing costs – CAB advice in relation to rent arrears has grown by over 40% since 2012, whilst debt-related issues experienced by CAB clients in Scotland have steadily declined over the same period. Citizens Advice Scotland's research has found that there are close links between the rise of rent arrears and the advent of welfare reform and more recently Universal Credit. People in part-time employment were amongst the groups more likely to be in rent arrears, with 32% of renters who worked part-time and 21% of those working full time having been in rent arrears at least once in the past five years.⁴

Transport costs – Recent CAS research showed that the cost of bus services, as well as service frequency and punctuality are big concerns for consumers, with 14% of survey respondents indicating they were unable to travel to work by bus.⁵

Food insecurity – A major survey conducted by CAS demonstrated the broad spectrum of issues people are having with accessing and affording food. People who are worrying about their food bill completed the survey through to people who are consistently making sacrifices about the quality and quantity of the food they eat. Crucially, the findings show that working people are also routinely struggling to afford food and are cutting down meal sizes or skipping meals because they simply do not have the money they need to buy food. Of those in full-time or part-time employment, 35% of those couldn't afford to eat balanced meals.⁶

Fuel poverty and energy costs – CAS research has shown that one tenth of Scots who are in work have had to miss paying gas or electricity bills at least once in the last year because they have run out of money, according to new statistics calculated and published by Citizens Advice Scotland (CAS). Renewed definitions of fuel poverty published in May 2019 revealed that 583,000 Scottish households are defined as being in fuel poverty and 293,000 defined as in 'extreme' fuel poverty. Fuel poverty is defined as a household spending over 10 per cent of its net income on fuel costs after housing, care and childcare costs and unable to maintain an acceptable standard of living. Extreme fuel poverty, meanwhile, is defined as spending over 20 per cent.⁷

All of the above serve to put more pressure on wages to prevent poverty. According to the latest official figures, in-work poverty for working age adults in Scotland has continuously

⁴ Rent Arrears: Causes and Consequences for CAB Clients – Citizens Advice Scotland, October 2018
<https://www.cas.org.uk/publications/rent-arrears>

⁵ Creating Better Journeys: Findings from the Citizens Advice Scotland bus users survey – Citizens Advice Scotland, March 2018 https://www.cas.org.uk/system/files/publications/creating_better_journeys_report.pdf

⁶ Bringing food to the table: Findings from the Citizens Advice Scotland national survey on food affordability, access and availability – Citizens Advice Scotland, December 2018
https://www.cas.org.uk/system/files/bringing_food_to_the_table_071212.pdf

⁷ 1 in 10 Scottish workers have been unable to pay fuel bills – Citizens Advice Scotland, June 2019
<https://www.cas.org.uk/news/1-10-scottish-workers-have-been-unable-pay-fuel-bills>

increased since reporting began. It reached an all-time high of 60% of working-age adults in relative poverty living in households where at least one person works in the 2015-2018 period.⁸ Given this, ensuring that the national minimum wage rates continue to increase is imperative if this trend is to be reversed.

Impact of the National Living Wage

5. What has been the impact of the NLW since April 2016? The rate is currently £7.83 and will rise to £8.21 in April 2019.

- ***Our critical interest is in views or data on the NLW's effects on employment, hours and earnings.***
- ***We are also very interested in evidence on pay structures, differentials and benefits (including premium pay and impacts on parts of the workforce above the NLW), outsourcing, progression, job moves, training, contract type, business models, productivity (and the different ways in which productivity improvements can be achieved), prices or profits.***

Having a higher national minimum wage rate has been positive in terms of earnings beginning to catch up with the cost of living. However the introduction has introduced a fifth level of minimum wage, alongside the 21-24, 18-20, Under 18 and Apprentice rates. This has caused some confusion for CAB clients who have sought advice about whether their pay complies with the legal minimum wage or not.

Additionally, the 'National Living Wage' name has also caused people to confuse it with the voluntary Living Wage, which is set at a higher rate (currently £9.00 per hour, and £10.55 per hour in London), in addition to leading people to query whether it is part of the national minimum wage scheme or not.

CAS recommends consideration is given to reducing the number of different rates of the national minimum wage, if it is not to be equalised entirely. Additionally, we also recommend consideration is given to changing the name of the National Living Wage, to aid understanding that it is a national minimum wage, and is not a voluntary scheme. Doing so would reduce complexity in the system and improve people's understanding of their right to a legal minimum wage.

In addition, the introduction of the National Living Wage, whilst welcome, has exacerbated the gap between the rate for those aged 25 and over and younger workers. For instance, the under 18 rate is 52% of the National Living Wage, with the Apprentice rate being worth just 48% of the NLW. This, in effect, can result in younger workers earning just half of what their older colleagues do. This is perceived to be unfair and discriminatory by younger CAB clients, and is difficult to justify. CAS recommends that the minimum wage should be equalised for all ages.

⁸ Poverty and income inequality in Scotland: 2015-2018 – Scottish Government
<https://www.gov.scot/publications/poverty-income-inequality-scotland-2015-18/pages/5/>

April 2020 rates of the NLW and other minimum wage rates

7. Under our latest forecasts, the target April 2020 rate for the NLW would be £8.67. Do you agree that the LPC should seek to meet this target?

Yes, the Low Pay Commission should at least seek to meet the target for increasing the National Living Wage to £8.67 per hour. However, in the long term, the National Living Wage should increase to ultimately end low pay, meeting the value of the independently-calculated voluntary Living Wage, which is currently £9.00 per hour and likely to increase before then, and should be equalised for all ages, as detailed elsewhere in this response.

8. What do you predict would be the effects of a rate of £8.67 in 2020 (earnings, employment, competitiveness)?

A significant effect of increasing the rate of the minimum wage would be that people who are low paid would see their earnings increase. According to research from the Resolution Foundation⁹, 17% of workers were in low pay¹⁰ in 2018, with 24% of workers paid less than the 'Real Living Wage'. Given the wider economic context of reducing support from the social security system and rising costs, an increase in the minimum wage is needed to ensure that people are better protected from income shocks and can afford to pay for essentials.

9. At what level should the 21-24 Year Old Rate be set in April 2020?

10. At what level should each of the other rates of the minimum wage be set in April [2020] – that is, for 16-17 year olds, for 18-20 year olds, for apprentices, and the Accommodation Offset?

The younger age rates should be increased at a higher rate than the National Living Wage, with a view to equalising the rates in the long term. In addition to making the minimum wage fairer for young people as detailed elsewhere in this response, increasing the rates would also better take into account the lower levels of social security support available for young people.¹¹

The minimum wage beyond 2020

In the October 2018 Budget, the Chancellor stated:

⁹ Low Pay Britain 2019 – Resolution Foundation, May 2019

<https://www.resolutionfoundation.org/app/uploads/2019/05/Low-Pay-Britain-2019-report.pdf>

¹⁰ Defined as two-thirds of the typical employee's pay

¹¹ Universal Credit, Jobseeker's Allowance, Employment and Support Allowance, Income Support and Housing Benefit all feature lower rates for under 25s and/or under 18s

"Next year we will need to give the LPC a new remit beyond 2020. We will want to be ambitious with the ultimate objective of ending low pay in the UK but we will also want to be careful – protecting employment for lower paid workers. So we will engage responsibly with employers, the TUC, and the LPC itself over the coming months gathering evidence and views to ensure we get this right – and I will confirm the final remit at the Budget next year."

HM Treasury noted that the OECD define relative low pay as two-thirds of median earnings.

12. Reflecting on your experience of the NLW since its introduction in 2016, what lessons do you think should be learned for the period after 2020?

13. Given the Chancellor's statements in the 2018 budget, what are your views on the future trajectory of the NLW and other NMW rates after 2020? What considerations should inform this?

As detailed in our response to question 5 and elsewhere in this response, the National Living Wage should progressively increase to match the independently-calculated Living Wage. This would both eliminate low pay, as defined by the OECD, as well as giving full-time workers an income that allows them to meet everyday living costs.¹²

In addition, the calculation of minimum wage rates should take account of social security support available for workers and wider living costs, as detailed in our response to question 2.

As detailed in our response to question 5, CAS also recommends consideration is given to changing the name of the National Living Wage, to aid understanding that it is a national minimum wage, rather than a voluntary scheme, as well as reducing complexity and confusion in the system.

21-24 year olds, young people and apprentices

14. What has been the effect of the minimum wage and the NLW on workers aged 21-24 and what effect do you think this has had on their employment prospects?

16. What do you think has been the effect of the minimum wage on young people, and on their employment prospects?

As detailed elsewhere in this response, CAS has increasingly been hearing feedback from CAB who advise younger clients about the different rates. There is a sense of unfairness that rates are lower for younger people doing the same work as older colleagues. Younger people are

¹² The Calculation – Living Wage Foundation <https://www.livingwage.org.uk/calculation>

also not entitled to the same levels of social security support, and can be particularly affected by certain costs, such as increases in the cost of private rented accommodation¹³.

Compliance and enforcement

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

A selection of CAB cases involving compliance with the National Minimum Wage from 2018-19 can be found below. Particularly common are cases involving workers from outwith the UK who are, in some cases, paid considerably below the minimum wage, and in some cases less than colleagues who are from Scotland. Another common theme is workers being paid 'cash in hand' and not being issued with written contracts which can make proving the true level of their wages difficult. Issues with minimum wage compliance can affect workers in different sectors and with different sizes of employers, but it appears to be more common for smaller employers to pay less than the national minimum wage. Cases also appear to more frequently involve the hospitality or retail sectors.

A West of Scotland CAB reports of a client who works as a parking attendant, who had moved to being paid weekly rather than monthly and was concerned that he may be paying extra tax and National Insurance as a result. He did not receive written payslips, and it emerged that he was being paid below the national minimum wage.

¹³ Rent Arrears: Causes and Consequences for CAB Clients – Citizens Advice Scotland, October 2018
<https://www.cas.org.uk/publications/rent-arrears>

An East of Scotland CAB reports of a client who had been working for a hotel until six months ago, when they left employment when the company got transferred to a new owner. The client was asked by new owner to help train new staff and worked for a further two and a half weeks for cash in hand. The client then found new employment, but two months ago, realised they were still on the payroll with their old employer and contacted them to ask to be taken off. The client did not receive a p45 until last week; however this contained the wrong information. A new p45 has now been sent to the client; however the amount is still wrong by around £40. The client noted that the employer pays their employees below minimum wage, without a working contract, and that health and safety in the kitchen is poor. The client wanted help to report the employer. The CAB adviser noted that this was not the first time that a client had contacted them about similar issues at the employer.

An East of Scotland CAB reports of a client who worked for an estate agent. She is unhappy about her contract which states she could be asked to work up to 3 hours overtime per week without pay. She was also concerned that previous apprentices had been promoted but still had the same contract as when they first started as apprentices. The client was advised that she should receive the appropriate level of the national minimum wage for all work done, and on what would constitute an 'apprenticeship' for these purposes.

An East of Scotland CAB reports of a client and their two friends who are all EU nationals and students aged 20 – 22. They had been working in a restaurant during the summer. The employer had given the clients contracts to sign but had never provided a copy. The contract was verbally agreed however and was implied by the work carried out. The clients had been working varying shifts of up to 80 hours a week, for an offered salary of about £150 per week. This is vastly below minimum wage and is vastly above the 48 hour maximum allowed by law. If the client didn't want to work, the employer would get angry and complain to them, threatening their job safety. The employer also did not pay the clients, instead offering them only what was necessary for their rent and

'pocket money' for items like packets of cigarettes. This was as opposed to the Scottish workers in the same establishment, who, after complaining, received the full money owed to them, so is potential discrimination. Three days ago the clients were told to not return to the business. The client wishes to know what action they could take to claim the money owed to them. Across the three clients approximately £7,000 is owed.

A North of Scotland CAB reports of a client and his wife who were not originally from the UK, who had worked in Scotland for an international organisation that provided residential support for people with learning disabilities. The client explained that he started working there around 3 years ago and believed that his post as live in assistant for a small remuneration (£400 per calendar month) was designed so that he could join a community and help those less fortunate. The client enjoyed the work at first but stated around 2 years ago things began to change – the client was expected to work at minimum 48 hours per week cooking; cleaning and doing chores. The client stated that his work became less and less about working with and supporting the core members and that the 'live out' staff got to do the outings and fun things more often than not. Although the organisation had a religious ethos, the client was an atheist. On further investigation, the organisation appeared to be using the NMW opt out clause for 'communities' under Section 44A of the National Minimum Wage Act 1998 - to possibly recruit cheap labour from outwith the UK, mainly young workers. However, it is unclear to what extent the set-up is a 'community' given that aside from token 'worship' recognising all faiths that is not compulsory otherwise it appears to be a standard care facility.

An East of Scotland CAB reports of a client who was seeking assistance to receive wages she was owed due to being paid below the national minimum wage and was at the stage of raising an employment tribunal claim. Her former employer had only given her payslips showing 16 hours per week at the National Minimum Wage and paying her an undocumented £5 per hour for further 30 hour per week, with all pay received in cash. The client has some handwritten rotas showing extra hours scheduled but they are unsigned and undated. The client had had another job offer from a shop who asked her origin and then offered her £6.50 per hour on learning she is from continental Europe. The CAB adviser commented that it appeared to be a wide scale problem with small employers who are exploiting foreign workers.

An East of Scotland CAB reports of a client who started an apprenticeship contract two years ago as a nursery teacher. She works 40 hours per week. The client did not have her apprentice contract with her as she never was given a copy and no other details about the types of apprenticeship she has signed for could be given. The client was seeking advice on her rates of pay and her holiday entitlement. Although the client was paid above the apprentice rate, it was unclear whether this was the appropriate rate or not. The client was extremely concerned about raising any issues with her employer in case there were negative repercussions.

A North of Scotland CAB reports of a client who had been working at a tattoo parlour for the past two months. The client has been working without a contract and has been paid cash (initially £1,250 per month and recently reduced to £850 per month). The client typically works 8am - 5pm with a half hour lunch break, 6 days per week, totalling over 200 hours per month. The client does not receive payslips and has been paid cash "here and there". The client has not kept written record of payment amounts and dates, nor has he placed cash into a bank account.

An East of Scotland CAB reports of a client who works full time as a delivery driver. In last few months, there have been discussions at work relating to pay and conditions and the management have decided to level out hourly rates between their standard and overtime rates. There was also agreement in that the new wages rates would include adjustments in relation to NMW (National Minimum Wage) conditions. In April, the client got his wage slip and it showed the change in hourly rates, but did not reflect the adjustment for NMW. The client spoke with his boss and discussed this anomaly and his boss stated he would have to get back to him on this matter.

At end of April, the client received his monthly wage slip and again this did not reflect the NMW adjustment. He thereafter tried to speak to his boss over the matter and then sent him a text requesting a discussion on this matter. The client then had a discussion with his line manager, where the client stated to him his annoyance over the matter and stated that if the money is not sorted out he would not come in to work.

The following day he received a text from his boss claiming no knowledge of the discussion about his wage rate and any NMW adjustment. The text then went on to say not to bother coming in to work and they would pick up his clocking on card and keys. The client is due to go on shift in early hours of Friday morning and did not know what to do.

An East of Scotland CAB reports of a client who was working as a kitchen porter. When he came into CAB for advice on reporting a change of circumstances for his tax credit claim, it emerged his employer had not increased his wages when the National Minimum Wage increased three weeks ago, and he was being paid at the previous rate.

21. What comments do you have on HMRC's enforcement work? What is your opinion on the quality and accessibility of the official guidance on the NLW/NMW?

22. What more could be done to improve compliance with the NLW/NMW?

Whilst CAS welcomes increased activity related to enforcement in recent years – in particular the introduction of 'naming and shaming' employers who pay less than the minimum wage¹⁴, there is more that could be done to ensure compliance. CAS would recommend increased resources for proactive promotion of the minimum wage rates, what workers can do if they are paid below the minimum wage, and to highlight the importance of compliance for employers. CAS would also welcome greater joint working between HMRC and citizens advice bureaux to allow incidents of non-compliance to be reported, and intelligence shared on an ongoing basis.

In the long term, CAS has previously recommended the creation of a statutory body (an Employment Commission) to bring together a range of functions aimed at tackling unfair employment practices. This could include powers to investigate National Minimum Wage breaches along with allowing workers to confidentially report unfair treatment such as breaches of their maternity, holiday, sickness, pay, dismissal, redundancy and other rights, providing a holistic and robust enforcement agency.¹⁵ CAS welcomes moves to bring strategic direction and coordination to bodies with overlapping responsibilities in this area beginning with the creation of the post of Director of Labour Market Enforcement, and looks forward to further proposals for creating a single labour market enforcement agency.¹⁶

¹⁴ Nearly 180 employers named and shamed for underpaying thousands of minimum wage workers – Department for Business, Energy and Industrial Strategy, March 2018 <https://www.gov.uk/government/news/nearly-200-employers-named-and-shamed-for-underpaying-thousands-of-minimum-wage-workers>

¹⁵ Page 45 – 46, Fair Enough? Protecting Scotland's workers from unfair treatment, February 2015 <https://www.cas.org.uk/publications/fair-enough>

¹⁶ Good Work Plan, HM Government, December 2018 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/766167/good-work-plan-command-paper.pdf