

**dti**

**NATIONAL MINIMUM WAGE**

**Annual Report 2004/05**

**IN ASSOCIATION WITH**





The DTI drives our ambition of 'prosperity for all' by working to create the best environment for business success in the UK. We help people and companies become more productive by promoting enterprise, innovation and creativity.

We champion UK business at home and abroad. We invest heavily in world-class science and technology. We protect the rights of working people and consumers. And we stand up for fair and open markets in the UK, Europe and the world.

## **MINISTERIAL FOREWORD**

The minimum wage has now been enforced by HM Revenue and Customs (HMRC) on behalf of the Department for Trade and Industry for over six years and remains one of the most important achievements of this Government. The significant changes brought in during 2004-2005 reflect our continuing commitment to ensure workers are both paid and receive a fair wage.

In addition to the October 2004 minimum wage increases, which included the introduction of a new rate for those under 18 and above compulsory school age, the October 2005 rate increases bring the minimum wage for adults to over £5 an hour.

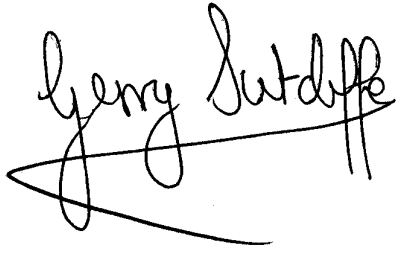
We have seen the introduction of the new rules for output workers. The new fair piece rate rules commenced in October 2004. They provide an easier and fairer way for employers to operate and ensure that piece workers receive the minimum wage rate for the time they take to produce a piece or carry out a task. This should benefit some of the most exploited people in the workforce such as home workers.

Further measures have been introduced in the Employment Relations Act 2004 to help enforce the minimum wage and came into effect in April 2005. HMRC's National Minimum Wage compliance officers now have more flexibility in the way they progress their cases and enforce payment of arrears.

We are also now taking forward work on targeting enforcement at key low-paying sectors (hairdressing has been chosen for this year) and bringing forward criminal prosecutions for repeat or major offenders.

This report reflects the work that has been undertaken over the past year and the results achieved. Our partnership continues to strengthen and by working collaboratively we are continuing to recognise and address the needs of the very lowest paid. We hope you find this report both interesting and informative.



A handwritten signature in black ink that reads "Gerry Sutcliffe". The signature is written in a cursive style with a long horizontal stroke at the bottom.A handwritten signature in black ink that reads "Dawn Primarolo". The signature is written in a cursive style with a long horizontal stroke at the bottom.

Gerry Sutcliffe, Minister for Employment Relations, and Consumer Affairs  
Dawn Primarolo, Paymaster General  
October 2005

## **SECTION 1: AWARENESS AND EDUCATION**

### **Awareness and Publicity**

For the minimum wage to remain truly successful it needs to be widely known about and willingly complied with. That is why Section 50 of the National Minimum Wage Act 1998 requires the Secretary of State to draw attention to those affected by it when the Regulations change.

In September/October 2004 the Government ran a nation-wide publicity campaign to coincide with the increases to the adult and development rates and the introduction of the new rate for 16-17 year olds. The campaign had several objectives: to inform employers and workers of the new increased rates and the new rate for 16/17 year olds; and to encourage people to call the help-line telephone number to obtain further information and advice.

The main campaign was biased towards large circulation national tabloids; supported by adverts in the broadsheets, trade press and selected women's magazines as well as ethnic press and TV listings. The specific target audience included low-paid workers, young workers, ethnic minority workers and all employers – particularly those in retail, hospitality, social care, hairdressing, security, cleaning and childcare.

Analysis of calls to the helpline and visits to the DTI minimum wage website page showed a marked increase in activity during the period of the campaign. Calls to the helpline during October 2004 were 44% higher than those in the previous year, and the highest experienced since October 2001.

The minimum wage will increase again on 1 October 2005 and there will be a further publicity campaign during September/October 2005 to announce the increases to the main and youth rate.

The new rates from 1 October 2005 are:

£5.05 an hour for those aged 22 years or above;

£4.25 an hour for 18 – 21 year olds; and

A rate of £3.00 for 16 and 17 year olds above compulsory school age

The Government will continue to develop their minimum wage publicity strategy to ensure that vulnerable groups like some ethnic minorities and home-workers are made aware of the minimum wage.

### **Young Workers**

In the autumn of 2004, the Government also ran an Internet publicity campaign on the new rate for 16-17 year olds. Adverts specifically designed to appeal to 16-17 year olds ran for six weeks on websites popular with this age group – such as the Sun and the MTV website. In addition the Government utilised various channels of communication to ensure that young people and those working with them, including teachers and advisers, were given information about the new rate. Articles and briefings were placed on websites and in newsletters, including:

[www.need2know.co.uk](http://www.need2know.co.uk) - award winning website aimed at young people;

[www.teachernet.gov.uk/educationoverview/briefing/news/](http://www.teachernet.gov.uk/educationoverview/briefing/news/) - website for teachers. A news piece was also published on the sites home page on 1 October;

*Teachers* magazine – a news item was placed in the November edition;

Connexions “multi bulletin” – regular newsletter sent to all Connexions Partnerships;

GO/LSC newsletter; and

Parent’s section on [www.direct.gov.uk](http://www.direct.gov.uk)

Research taken after the campaign showed high awareness of the existence of the new minimum wage rate for 16/17 olds amongst workers (89%) and employers (100%), but less awareness of the detail e.g. the rates, age criteria.

### **Ethnic Minorities**

Following research commissioned by the DTI in 2004, they reviewed their strategy on how best to promote awareness of the minimum wage amongst ethnic minorities. The research findings made clear that the best approach to adopt was to direct mail community networks. In the Autumn of 2004 Gerry Sutcliffe, Employment Relations Minister, wrote to more than 2,000 ethnic community networks providing details of the increases, offering leaflets in ethnic languages, and explaining the role of the helpline which is able to field calls in many ethnic languages.

### **Home-workers**

On 1 October 2004 the Government introduced a new system of 'fair piece rates' for home-workers. Employers had the choice of paying their workers the minimum wage for every hour they worked or at a fair piece rate that allowed an average worker to earn the minimum wage. To help promote the new system to home-workers, in partnership with the TUC and the National Group on Home-working, more than 40,000 post cards were distributed providing details of the new system. As a high percentage of home-workers come from ethnic minorities, details of the new 'fair piece rate' system were also included in the direct mail approach to ethnic minority community networks.

### **Awareness and Guidance**

As well as paid publicity, the Government has taken a number of other steps to ensure that awareness and understanding of the legislation remains high. These include:

The DTI updated short guides for employers, employees and young workers in October 2004;

HMRC continue to make presentations and answer questions on the minimum wage at seminars and conferences working closely with local communities and relevant groups to improve compliance with the minimum wage;

Throughout 2004/05, the HMRC held a series of tax/national insurance awareness events in towns and cities across the UK. HMRC's minimum wage staff attended all of these events; and

Information about the minimum wage rate changes and the helpline is also included in the HMRC's employer bulletins, which reach about 1.5 million tax-registered employers.

## **SECTION 2: COMPLIANCE AND ENFORCEMENT**

### **Background**

The National Minimum Wage Act 1998 has now been in force for over six years. HM Revenue and Customs has operational responsibility for enforcing the minimum wage and has operated a helpline and network of compliance teams since 1 April 1999 to fulfil that role.

The Department for the Environment, Food and Rural Affairs and the Agricultural Agencies in Scotland and Northern Ireland undertake enforcement of the minimum wage in the agricultural sector. These bodies already had responsibility for enforcing agricultural minimum wages (see Annex A) before the national minimum wage was introduced.

Under powers contained in the National Minimum Wage Act 1998, a worker has the right to receive the minimum wage and can enforce this right by taking their case to an employment tribunal or civil court. However, the Government did not want workers to have to rely on taking action against their employer themselves, as intimidation or fear of losing their job could prevent a worker from making a complaint. The Act therefore allows for the appointment of enforcement officers to act on behalf of workers, where they identify that a business is failing to fulfil its obligations.

HM Revenue and Customs enforces the minimum wage under a Service Level Agreement with the DTI. Under the terms of the Agreement, the HMRC provides information, inspection and enforcement services, and responds to enquiries and complaints from workers, employers and third parties to help ensure that employers comply with the minimum wage legislation. This includes visiting a sample of employers about whom no complaints have been made, to check that they are meeting their obligations under the minimum wage legislation.

## **ENFORCEMENT OPERATIONS**

### **Helpline**

The helpline is based on Benton Park View in Newcastle-upon-Tyne and within Longbenton Contact Centre, part of HM Revenue and Customs. The helpline advisers handle enquiries on all aspects of the minimum wage from workers, employers and third parties. All callers have the opportunity to register a complaint about underpayment of the minimum wage, with the option of doing so anonymously if they wish. Details of complaints are forwarded via the NMW Central Information Unit to the relevant regional compliance team to follow up. The helpline also deals with requests for guidance material. All calls are charged at local rates.

0845 6000 678 **Monday-Friday, 8am to 6pm for enquiries**

0845 8450 360 **24 hour automated service for guidance material**

**Over 57,000 enquiries were received at the helpline during 2004-05.**

95.69% of calls were answered within 20 seconds.

The complaints generated from the helpline traffic have remained constant at over 1,900 for the past three years. The helpline advisors will establish whether there may be an underlying complaint behind a caller's request for factual information and where necessary make the appropriate referral to a compliance team. The incidence of non-compliance found in minimum wage investigations continues to remain high, at 35% in 2004-05

**Since 1 April 1999, the helpline has responded to more than 440,000 enquiries and handled over 15,000 complaints about non-payment of the minimum wage.**

The helpline now has a fully supported e-mail system available via the HM Revenue and Customs web site. Four agents are currently trained on its use by the helpline to ensure continued operation against most contingencies. This is an incremental development with new, enhanced features expected when the robustness of the current system is fully proven. The expectation is that soon for the first time HMRC and the DTI will be able to advertise the facility in the confidence that it will stand up to

higher volumes of traffic. **1,811 e-mails were received and answered during 2004/05**

### **Central Information Unit**

The Central Information Unit (CIU) is located near the helpline. The role of the CIU has now evolved from a mainly processing unit to a research and analytical unit whose main responsibilities are:

- to provide quality casework to the 16 compliance teams;
- to work closely with relevant HM Revenue and Customs personnel and other bodies to develop intelligence capability;
- to effectively manage information by recognising and addressing the implication of changes in new technology, working practices and legislation;
- to implement effective analytical processes for handling information;
- to provide the information needed to inform and support policy and strategy decision-making;
- to promote collaborative working with interested parties; and
- to provide technical support to helpline call agents dealing with the more complex telephone and e-mail enquiries.

Following the introduction of a risk assessment program to identify employers that are more at risk of not paying the minimum wage, CIU have used the experience gained to develop risk assessment procedures to evaluate all information received. This has ensured that there is a smooth flow of quality casework to the compliance teams.

By working closely with other parts of HM Revenue and Customs and introducing an effective analytical process for handling information, the CIU have been able to provide teams with packaged cases containing quality information from various sources.

***Exchange of information is strictly controlled. Section 39 of the Employment Relations Act 1999 and Section 148 of the Finance Act 2000 allow exchange of information between minimum wage officers and tax colleagues.***

## **Outreach Work**

Customer Responsive Outreach Work (CROW) is undertaken by a small team of nine compliance officers trained in presentational skills who respond to requests from organisations across the UK to talk about the minimum wage. These include:

- voluntary organisations representing various trade sectors;
- community organisations representing ethnic minorities;
- Citizens Advice Bureaux;
- Low Pay Units;
- trade unions; and
- large employer groups.

During 2004-05 team members also made presentations to local colleges and Care Inspectorates. The team members also linked up with other HM Revenue and Customs colleagues to attend national Employer Talk events and attended a variety of events across Northern Ireland.

## **Compliance Teams**

There are currently 16 compliance teams situated across the UK, each with between 3 to 8 compliance officers. They respond to complaints made about employers suspected of not paying the minimum wage. Complaints and other cases are referred to the appropriate team by the CIU.

## **DATA ON ENFORCEMENT**

### **Central Enforcement Operations**

During 2004-05 the helpline in Longbenton handled over 57,000 enquiries, most of which were calls made directly to the helpline advisers. This is an increase of over 4,600 calls from last year's figure, which suggests that awareness of the minimum wage may be at almost universal levels and workers know where to contact when changes are coming into effect. 2004-05 saw not only a rise in minimum wage rates but also a change to the Fair Piece rates System in October 2004 and the introduction of a new rate for 16/17 year olds

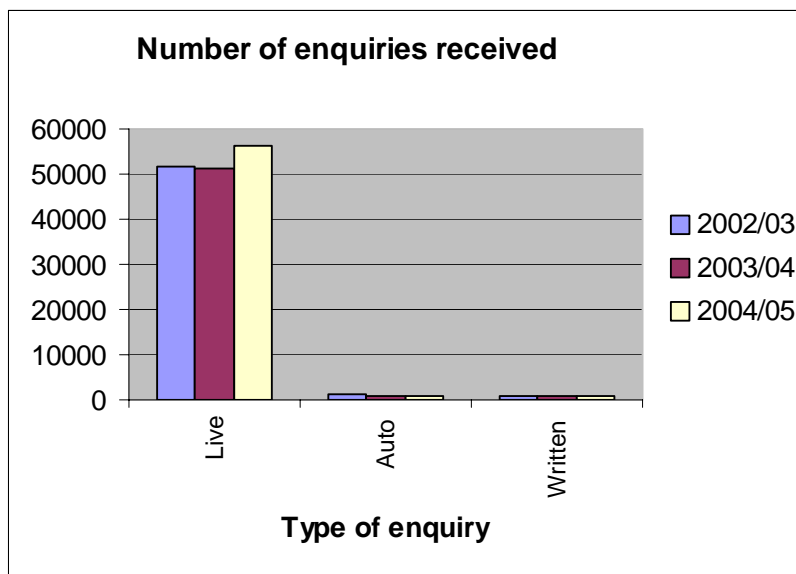
Figures A1 and A2 provide details of the number of enquiries received over the past 3 years.

***Numbers of enquiries***

	2002/03	2003/04	2004/05
Live	51800	51360	56111
Auto	1074	1031	907
Written	802	835	715
<b>TOTAL</b>	<b>53676</b>	<b>53226</b>	<b>57733</b>

*Figure A1*

- ❖ **Live** = the number of enquiries handled by a telephone operator
- ❖ **Auto** = the number of calls to the automated line requesting literature
- ❖ **Written** = the number of written enquiries received



*Figure A2*

As in the previous year, the volume of calls increased considerably in the weeks around 1 October 2004 when both the main and development minimum rates increased. The main rate increased from £4.50 to £4.85 per hour, and the development rate increased from £3.80 to £4.10 per hour. A new rate for 16/17 year olds over compulsory school leaving age of £3.00 per hour was introduced from 1<sup>st</sup> October 2004.

Analysis of helpline call volume and visits to the DTI website page showed a marked increase in activity during the period of the campaign. Calls to the helpline doubled in the week commencing 29 September compared with the week before the campaign began and did not drop to pre-campaign levels until 2 weeks after the print and online advertising finished. The highest number of calls occurred in the second week of the campaign, when the call volume was six times that recorded in the first week. Calls to the helpline during October 2004 were 44% higher than experienced in the previous year. The increase was as a result of enquiries in relation to the introduction of the two new initiatives. Calls during this time were the highest experienced since October 2001.

Figure B illustrates call levels for each month in 2004-05

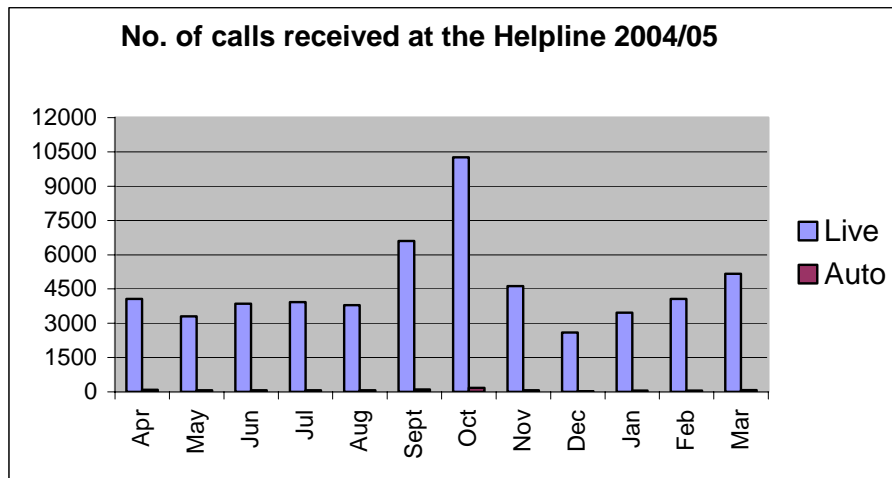


Figure B

### **Network Enforcement Activity**

NMW compliance officers continue to produce good results and frequently receive telephone calls, letters and Christmas cards from workers who have been helped to obtain the minimum wage together with arrears of pay.

In 2004-05 the 16 compliance teams completed more than 5, 100 investigations.

Although this is a decrease from the previous year, as time has gone on, it is recognised that the complexity of investigations is increasing.

Investigations during 2004-05 fell into two main categories:

- **“Complaints”** cases are investigated as a result of a complaint being made by a worker or ex-worker about non-payment of minimum wage;
- **“Other”** cases are investigated as a result of information from the HMRC Tax Credit Office and other sources including third party complainants, which is analysed by the Central Information unit to identify employers most at risk of non-compliance.

Figure C1 provides details of the number of employers subject to a completed investigation over the past three years, and the origin of the investigation.

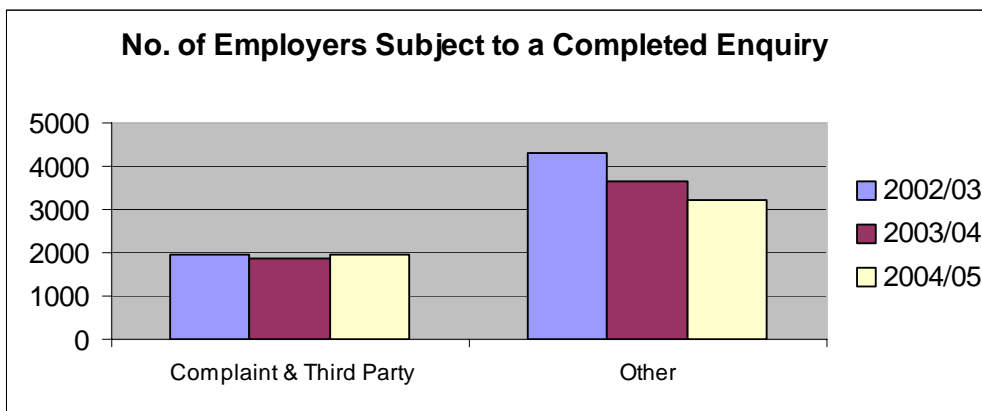
***Number of employers subject to a completed investigation***

	2002/03	2003/04	2004/05
Complaint	1953	1886	1951
Other	4285	3655	3204
<b>TOTAL</b>	<b>6238</b>	<b>5541</b>	<b>5155</b>

*Figure C1*

It is apparent that complaints have been running at a relatively steady level for the past three years.

Figure C2 illustrates the number of cases closed by type since April 2002



*Figure C2*

Figure D illustrates the levels of non-compliance identified in NMW investigations in the past three years. The Government’s focus remains on identifying those employers most likely to be failing to understand or undertake their obligations to pay the minimum wage.

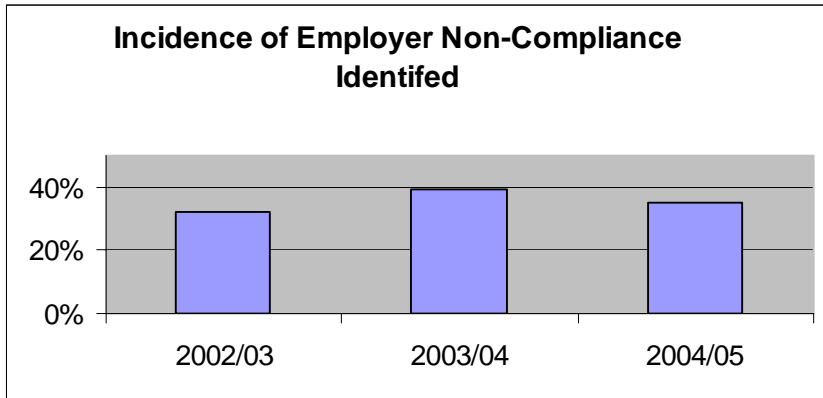


Figure D

**Identifying National Minimum Wage Arrears.**

The amount of arrears identified increased in 2004-05. Figures E1 and E2 show the total arrears identified by case type since April 2002.

Total Arrears identified by Case Type (£)

	2002/03	2003/04	2004/2005
Complaint and 3rd Party complaint	2,542,235	1,352,422	2,600,461
Tax Credit	784,978	932,486	819,014
Other/proactive	258,728	273,188	340,886
<b>TOTAL</b>	<b>3,585,941</b>	<b>2,558,096</b>	<b>3,760,361</b>

Figure E1

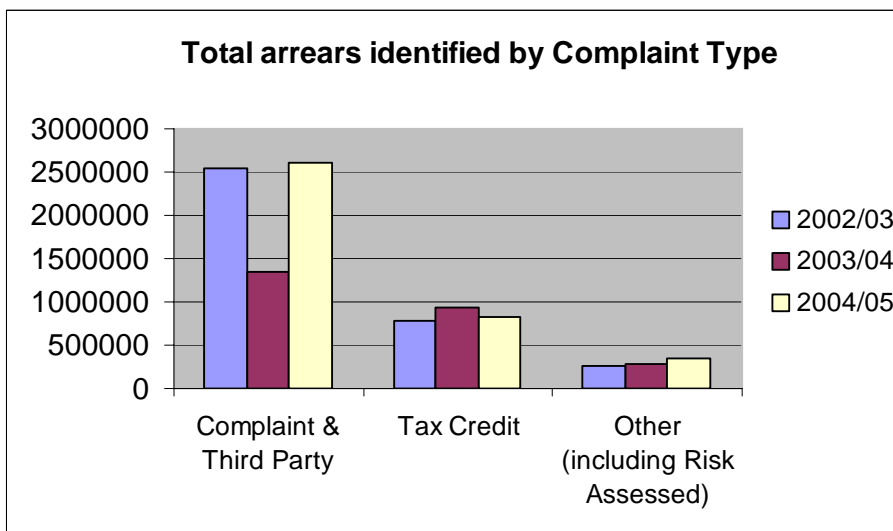


Figure E2

The figures also show that the percentage of employers investigated found to have arrears have hit 35% in 2004/05.

The number of workers for whom arrears have been identified for each of the last three years has risen year on year.

Year	male	female	total
2002-03	3,338	4,035	7,373
2003-04	5,026	4,402	9,428
2004-05	5,801	5,460	11,261

Figure F shows the average arrears identified during the last three years of the minimum wage.

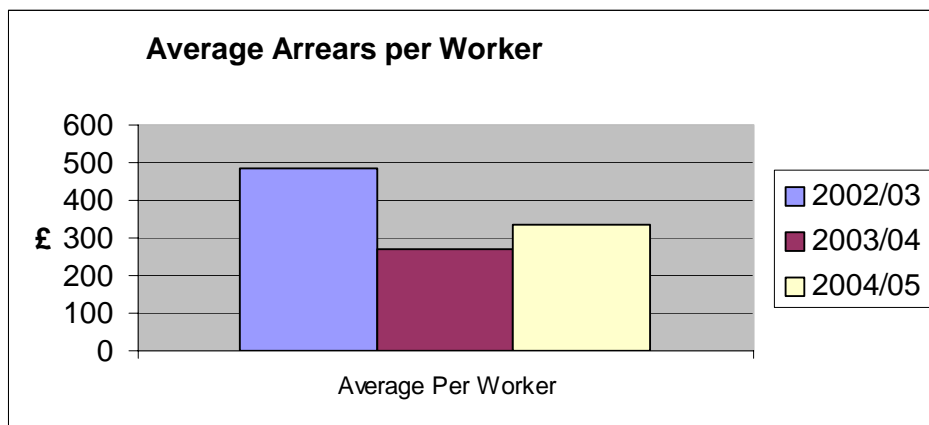


Figure F

Eight cases were heard by an employment tribunal, either as a result of an appeal by the employer against an enforcement notice, HMRC taking action on behalf of workers or both. A successful outcome in favour of the worker was achieved in 75% of the cases.

#### **Data on complaints about non-payment of minimum wage**

Some good results have been achieved in partnership with external organisations (see Enforcement Pilot Projects on pages 18-21).

In addition the work of the helpline advisers in explaining minimum wage enforcement procedures to callers and ensuring they understand the support available to them has paid dividends.

Callers to the helpline are asked to provide their date of birth to inform HMRC's understanding of their particular circumstances and the advice given but many of those who wish to register an anonymous complaint are reluctant to provide personal information. As a result, HMRC do not have age details for a large proportion of complainants.

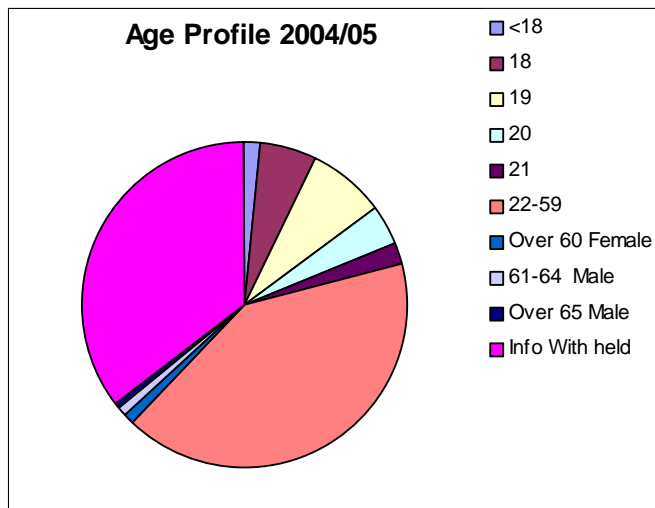


Figure G

For the first time, a slightly larger proportion of complaints during 2004-05 were received from female workers. In principle there should be more complaints from female workers, who tend to work in lower paid sectors of the economy. HMRC and DTI have been looking at the issues surrounding this and addressing the concerns of specific groups such as home-workers where there is a predominantly female work force. Although too early to tell, the NMW enforcement activities may have begun to have more of an impact on the female work force.

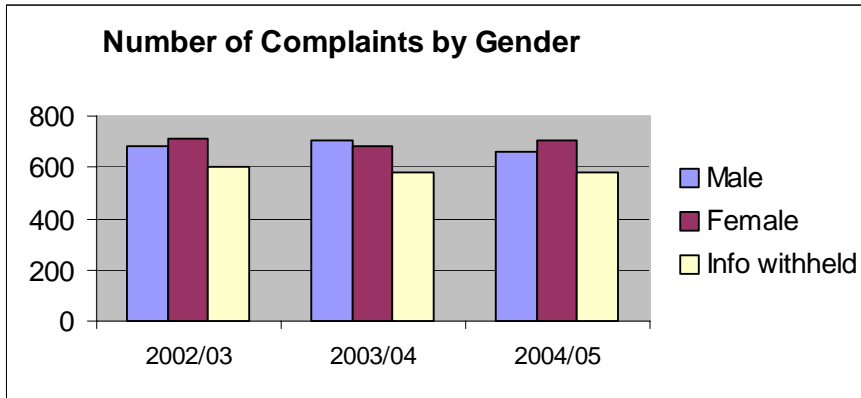


Figure I shows' the number of complaints received by trade sector. There are noteworthy increases in respect of hospitality and social care.

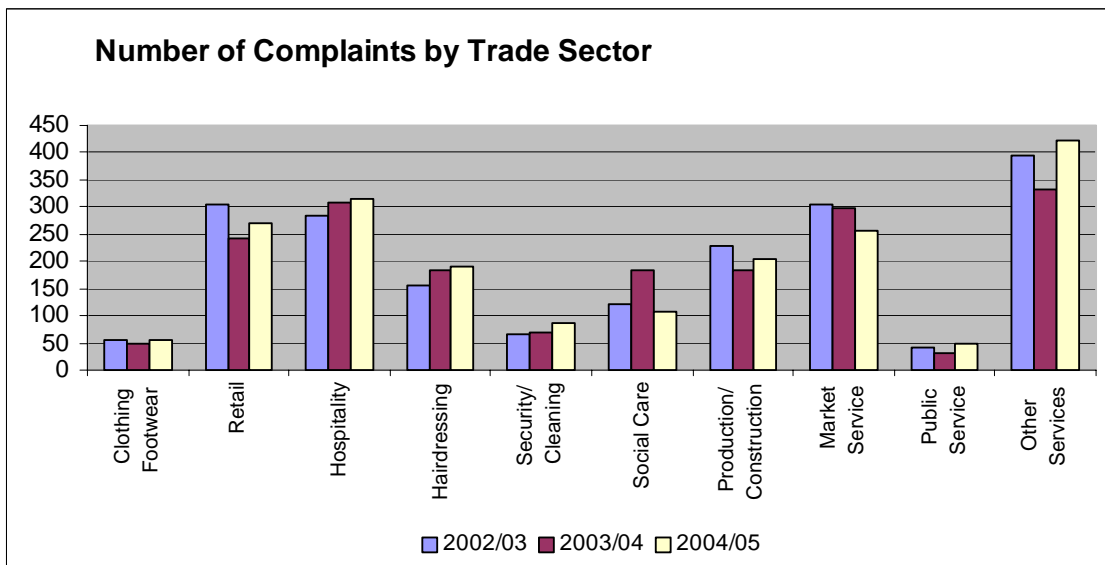
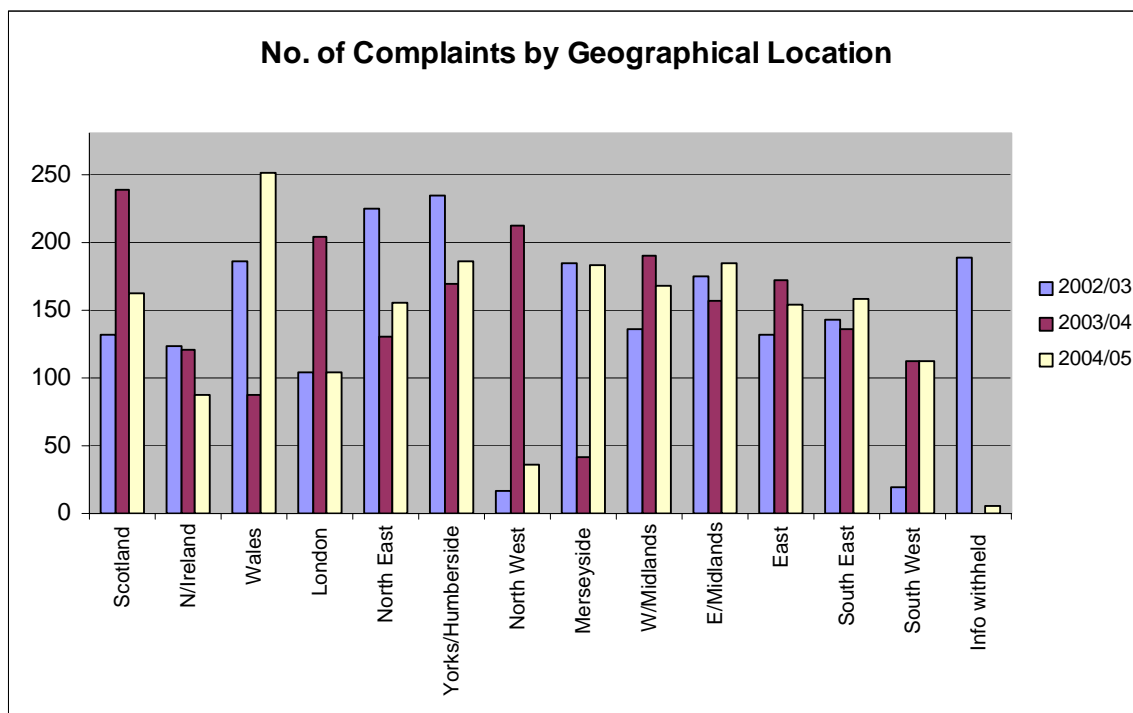


Figure I

Figure J illustrates the number of complaints received by geographical location.<sup>1</sup> The highest incidence of complaints is registered in Wales. The South West has remained constant with a small increase in the South East and E. Midlands.

<sup>1</sup> The statistics are recorded in accordance with Government Office regions rather than the regions in which the compliance teams are based.



### Quality Standards

The monitoring of the quality of HMRC's NMW enforcement activities has been brought in line with the approach adopted for other HMRC compliance activities. An enhanced system was piloted from December 2004 to February 2005 and was rolled out nationally from April 2005. The new system is designed to assist NMW compliance officers as they progress a case and prompts managers' input at the end of each of the three stages of working a case (opening, enquiry and settlement stage). The new process ensures that cases are reviewed and evaluated throughout their working life by both the compliance officers and their managers, facilitating input from managers before the enquiry is settled.

Further management checks will be put in place from October 2005 to require cases to be reviewed by team leaders and area managers so that the performance of all the NMW compliance teams can be maximised across HMRC. There will be mandatory checks at six-month intervals to allow progress of the enquiry to be monitored, and if necessary influenced by managers. This is in line with the practice and guidance in other compliance business streams of the HMRC, and will ensure consistency across the NMW business, where teams had developed their own monitoring arrangements. A further measure to provide for consistency across the business was the introduction of standard file structures for NMW enquiries

## **ENFORCEMENT PILOT PROJECTS**

### **Background**

In 2001/02, the DTI and HMRC established seven community-based pilots in conjunction with external organisations following recommendations made in the second report published by the Low Pay Commission.

The projects were established in areas where it was felt that there was a low level of awareness of the minimum wage and a low level of complaints about non-payment of the Minimum Wage. Four of these projects continued into 2004/05.

### **Progress in 2004-2005**

#### **Local Helplines**

The Northern Ireland National Minimum Wage helpline has been in operation since September 2001. Citizens Advice Northern Ireland, in partnership with HM Revenue and Customs and DTI, operate the helpline. The helpline was set-up to serve the workers and employers in Northern Ireland. Since its inception there have been nearly 10,000 calls to the helpline with over 400 worker complaints referred to the Belfast compliance team for investigation.

The Scottish National Minimum Wage helpline has been operated, by the Scottish Low Pay Unit, since February 2003. They work closely with the local NMW Compliance team, and Citizens Advice Scotland. The aim of this project is to raise awareness of the minimum wage issues and enforcement activity in Scotland. The project provides an outlet for the workers in Scotland who would prefer to discuss minimum wage issues with a non-official organisation or to utilise the face-to-face contact available through the Citizens Advice network. Since the launch of the helpline it has taken over 2000 calls generating over 140 complaints, which have been referred to minimum wage compliance teams for investigation.

#### **Working with Community Organisations**

In the East Midlands, the partnership with Leicester City Council and Community (the former Knitwear, Footwear and Apparels Trades Union) has continued to

develop. The community outreach worker has encouraged workers to come forward and complain about the non-payment of the minimum wage. Between April 2004 and March 2005, 37 referrals were generated. From the cases generated by those referrals, that have now been concluded, 11 workers have benefited and £8,728 in arrears has been identified for those workers.

The partnership with the West Midlands Employment and Low Pay Unit was initially aimed to raise awareness of the minimum wage across the region, targeting ethnic minority groups. The project was broadly successful and then focused on the bigger challenge of encouraging vulnerable workers to come forward and complain. This pilot project ended in August 2004.

## **SECTION 3: POLICY BACKGROUND**

### **The Act and the Low Pay Commission**

The independent Low Pay Commission was set up in July 1997 to advise Government on issues surrounding the introduction of the minimum wage. The Commission was given a statutory footing once the National Minimum Wage Act was passed in July 1998. The minimum wage itself came into force on 1 April 1999.

### **October 2004 increases**

In March 2004 the Government accepted the recommendations of the Low Pay Commission that the main minimum wage rate should be increased by 35 pence/hour in October 2004, to £4.85, and the youth rate by 25 pence /hour to £4.10.

### **Latest Report of the Low Pay Commission**

In August 2004, the Government announced new terms of reference for the Commission and asked them to report to the Prime Minister and the Secretary of State for Trade and Industry by the end of February 2005.

The Commission were asked to:

- continue to monitor and evaluate the impact of the National Minimum Wage with particular reference to the effect on pay, employment and competitiveness in low-paying sectors and small firms, and the effects on pay structures;
- review the levels of each of the different minimum wage rates and make recommendations, if appropriate, for change;
- in making any recommendations for future rate changes, they were asked to have regard to the wider social and economic implications, the likely effect on employment levels, the impact on the costs and competitiveness of business,

and the potential costs to industry and the Exchequer. They were also asked to report on the effect that the minimum wage has had on the gender pay gap and the pay of ethnic minority and disabled workers since its introduction.

In October 2004 the Government wrote to the Commission again enlarging their remit. They were asked to:-

- consider whether there was evidence of any significant increase in the number of employers paying 18-21 year old workers lower rates than adults and to advise on the reasons for any such increase;
- factor into their deliberations the increased cost to the employers of the Government's intention to make bank holidays additional to the existing annual leave entitlement of twenty days;
- continue to work with the new Women and Work Commission;
- consider whether salary sacrifice schemes involving childcare vouchers should be allowed to count towards minimum wage pay.

The Commission considered the last point carefully and came to the conclusion that the issue of childcare vouchers could not be properly considered in isolation from the wider issue of non-cash benefits as a whole. This meant that they were not in a position to produce the advice required within the timescale. They suggested that the Government invite them to give the matter detailed consideration for inclusion in their 2006 report.

In February 2005 the Government published the latest Low Pay Commission Report. The Government accepted the Low Pay Commission's recommendation of £5.05 an hour (around 4% increase) and from £4.10 to £4.25 an hour (also around 4% increase) from 1 October 2005. The Government estimates that 1.3 million jobs across the UK stand to benefit from these increases.

## **Fair Piece Rates**

In February 2003 the Government consulted on replacing “fair estimate” agreements with a system, which would enable the setting of “fair piece rates”. Responses from all sides supported a move to fair piece rates and the removal of the four-fifths rule.

In November 2003 the Government further consulted on the draft regulations. Once the consultation had finished the Government confirmed that employers would no longer be allowed to set the rate of pay using the four fifths of the time that it takes an average worker to complete a set block of work.

From October 2004 employers had to pay their output workers the minimum wage for every hour they work or, in effect, a fair piece rate derived from the time that a worker working at the average speed would have taken to produce the piece in question.

From April 2005, employers have been required to pay their piece workers either the minimum wage for every hour they work or a fair piece rate set at 120% of the minimum wage.

This means that most home-workers, even those who work slightly slower than the average worker, should receive the minimum wage.

This change to the law will be especially important to ethnic minority and women workers, who make up a large proportion of people who work at home. This system should be more easily understood and this should mean that more employers take advantage of the new arrangements, and that more home-workers will be clear about whether they are receiving a fair rate.

## **Light Touch Enforcement**

In 2004/05 the Government looked to see whether there were areas where HMRC compliance officers could take a less ‘technical’ approach to the minimum wage regulations, in order to free up resources so that they can better focus on key areas.

Compliance officers have found that in a number of cases workers have been paid below the minimum wage in some pay periods, but are clearly being paid above the minimum wage overall. For example some workers may be paid weekly and receive basic pay in some weeks below the minimum wage, but in other weeks they earn commission which takes them well above the minimum wage.

While strictly speaking this is a breach of the legislation, cases like these – where workers are earning well above the minimum wage overall – should really not be the main goal of NMW enforcement activity. In January 2005 the Government decided not to pursue any more cases of this type, which will help compliance officers free up resources to tackle seriously non-compliant employers.

Individual workers may still however take their own cases to a tribunal if they wish. HMRC will also reserve their freedom to pursue cases where they believe employers are using this to deliberately to avoid paying the minimum wage –for example by paying a basic rate below the minimum wage and dismissing workers just before their commission becomes due.

### **Looking Forward**

The Government are absolutely determined to tackle difficult employers and on 12 July 2005 the Minister For Employment Relations, Gerry Sutcliffe outlined two initiatives that HMRC and the DTI are taking to help further improve the effectiveness of minimum wage enforcement.

### **Targeted Enforcement**

This approach will allow HMRC and the DTI to target publicity and enforcement at key low-paying sectors in turn by meeting the main employer groups in each sector to discuss their concerns about the minimum wage; stress that the aim of NMW enforcement activity is not to tackle the great majority of good employers, but to tackle the minority of bad employers; and issue guidance and publicity aimed at both workers and employers addressing their main concerns. This will then be followed by an enforcement drive, encouraging workers paid below the minimum wage to come

forward, and for HMRC minimum wage compliance officers to visit employers where they suspect there may be non-compliance. The Government believes this approach will enable HMRC and the DTI to raise the profile of the minimum wage in each sector in turn, address their concerns and improve compliance at the same time.

For the first year of this programme the Government have chosen the hairdressing sector. The two key federations have told the DTI that they had no difficulties with being the first selected for targeted enforcement and indeed have welcomed it.

### **Criminal prosecutions**

The great majority of minimum wage cases are settled without the need for any formal enforcement action. However the National Minimum Wage Act also provides for criminal prosecutions as a long- stop where employers are regularly or deliberately non-compliant. In addition to failure to pay the minimum wage, the criminal offences include obstructing officers, failing to keep adequate records, and producing false records.

To date the Government has not taken forward any criminal investigations, but Ministers now believe there is a case for using this route, particularly where lesser sanctions alone are not producing compliance. DTI have therefore now agreed a criminal investigations strategy in principle with HMRC, and they will be starting to identify cases with the aim of investigating a small number of employers in 2005/06 for prosecution.

## **ANNEX A**

### **AGRICULTURAL WAGES: REPORT ON THE SIXTH YEAR (APRIL 2004 - MARCH 2005)**

#### **England and Wales**

##### **Introduction**

This report covers the sixth year's work of the Agricultural Wages Team (AWT) based at Defra's office in Ergon House.

##### **Procedure**

When a complaint is received and it appears that the worker has been underpaid, AWT staff attempt to resolve matters by writing to, or in some cases telephoning, the employer and explaining the requirements of the legislation. The aim is to persuade the employer to pay the worker at the correct rate and to pay arrears. If the employer agrees to put matters right by a specific date and the AWT receives confirmation from the worker that this has been done and that he or she is content, the case is closed. If the employer refuses to co-operate or fails to pay the money, the case is passed to an Agricultural Wages Inspector (AWI) to investigate.

A visit from an AWI may be sufficient to prompt the employer to put matters right. Where this fails, an Enforcement Notice may be served. A schedule of arrears attached to the Notice shows the sum due to the worker for the hours worked, holiday taken etc in each pay reference period and sets this against the sum received. The arrears due in each pay reference period are calculated and the total sum due is stated in the Enforcement Notice. An employer may appeal to an Employment Tribunal against an Enforcement Notice. Provided the Notice is upheld, the employer is required to pay the arrears due and, if he or she fails to do so, a Penalty Notice may be served.

## 1 April 2004 - 31 March 2005

In 2002 the Employment Appeals Tribunal ruled, in the *Inland Revenue Wales and Midlands v Bebb Travel plc* that enforcement notices could be issued only in respect of future payments of the minimum wage or in respect of future and associated past payments. The National Minimum Wage (Enforcement Notices) Act 2003, which came into force in July 2003, gave HMRC the power to issue enforcement notices in respect of former workers. This power applied retrospectively and following enactment, work was begun to reactivate those cases put on hold after the *Bebb Travel* ruling. Work on 3 of these cases was completed and Enforcement Notices were issued during 2004/5. At 31 March 2005 a further 7 of these cases had reached the final stage prior to the issue of an Enforcement Notice.

The AWT's pre Agricultural Wages Inspection (AWI) casework has achieved settlement in 24 cases and has resulted in the payment of arrears of approximately £29,000. A further 30 complaints have been passed to an AWI for inspection once informal avenues had been exhausted. At 31 March 2005, there were 59 open cases, 10 of which involved employers with multiple worker complaints. Nine of the open cases were at the final stage prior to the issue of an Enforcement Notice in addition to those cases mentioned in the above paragraph.

The following table gives the number of calls and complaints received from 1 April 2004 to 31 March 2005 with the 5 preceding years' figures for comparison.

*Calls and complaints received 1<sup>st</sup> April 1999 to 31 March 2005*

	1999/2000	2000/01	2001/02	2002/03	2003/04	2004/05
<b>Calls to Helpline</b>	2610	3476	4092	4477	4254	5082
Complaint forms received	82	75	45	40	70	88
Cases passed to AWIs	36	37	19	2	22	30
Enforcement Notices issued	2	2	5	1	1	4

Penalty Notices issued	0	0	0	0	0	0
Cases resulting in debt recovery action	0	0	2	0	0	0
Employment Tribunal Appeals	1	2	3	0	1	4
Cases settled prior to Employment Tribunal Hearing	-	-	-	-	-	3
Employment Tribunal hearings	0	1	2	0	1	1
Enforcement Notice upheld	0	1	2	0	1	1
Value of arrears in cases where Enforcement Notice has been served	£4694	£6,882	£18,409	£1,907	£8,787	£81,347
Open cases carried forward	-	-	-	-	-	59

### **Scotland**

The Agricultural Wages (Scotland) Act 1949 as amended requires Scottish Ministers to ensure compliance with the terms of the Agricultural Wages (Scotland) Orders (made by the Scottish Agricultural Wages Board) and to investigate complaints. This enforcement work is undertaken by the Scottish Executive Environment and Rural Affairs Department (SEERAD) with five Agricultural Wages Inspectors carrying out around 100 farm inspections each year and investigating complaints as necessary. As in previous years the majority of investigations show a high degree of compliance with statutory minimum hourly rates of wages and that problems are more likely to arise with respect to overtime rates, holiday entitlement and sick pay. The industry generally remains reluctant to adopt the use of time sheets despite these being mandatory.

Between April 2004 and March 2005 £18,759.88 of arrears of pay and allowances was recovered by SEERAD on behalf of agricultural workers in Scotland.

### **Northern Ireland**

The Department of Agriculture and Rural Development operates a similar Helpline to that of Defra and dealt with approximately 200 enquiries in the year up to March 2005. During this period one complaint case was opened and resolved, with payment of £3,000 being made in respect of arrears.

