



Northern Ireland Blood Transfusion Service  
City Hospital  
Lisburn Road  
BELFAST  
BT9 7TS

**Indv and Small Business Compliance**  
HM Revenue and Customs  
BX9 1LE

Phone 03000 [REDACTED]

Fax 03000 [REDACTED]

Email [REDACTED]

**Date** 17 May 2018  
**Our Ref** CFS-1438176  
**Case Ref** CFS-1438176

**Web** [www.gov.uk](http://www.gov.uk)

Dear Sir

## National Minimum Wage and National Living Wage

We enforce National Minimum Wage (NMW) under the National Minimum Wage Act and from 1 April 2016 this has incorporated National Living Wage. Where I refer to NMW, this also covers the National Living Wage where appropriate.

### Closure of check

From the information I've seen, I identified that you hadn't paid some of your workers at least the correct rate of NMW. I told you that you must pay those workers their arrears of pay and start paying them at least the correct rate of NMW. I'm now satisfied that you've done this.

If I receive information in the future that suggests you're not paying your workers at least the correct rate of NMW, I may contact you again.

The arrears of pay occurred because you failed to implement the National Living Wage rate applicable at 1 April 2017.

### Important information about the National Minimum Wage Naming Scheme

Paying workers the NMW is the law and breaking that law is a serious offence. As you had paid some of your workers less than the NMW, you've broken NMW law. Your details will now be referred to the Department for Business, Energy and Industrial Strategy (BEIS) for consideration under the NMW naming scheme.

This was explained in the factsheet you received at the start of my check, NMW FS1, 'National minimum wage information for employers'. I enclose another copy in case you no longer have the one I sent you.

**Please read it carefully, as it explains about making representations to BEIS if you believe that your details should not be published.**

The exceptional circumstances are:

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Information is available in large print, audio and Braille formats.  
Text Relay service prefix number – 18001



- naming by BEIS carries a risk of personal harm to an individual or their family
- there are national security risks associated with naming in this instance
- other factors which suggest that it would not be in the public interest to name the company

You have 14 working days from the date of this letter to send representations to BEIS. If BEIS don't receive any representations from you then you'll be named by national press release under the BEIS NMW Naming Scheme at the earliest opportunity. That press release will be published on the GOV.UK website, where it may be of interest to national and local media, as well as to members of the public. You won't be notified of the date that your details will be published.

## How to make representations to BEIS

You can make representations by email to [nmw.namingscheme@beis.gov.uk](mailto:nmw.namingscheme@beis.gov.uk)  
You should include evidence to support your representations.

Alternatively, you can send the information to the address below. We suggest that you do this by recorded delivery to:

Department for Business, Energy and Industrial Strategy  
National Minimum Wage Team - NMW Naming Scheme Representations  
Abbey 1, 3rd Floor  
1 Victoria Street  
LONDON  
SW1H 0ET

## More information

You can find more information about the Department for Business, Energy and Industrial Strategy National Minimum Wage Naming Scheme from the leaflet NMW FS1 that I have sent you, or from our website. Go to [www.gov.uk/government/publications/enforcing-national-minimum-wage-law](http://www.gov.uk/government/publications/enforcing-national-minimum-wage-law)

## Advice about record keeping

Under national minimum wage law, employers must keep records that demonstrate that they are paying their workers at least the national minimum wage. Those records must be kept for at least 3 years. During my review, I gave you the following advice about record keeping:

- For National Minimum Wage purposes the workers impacted by the HSC NI National Living Wage failure in April 2017 fall into the two worker types as explained below:-
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- Time Work.
- There are three circumstances when work is Time Work.
  1. Where the worker is paid under his contract solely according to the length of time worked.
  2. Where the worker is paid under his contract according to his level of output over an hour (or other period of time) and the worker is required to work for a set period of time. (This differs from 'output work'.)
  3. Where the worker works as in 2 above, but is paid by the hour because he fails to reach the level of output per hour set by his contract.
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- Salaried Work.
- Some workers are paid a salary by their employer however this by itself is not sufficient to treat the person as performing salaried hours work for National Minimum Wage purposes; a worker is only performing salaried hours work when all of the following apply:
  1. They are paid under their contract for an ascertainable basic number of hours per year.
  2. They are entitled to an annual salary for those hours (the basic hours),

- 3. They are entitled to no other payment for the ascertainable basic hours except a performance bonus.
- 4. They are paid either in equal weekly or monthly instalments (or by varying monthly instalments resulting in the worker being entitled to be paid in equal amounts each quarter).
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- Deductions.
- I would remind you that, deductions that an employer makes from a worker's pay deemed to be for the employer's own use and benefit have the effect of reducing pay for NMW purposes.

### **Your adviser**

If you have an adviser acting on your behalf, you may want to show them this letter.

Whichever method you choose to contact us about this check, you need to quote the case reference CFS-1438176 and any other references shown above. If you write you need to use the address shown above. If you send documents you must tell us if you want them returned as we may securely destroy them after 50 days.

Yours faithfully

  
Higher Officer

**Direct Dial** 03000 

Join the millions of taxpayers already using their Personal Tax Account to access a range of HMRC services. It takes just a few minutes to get started, go to [www.gov.uk/personal-tax-account](http://www.gov.uk/personal-tax-account)

To find out what you can expect from us and what we expect from you go to [www.gov.uk/hmrc/your-charter](http://www.gov.uk/hmrc/your-charter) and have a look at 'Your Charter'.