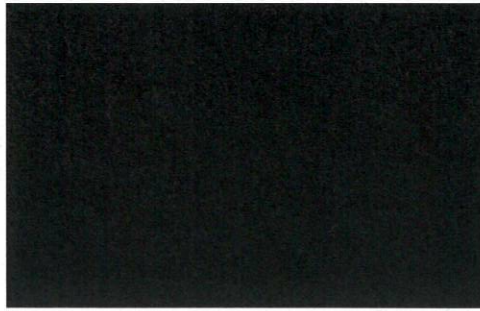




Ministry  
of Defence



FOI2020/04253

E-mail: [Navysec-foimailbox@mod.gov.uk](mailto:Navysec-foimailbox@mod.gov.uk)



15 October 2020

Dear ,

Release of Information

Further to our correspondence of 22 September 2020, I am now able to provide you with a substantive response to your request for the following information:

'The Joint Services Adventurous Sail Training Center in Gosport is operated by the MOD. This unit employs D band Sailing Instructors and C2 Yacht Skippers. The D band instructors put a case to the HMRC for working below the national minimum wage due to hours on duty, whilst at sea. There is also reference to the C2s in this report.

I would like a copy of that report and associated documentation.'

Your request has been considered to be a request for information in accordance with the Freedom of Information Act 2000 (the Act).

A search has now been completed within the Ministry of Defence (MOD) and I can confirm that information in scope of your request is held. The HM Revenue and Customs (HMRC) Report titled "National Minimum Wage Risk Report Joint Services Adventurous Sail Training Centre" dated 2019 and associated documentation is enclosed with this letter.

In respect of the HMRC investigation which found that the MOD had not breached National Minimum Wage (NMW) legislation, I should advise you that, noting the grades of JSASTC sea-going personnel, HMRC reviewed the MOD's minimum Band D and Band C2 salaries to test whether the MOD had breached the Government's NMW legislation. At the time of their investigation HMRC reviewed the MOD's minimum salaries for Band D and Band C2 grades in place from 1 August 2017 until 31 July 2018.

As part of their calculations HMRC included an Accommodation Offset figure to reflect the on-board accommodation provided to JSASTC sea-going personnel by the MOD. A link to the Government's accommodation website is contained in the HMRC report, including an

explanation of associated HMRC calculations at page 5. Government legislation allows an employer to treat accommodation as part of the NMW calculations provided it meets approved criteria.

Based upon the above calculations, HMRC concluded the MOD had not breached the NMW. To assist, the MOD's 2018 and 2019 minimum / maximum salaries are also provided, to reflect that the MOD has further increased Band D and Band C2 salaries in line with agreed Government direction.

You will note that the names and contact details of third parties contained within the HMRC Report and covering letter have been withheld under section 40(2) (Personal Information) of the Act. Section 40(2) applies to personal data relating to third parties.

If you have any queries regarding the content of this letter, please contact this office in the first instance.

If you wish to complain about the handling of your request, or the content of this response, you can request an independent internal review by contacting the Information Rights Compliance team, Ground Floor, MOD Main Building, Whitehall, SW1A 2HB (e-mail [CIO-FOI-IR@mod.uk](mailto:CIO-FOI-IR@mod.uk)). Please note that any request for an internal review should be made within 40 working days of the date of this response.

If you remain dissatisfied following an internal review, you may raise your complaint directly to the Information Commissioner under the provisions of Section 50 of the Freedom of Information Act. Please note that the Information Commissioner will not normally investigate your case until the MOD internal review process has been completed. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF. Further details of the role and powers of the Information Commissioner can be found on the Commissioner's website at <https://ico.org.uk/>.

Yours sincerely

Navy Command Secretariat - FOI Section

FOI2020/04253

MOD Current and Historic Pay Rates for Band C2s and Ds.

2017 - BAND C2

Pay Scale	
Grade	BAND C2
Mandate Code	7571
Effective Date	01/08/2017 <a href="#">select another Effective Date</a>
Effective End Date	31/07/2018
Payroll Name	MOD Main
Pay Group	Main Pay Authorities
Grade Spinal Point	BAND C2-SAL-
Spine Value	
Grade Min	31136
Grade Max	35461

2017 - BAND D

Pay Scale	
Grade	BAND D
Mandate Code	7572
Effective Date	01/08/2017 <a href="#">select another Effective Date</a>
Effective End Date	31/07/2018
Payroll Name	MOD Main
Pay Group	Main Pay Authorities
Grade Spinal Point	BAND D-SAL-
Spine Value	
Grade Min	24934
Grade Max	28394

**2018 - BAND C2**

<b>Pay Scale</b>	
<b>Grade</b>	<b>BAND C2</b>
<b>Mandate Code</b>	<b>7571</b>
<b>Effective Date</b>	01/08/2018 <small>select another Effective Date</small>
<b>Effective End Date</b>	31/07/2019
<b>Payroll Name</b>	MOD Main
<b>Pay Group</b>	Main Pay Authorities
<b>Grade Spinal Point</b>	BAND C2-SAL-
<b>Spine Value</b>	
<b>Grade Min</b>	31696
<b>Grade Max</b>	35745

**2018 - BAND D**

<b>Pay Scale</b>	
<b>Grade</b>	<b>BAND D</b>
<b>Mandate Code</b>	<b>7572</b>
<b>Effective Date</b>	01/08/2018 <small>select another Effective Date</small>
<b>Effective End Date</b>	31/07/2019
<b>Payroll Name</b>	MOD Main
<b>Pay Group</b>	Main Pay Authorities
<b>Grade Spinal Point</b>	BAND D-SAL-
<b>Spine Value</b>	
<b>Grade Min</b>	25383
<b>Grade Max</b>	28621

2019 - BAND C2

Pay Scale	
Grade	BAND C2
Mandate Code	7571
Effective Date	01/08/2019 <small>select another Effective Date</small>
Effective End Date	
Payroll Name	MOD Main
Pay Group	Main Pay Authorities
Grade Spinal Point	BAND C2-SAL-
Spine Value	
Grade Min	32425
Grade Max	36102

2019 - BAND D

Pay Scale	
Grade	BAND D
Mandate Code	7572
Effective Date	01/08/2019 <small>select another Effective Date</small>
Effective End Date	
Payroll Name	MOD Main
Pay Group	Main Pay Authorities
Grade Spinal Point	BAND D-SAL-
Spine Value	
Grade Min	25967
Grade Max	28907





HM Revenue  
& Customs

[Redacted]

[Redacted]

Phone [Redacted]

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

Date 9 October 2019  
Our Ref CFS-1636902  
Case Ref CFS-1636902

Dear Sirs

### **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**

I've now completed my check of your records. Thank you for your help.

From the information I've seen, you appear to be paying your workers at least the correct rate of NMW.

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.

#### **More information**

At the start of my check, I sent you a copy of factsheet NMW FS1, 'National minimum wage information for employers'. This contains important information about NMW. You may like to keep it for future reference.

#### **Advice about record keeping**

Under NMW law, employers must keep records that demonstrate that they're paying their workers at least the NMW. Those records must be kept for at least 3 years. During my review, I provided you with advice on time recording for workers.

As your workers are unmeasured workers for the purposes of National Minimum Wage you must ensure that you pay at least the NMW for each hour worked.

---

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



This is currently £8.21..

**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-1636902 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. We will not return memory sticks or any other removable media. It is our policy to destroy these rather than return them.

Yours faithfully

██████████  
██████████  
██████████

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'.



2019

# National Minimum Wage Risk Report Joint Services Adventurous Sail Training Centre

FINAL REPORT D GRADE INSTRUCTORS

HM REVENUE AND CUSTOMS | [Company address]

## Contents

Background .....	1
HMRC Enquiry Process and Parameters .....	2
Worker Type .....	2
HMRC Findings .....	4
Additional Advice .....	4

## Background

In August 2018 a complaint was received into HMRC via the National Minimum Wage Advice Line.

The complaint was in respect of the Band D Instructors based at the Joint Services Adventurous Sail Training Centre, Gosport, PO12 2AQ.

Although employed on a 42 hour week basis for up to 20 weeks of the year instructors are required to run courses at sea for a 5 day consecutive period.

During this period hours substantially increase and vary from the standard 42 hours and remuneration in pay does not reflect this.

On this basis HMRC opened an enquiry to investigate if there was a NMW risk and details of the process undertaken along with the parameters set in the case are documented below.

It is worth noting at this point that HMRC's role within this enquiry does not extend to providing advice on contracts or the working time directives as this is not within our remit.

The report will focus only on the National Minimum Wage risk and provide our conclusions on this aspect only.

## HMRC Enquiry Process and Parameters

To gather evidence and investigate the complaint HMRC have undertaken the following:

- In depth Interviews with you the employer and detailed interviews with various Band D grade Instructors to establish working time parameters.
- Sail records were analysed alongside the above and relevant supporting HR information was requested detailing absences, holidays and sick leave.
- Discussions with MoD have been initiated regarding the workers contracts to establish worker type
- Accommodation was observed on site by HMRC to determine if an accommodation offset can be applied.

## Worker Type

In the absence of clarification from the MoD on this aspect it is my opinion that for National Minimum Wage purposes that the Band D Grade Instructors will be classed as an **un-measured worker**.

I have attached the BEIS guidance which I referred to alongside the legislation in order to form this opinion.

I am aware that Civil Service Employees are generally considered as salaried but the nature of the employment does not fit into a standard Civil Service role.

My opinion was reached on the basis that in order to be a salaried worker a number of criteria has to be met.

A worker is performing salaried hours work when all of the following apply:

Regulation 21 of the NMW Regulations 2015

- (1) "Salaried hours work" which is done under a worker's contract and which meets the conditions in paragraphs (2) to (5) of this regulation
- (2) The first condition is that the worker is entitled under their contract to be paid an annual salary or an annual salary and a performance bonus
- (3) They are entitled under their contract to be paid that salary/Performance bonus in respect of a number of hours in a year, whether those hours are specified in or ascertained in accordance with their contract ( The basic hours)
- (4) They are entitled to no other payment for the ascertainable basic hours except a performance bonus.
- (5) 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.

As I cannot ascertain the annual basic hours and I have not been provided with any evidence to the contrary **Regulation 21(3) of the National Minimum Wage Regulations 2015** has not been met.

#### How we tested the information

The NMW assessments have been performed individually for every single Pay Reference Period (PRP), this can vary from case to case but it cannot be longer than a month and is defined by examining how a worker is paid. In this particular case the PRP is a calendar month as the intention of you the employer is to pay in monthly instalments to cover from the 1<sup>st</sup> of the month to the end of the month.

This means the PRP Start Date will be 1<sup>st</sup> of the month and the PRP End Date will be the last day of the same month.

HMRC looked at the Voyage information provided and extracted the number of days on the Voyage from the 1<sup>st</sup> to the end of the PRP. Where a Voyage either commences in an earlier PRP or ends in a later PRP only the days on Voyage in the PRP are included. (i.e. for March 2018, a Voyage commences 27 February 2018 and ends 3 March 2018. The 3 days in March 2018 have only been included in the March 2018 PRP.)

Once all the working days in a single PRP were identified the total hours have been calculated based on the evidence collated via worker interviews.

The chart below details the total number of hours HMRC determine are working hours whilst at Sea. (times collated via interviews with employer and workers)

MONDAY HOURS	14.50
TUESDAY HOURS	16.00
WEDNESDAY HOURS	18.50
THURSDAY HOUR	16.00
FRIDAY HOURS	9.00

Where the employer has provided suitable sleeping facilities and the worker is permitted to sleep then this time does not have to be paid for NMW purposes and has been excluded for the purpose of the calculation. Although the times come with the caveat that they do not consider any disturbed time during the sleep period due to lack of evidence and no recorded instances.

I have commented on the absence of records later in my report under the header Additional Advice.

The outcome of the assessment demonstrates that the risk to NMW is extremely low due to the Hourly Rate Paid.

Another consideration HMRC have had to account for is the Accommodation Offset, this is a daily amount the employer can affectively treat as pay for NMW purposes. In the example provided at the end of my letter the Total Accommodation Days is multiplied by the Accommodation Offset Rate ([www.gov.uk/national-minimum-wage-accommodation](http://www.gov.uk/national-minimum-wage-accommodation)) to calculate the Accommodation Offset for the PRP. This Accommodation Offset is then added to the workers' Pay for NMW Purposes. (Please note the calculation is different when an employer charges for the accommodation)

The Accommodation Offset Days are only give to a full 24 hour period (midnight to midnight) (i.e. will not apply on Monday or Friday when it is not available for 24 hours).

HMRC have not taken into consideration the meals provided as the legislation does not allow us to consider any benefits in kind as pay.

The exception to this is Accommodation and details have been provided within the report.

Please refer to the section treatment of benefits in kind in the attached manual for further details.

## HMRC Findings

Using the parameters detailed above HMRC was able to determine that there has been no breach of National Minimum wage during the test period provided.

HMRC can conclude that the hourly rate paid is in excess of the National minimum wage minimum amount and the risk of a breach in any earlier years is negligible.

HMRC consider that JSASTC are compliant with the National Minimum Wage legislation and will therefore be closing the enquiry into Band D grade employees with no further action necessary.

## Additional Advice

During the enquiry it became apparent that working time is not being adequately recorded.

HMRC would advise that going forward time should be documented fully as a measure of best practice along with any time where sleep is disturbed as this would be classed as working time.

HMRC was unable to include this in any calculation parameters due to the lack of documented evidence, however I do not expect that this would alter the outcome of the

enquiry as it is not a regular occurrence and the rates of pay per hour are in excess of the National Minimum Wage threshold.