

ANNEX C – INFORMATION TO BE RELEASED

To Edward Davey & David Willetts

From [REDACTED], ER Strategic Hub, [REDACTED]

[REDACTED] National Minimum Wage policy [REDACTED]

Date 15 July 2010

Issue:

Proposals for action to improve the treatment of interns and address abuses, particularly in relation to the National Minimum Wage.

Timing:

2. Routine.

Recommendation:

3. That you:-

(a) agree the policy objective in para 6 (on which the following proposals are based); and, if so,

(b) confirm you are happy for us to develop a programme of work on the basis of the proposals set out in detail at para 12 which in summary:

- takes a clearer and more robust line that most interns are likely to be within the definition of workers and so eligible for the NMW and other worker rights; and
- involves a programme of action to encourage compliance.

Coalition Considerations:

4. The Coalition document refers (separately) to support for NMW; the creation of internships as an element of "our wider programme to get Britain working"; and pledges to provide internships in every Whitehall department for under-represented minorities.

Argument/Analysis:

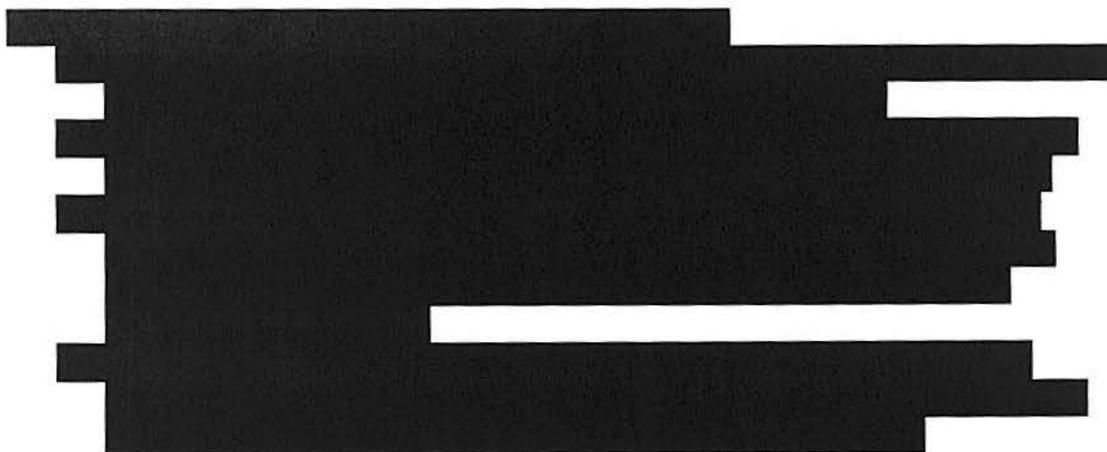
5. Interns as such have no legal status. Internships are typically a period of workplace learning for undergraduates and graduates lasting from 3-12 months. There are benefits to both the employer and the intern and are increasingly being seen as key to developing the employability skills that employers say they need. The concept has become endemic in a number of high profile sectors such as media, entertainment and politics. The issue is whether they should be paid or not.

6. In pulling together the proposals in para 12 the policy assumption has been that you:

- would not want to do anything that might discourage the use of interns and run counter to the Government's stated objective in the Coalition Agreement;
- wish to ensure that those from disadvantaged backgrounds have greater access to this method of gaining employment experience
- believe that if interns are genuinely undertaking activity which is in all practical respects work, they should be paid.

Current position on interns

7. The CIPD 2010 Learning and Development survey found that 63% of employers pay their interns at least the NMW, with 92% of this group of employers paying their interns over and above the NMW out of choice. Hard evidence of abuses is weak and difficult to come by. Where entering a sector is all about getting experience, making a name for oneself and building up contacts, young people will naturally be hesitant to complain or assert rights. There are relatively few calls to the Pay & Work Rights helpline and HMRC inspectors tell us that it is often difficult to pursue cases as would-be complainants are complicit in the arrangement.



[REDACTED]

[REDACTED]

10. [REDACTED]

11. [REDACTED]

Internships in relation to the NMW

12. Internships are not defined in law. Under employment and NMW law, individuals can be employees, self-employed, workers, volunteers or voluntary workers. An intern's legal status will be determined by the nature of the

activities they undertake and the relationship with their employer. This legal uncertainty is reflected in our current guidance on Directgov and businesslink.gov, which sets out the definitions of legally defined categories but does not provide a clear answer on the position of interns.

Exemptions from the NMW are narrowly drawn, notably where the agreement is one of primarily providing exposure to the work environment, learning and training. Such an essentially altruistic arrangement is likely only to exist in cases of very short term and limited "internships".

14. We do not recommend attempting to change the legal position of interns. Attempting to introduce a new regulatory definition would be fraught with difficulties, not least as it would open up the bigger issue of employee and worker status. One option might be to distinguish between short and longer term placements but our view is that seeking to legislate a line between these would inevitably end up adding to the existing complexity and create its own distortions.

15. There is also a real risk of adverse impacts on the voluntary sector; the current guidance was painstakingly developed with voluntary sector representatives to clarify where NMW did not apply. In response to current interest in interns, Equity reports that some companies in the entertainment sector are already renaming their internships as voluntary positions. The name given to a position does not change its legal status.

Proposals for Action

16. In the context of the analysis above and operating in an era of zero-cost marketing, we propose developing the following strands of work,

[Redacted]

[Redacted]

□ [Redacted]

[Redacted]

□ Refresh our current **guidance** on Directgov, businesslink.gov and the Graduate Talent Pool (subject to ministerial decision on future delivery of the Pool) so it more firmly and clearly points to most internships being within the definition of workers and so entitled to the NMW and other rights.

[Redacted]

17. [Redacted]

Resource/Financial Value for Money considerations

[Redacted]

Legal

[Redacted]

Press and Stakeholder handling

[Redacted]

Special Advisors' advice:

[Redacted]

Cleared by

Mandy Mayer

Advice received from: [REDACTED]

Copy list: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

To Edward Davey & David Willetts
From [REDACTED] (NMW team, [REDACTED])
Date 15 September 2010

NMW: proposals for action on unpaid internships

Issue

You asked for more information on proposals for action to improve the treatment of interns and address abuses, particularly in relation to the National Minimum Wage (NMW).

Timing

2. Routine. [REDACTED]

Recommendation

3. That you:-

(a) review the options which are summarised at para 15 and set out in more detail, including their potential impacts, at Annex A;

(b) consider our recommended option and its underlying policy assumptions as set out in para 18;

(c) [REDACTED]

This advice is complex and we would, of course, be happy to discuss.

Current situation

Data

4. No single data source can provide an accurate estimate of the number of paid or unpaid internships. Unpaid workers are particularly hard to capture in national surveys as they are not on the PAYE system. Given the paucity of data, we have

had to construct an estimate for the total number of interns based heavily on reports from the Chartered Institute of Personnel and Development (CIPD), combined with a number of other assumptions. This estimate is 50-70,000 internships, of which 10-15,000 are unpaid, but due to data limitations any figures should be treated as purely indicative.

5. The Spring 2010 CIPD Labour Market Outlook found that 21% of responding firms planned to recruit an intern between April and September 2010. The separate 2010 CIPD Learning and Talent Development survey found that, of those respondents who did employ interns, around half (49%)¹ pay their interns at least the adult minimum wage. 30% pay a wage below the adult NMW (which may include legal youth/development rate payments but data does not provide further detail) and around 21% receive expenses only or are completely unpaid. It should be noted CIPD surveys have a sample base which is heavily skewed towards larger firms and response rates are low, although the estimate of the total number of interns above attempts to correct for this.

6. The HESA Destination of Leavers of Higher Education (DLHE) survey has a category for individuals undertaking voluntary or unpaid work six months after graduating. The most recent survey (2008/09) shows a sharp increase in the proportion of all graduates undertaking voluntary or unpaid work, increasing to 1.6% from 1.1% the previous year.

7. Of the Graduate Talent Pool vacancies advertised in June 2010 about a third of internship opportunities were unpaid or expenses only. The Arts, Entertainment & Museum sector had the highest proportion of unpaid vacancies with approximately 92% of vacancies being unpaid or expenses only. 77% of the fashion, clothing or textiles vacancies, 76% of PR vacancies, 72% of architecture vacancies, and 50% of media vacancies were unpaid. The majority of internships in the publishing sector (newspapers, magazines and databases) are also unpaid. The LPC highlighted entertainment, media, and politics as sectors where it is becoming increasingly commonplace for employers to demand a period of unpaid work experience as a means of gaining entry into the profession.



9. We will be receiving more information on internships from the LPC. In the remit for the 2011 report, LPC was asked "to review the labour market position of

¹ This is lower than the 63% figure quoted in the last submission: there is a lack of consistency in CIPD publications and BIS economists judge the 49% figure to be the most reliable.

young people, including those in apprenticeships and internships". They have commissioned research on young people: interim results will be presented at a research workshop on 4 October, with final results and conclusions in their report to be submitted by end February 2011.

10. On the issue of the potential impact of the existence of the NMW on internships, BIS economists conclude that it is extremely difficult to establish a direct relationship between increases in the NMW and the recent rise in graduates who are in voluntary or unpaid work. However, given recent modest increases in the NMW **it is unlikely that the NMW is the primary reason for the growing number of unpaid graduates**. A parallel submission has been prepared with more details on this issue.

Related initiatives

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

Argument/Analysis

Options

15. In response to the submission we put up on 15th July 2010 you asked for further, more detailed options and potential impact on the availability of paid and unpaid internships. Below are the different options we have outlined in the attached Options Paper (Annex A), starting with the most restrictive:

Option A: All interns are paid at least NMW and move towards all internships being high quality, paid programmes. This is the proposal put forward by the IPPR in their recent paper.

B options: Continue with the current legislative framework but with different communication presentations:

B1: communications message that 'most interns should be paid'.

B2: communications message supporting an increase in overall internship numbers, neutrality on paid/unpaid and providing legal clarity (including that unpaid internships can be legal).

B3: communications message that 'unpaid internships are legal' and government supports them, with guidance on legal criteria and how to set them up

C options: Introduce exemptions from NMW regulations:

C1: Introduce an exemption for interns from the NMW regulations, to define a wider group of unpaid interns.

C2: Introduce an exemption for interns from the NMW regulations to define a group to receive a training rate. This proposal was put forward by the CIPD.

Option D: The British Chamber of Commerce's recommendation to create a new worker status of 'intern'. An intern would be an individual on a contract of no longer than three months' duration, provided with on-the-job training and a certificate or reference letter provided at the end of the internship.

16. The Options paper gives an indication of the impact that each would have on paid and unpaid internships.

17. In terms of social mobility, options that improve the chances of someone with modest means being able to undertake an internship would be most likely to improve mobility. An increase in paid internships clearly would have the greatest positive benefit. However there could be a benefit also from an increase in short term unpaid internships and certainly if financial assistance were available. Any option that makes internships more likely to be unpaid, especially longer term ones, would

[Redacted]

24. Firms that face costs from the options which restrict unpaid interns are likely to seek alternative ways of conducting their work at a lower cost. A reclassification of interns to volunteers is addressed in the estimates contained in the Options Paper, but it is unclear to what extent this will be feasible for employers. Firms could also cover the work undertaken by unpaid interns by transferring it to existing staff or employing other workers such as freelance employees. These reactions could affect the extent to which the policy options achieve objectives such as equity or improving social mobility.

[Redacted]

Resource/Financial Value for Money considerations

[Redacted]

Legal

[Redacted]

Press and Stakeholder handling

[Redacted]

[Redacted]

[Redacted]

Special Advisors' advice: [REDACTED]

Cleared by Mandy Mayer

Advice received from: [REDACTED]
[REDACTED]
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ANNEX A - OPTIONS PAPER

Based on current data it is impossible to provide robust estimates for the impact of these options on paid and unpaid internships. Indicative scenarios have been provided in terms of the effect the options will have on employers and hence the total number of internships offered. But given the level of uncertainty as to firms' reactions these figures should only be taken as a guide. From experience during the introduction of the NMW, it is likely that many companies will adjust without detrimental effect, either paying NMW or restructuring positions as legally unpaid as required/allowed. However, the use of internships varies greatly across sectors and a small overall impact may mask larger effects on certain sectors. Due to data limitations it has not been possible to provide sector-specific breakdowns of our estimates.

<p>Option A - All interns should be paid at least the NMW and move towards all internships being high quality, paid programmes (IPPR proposal).</p>
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The IPPR's report, published on 31 July 2010, gave several recommendations on how the labour market could be shifted towards all internships being high quality, paid programmes, for example, by ensuring that the public sector and parliament pay NMW. These recommendations are summarised in annex C.

The IPPR are not proposing legislative change, but a gradual culture change towards the situation where all internships are paid. (To formally bring all internships within the definition of worker would require change to primary legislation, which would need to be carefully drafted in order to catch all appropriate "internships" and not encroach on the exemptions.)

Many of their recommendations would have public expenditure implications and demand greater resource.

Impact:

- Of the options, Option A could lead to the largest reduction in the number of internship opportunities available over a period of time as businesses face a choice between paying the NMW or withdrawing the internship.
- It is estimated that approximately 20% of all internships are unpaid (which equates to 10-15,000 by our total). It is estimated that roughly 1 in 3 of these positions would be withdrawn, with the rest becoming paid.
- Approximately 30% of interns are estimated to be paid at below the adult NMW rate. It is estimated that approx 1 in 20 of these positions would be withdrawn, with the rest becoming paid.

- There would therefore be an increase in paid internships from the majority of unpaid or low paid internships which businesses chose to continue. In this sense though, the proposal would incur a large cost to business.
- The effects would vary across sectors depending on how factors such as profitability influence decisions to continue with internships.
- Positive impact on social mobility.
- Negative impact on creative sectors – film, arts and heritage, and publishing.

Stakeholder Views

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Option B1 - Continue with the current legislative framework, with communications message that 'most interns should be paid'.

Takes a clearer and more robust line that most interns are likely to be within the definition of workers and so eligible for the NMW and other worker rights (outlined in previous interns submission sent on 15th July 2010).

Impact

- With strong caveats about high levels of uncertainty, it has been estimated that:
 - Approx. 1 in 10 unpaid internships would be withdrawn, with around half of the remaining unpaid internships starting to pay the adult NMW.
 - Approx. 1 in 20 internships paying under the adult NMW would be withdrawn, with the rest all moving to the adult rate.
 - The overall number of internships would therefore decrease even though the number of paid internships would increase.
 - The combined effect of these changes would result in a larger cost to business than the remaining Option B alternatives.
- Positive impact on social mobility, based on the assumption that access to larger number of paid internships has a greater positive influence than the reduction in the overall number of internships.

Stakeholder views

[Redacted stakeholder views]

Option B2 - Continue with the current legislative framework, with the communications message supporting an increase in overall internship numbers, neutrality on paid/unpaid and providing legal clarity (including that unpaid internships can be legal).

The focus of the communications message would be on supporting the overall increase in internships, and we would look for relevant messages that could accompany this. This option would maintain that if someone is a 'worker' they are eligible for NMW but recognises that some employers will offer valuable unpaid internships. References to paid and unpaid internships would be kept low key and focussed on the facts and providing legal clarity.

Guidance will help employers to comply with the law by explaining how to set up unpaid internships that are legal (either through falling within the NMW exemption or

by being a volunteer position) and set out the limitations of what can be asked of unpaid interns.

The guidance will explain the criteria an employment tribunal would take into account on considering whether an individual were not a worker, including purpose of position (is there a significant educational element or work shadowing?), whether something of value was being provided and length of posting; unpaid interns should not be expected to work fixed hours or undertake specific tasks at specific times. It will point out that an internship which replaces a paid position is more likely to be entitled to NMW. The guidance will state that there is no obligation for a voluntary intern to come in and will explain what sort of expenses can be paid for.

Impact

- While the legal framework is the same for the B options, economists estimate that the different communications approach will initially have a small but measurable influence on the outcome for paid and unpaid internships.
- It is estimated that this option would, very approximately, lead to half the withdrawals compared to the previous option over the short-to-medium term.
- It may, however, eventually have a similar impact to that described under Option B1, as employers realise that they are in the same position and enforcement action begins to be felt, regardless of the strength of the communications message.
- This option is unlikely to have a negative impact on social mobility as it would not make it more likely for internship to be unpaid and would only lead to a small reduction in the overall number of positions. The neutral message on paid/unpaid as compared to the other options would leave the space clear for other policy initiatives to promote uptake and quality of internships and social mobility.
- It could have a less negative impact on the creative industries sector because we could work with them in addressing abuses, without an abrupt blanket public rejection of all unpaid positions.

Stakeholder views

[REDACTED]

[REDACTED]

[REDACTED]

Option B3 – Continue with the current legislative framework, with the communications message that ‘unpaid internships are legal’ and government supports them, with guidance on legal criteria and how to set them up.

This option is differentiated by the provision of Government support for unpaid internships and highlighting guidance on legal criteria and how to set up such positions.

In parallel, this option would focus on making internships better quality and ensuring that unpaid internships provide significant training and work experience.

Impact

- Explicit Government support for unpaid internships is likely to lead to a small increase in the overall number of internships, and an increase in the proportion of unpaid positions. The small overall increase will come from a mixture of positions being reclassified from being paid to unpaid and new positions being created.
- As this option would increase the proportion of unpaid internships, it is likely to magnify existing barriers to entry to the professions and decrease social mobility.
- It could have a less negative impact on the creative industries sector.

Stakeholder views

[Redacted]

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[Redacted]

[Redacted]

Option C1 - Introduce an exemption for interns from the NMW regulations, to define a wider group of unpaid interns.

Interns would be defined under a new exemption within the NMW Regulations as no longer eligible for NMW. It would be up to the employer to decide whether to offer

payment and if so how much, based on the value the intern brings to the organisation and the training offered.

Impact

- This option may lead to a small increase in the overall number of internships. The proportion of unpaid internships would increase, partly from transfers from those who are currently paid and partly from new positions created.
- This option would not improve opportunities for the less privileged and could have an adverse effect on social mobility.
- A definition of an intern would be needed to define who is eligible for the exemption but there many different types of internships, varying in length, content, and quality. It would thus be difficult to find a robust definition of an intern under the law, and there would be a high risk of interference with the volunteering sector.

Stakeholder views

[REDACTED]

Option C2 - Introduce an exemption for interns from the NMW regulations to define a group to receive a training rate. This proposal was put forward by the CIPD.

The Chartered Institute for Personnel Development has proposed a special interns' training wage of £2.50 an hour for all interns, mirroring the minimum wage rate for apprentices that is being introduced.

CIPD believes that the introduction of a training wage would reflect the contribution that interns make to their organisations, which they state is likely to be less than that of a fully-trained member of staff, at the same time as avoiding concerns over reductions in the number of internship opportunities that may result from all interns being paid the full minimum wage. In addition, they think a training wage would represent a significant step towards ensuring that internships promote social mobility, provide young people with valuable experience and help tackle exploitation in the workplace.

[REDACTED]

[REDACTED]

[REDACTED]

Issues:

- A definition of an intern would be needed to define who is eligible for the training wage but there many different types of internships, varying in length, content, and quality.
- An exemption for interns would be required in the NMW regs.
- Apprenticeships are formal programmes of learning that result in recognised qualifications and so there are legitimate reasons for not treating apprentices like other workers. Internships have no formal definition or structure and rarely result in a qualification. It is therefore much more difficult to work out who is genuinely an intern in different organisations and to make the case that interns are significantly different from other workers.
- The proposal for an interns' training wage fails to fully acknowledge that some interns are already entitled to the standard minimum wage.

Impact:

- Risk in reduction of internships offered due to requirement to pay, particularly in some sectors such as publishing which do not see the need to pay any wage.
- It is estimated that the withdrawal rate for unpaid internships would be approximately 1.5x that in B1. All unpaid internships would be required by law to pay a training wage of £2.50 per hour so it is assumed that compliance is 100% but there could be recourse to voluntary positions.
- The pay rates for those interns paid below the NMW is not know but, if it is assumed that they receive at least half the adult NMW, their positions would not be affected, on average, by the introduction of a £2.50 minimum. Consequently the net cost to business is lower than many of the other options.
- The training wage could be perceived as a message from the government that £2.50 is a suitable wage for an intern or trainee and those that were previously paying above this may cut wages.

Stakeholder views

[REDACTED]

Option D - The British Chamber of Commerce's recommendation to create a new category of workers to cover interns.

The BCC report entitled "Employment Regulation: Up to the job?", published in April 2010, set out their view that the employment and tax status of interns hampers the policy objective of increasing the number of internships available.

BCC recommended that a new category of worker be invented to cover interns. An intern would be an individual on a contract of no longer than three months' duration, provided with on-the-job training and a certificate or reference letter provided at the end of the internship. It is assumed that they are unpaid for this period.

[REDACTED]

[REDACTED]

Impact

- Pursuing this approach is likely to be criticised in Parliament as disproportionate and against normal legal practice, and could run counter to European law requirements.
- May cause employers difficulties in practice as there are many different types of internships, varying in length, content, and quality.
- The clear unintended consequence of this option would be that firms would be incentivised to continue their current payment method but cease the employment at three months to avoid paying a higher wage rate. It is therefore estimated that relatively high proportions of internships that last more than three months would be either withdrawn or shortened to 3 months.

Stakeholder Views

[REDACTED]