LOW PAY COMMISSION CONSULTATION 2014 REPORT

REC Response

About the REC

The REC represents over 3,600 recruitment businesses – 80 per cent of the UK's £25 billion industry by turnover – and 5,500 individual recruiters through its Institute of Recruitment Professionals.

It supports members and drives professionalism in the industry through the provision of free legal services, training and a comprehensive professional qualifications framework.

We sit on both the board of the Gangmasters Licensing Authority and on their Labour Provider/User liaison group. We have around 600 members who supply into the GLA licensed sectors, often at or near NMW pay rates, a further 250 operating in hospitality and approximately 400 in the care sector.

What are your views on the outlook for the UK economy, including employment and unemployment levels, for the period October 2014 – September 2015?

The REC is confident that employment levels will continue to rise through 2014-15, building on the positive trends we have seen throughout 2013. We gather our own labour market data via two reports flagship reports: Report on Jobs, which surveys recruitment agencies monthly on client demand for staff, vacancy levels, pay growth and candidate availability, and Jobs Outlook, also monthly, which surveys a panel of employers about their hiring intentions over the short and medium term and the general outlook for their businesses.

Key extracts from the most recent editions of each are included below, along with some headline figures from our annual 'Recruitment Industry Trends' survey, which looks at the health of the recruitment industry from year to year and forecasts future growth.

From Jobs Outlook:

- Consumer and business confidence indices are at their highest levels since late 2009/early 2010.
- Around 10% of those who, a month earlier, had a little or considerable spare workforce capacity now have none.
- Over one third of employers now state that they would have to take on more people in order to take on more work.
- 98% of employers now stating that their permanent workforces will at the very least stay the same, with 41% expecting permanent workforce growth.
- A net balance of 26% of employers planning increases in temporary labour over the next 4-12 months compared to 10% in August 2012 and 8% in August 2011.
- Clear evidence that employers intend to use increasing amounts of agency labour to extend their capacity with 79% of employers now confirm that use of agency labour helps them to meet their strategic objectives.

From Report on Jobs:

- Our own monthly labour market data shows hiring for both temporary and permanent roles has consistently been on the up since mid-2012, with the exception of May 2013 which saw a slight decline in demand for temporary staff.
- Our latest Report on Jobs shows demand growing significantly in all nine sectors we record data for.
- It also finds temp hiring growing at the sharpest rate for over 15 years – September 2013 saw the fastest rise in short-term appointments since July 1998
- Permanent salary growth is also at its strongest in five-and-a-half years, whilst we've also seen the fastest rise in vacancies since June 2007.

- We are confident that these upward trends will continue through the rest of 2013 and into 2014/15.

From the Recruitment Industry Trends 2011/12 report:

Recruitment industry value:

- 2009/10 - £19.6 billion
- 2010/11 - £24.6 billion
- 2011/12 - £25.7 billion

The vast majority of this value comes from the temporary agency market, which has similarly increased year on year in both turnover and placement volume:

Temporary Recruitment Turnover:

- 2009/10 - £17.8 billion
- 2010/11 - £22 billion
- 2011/12 - £23.3 billion

Temporary Recruitment Volumes:

- 2009/10 - 879,302
- 2010/11 - 1,049,333
- 2011/12 - 1,105,894

From 2009/10 to 2011/12 there has thus been a 5.5% growth in turnover and 5.4% growth in temp placement volumes, despite the implementation of AWR, which many feared would have a significant negative impact on the use of temporary labour.

Our future forecasts predict 2% growth in 2012/13 and 5% looking ahead to 2014.

We expect that the increasingly flexible working practices adopted by many employers and employees as a means of surviving the recessions will be retained, driven by both workers and businesses.

What has been the impact of the NMW? Has this impact varied, and if so how (for example by sector, type and size of business or groups of workers (including women, ethnic minorities, migrant workers, disabled people, older workers, and those who are unqualified))?

The REC member view of the NMW has been consistent for many years: it is a successful initiative that has had a very positive impact on workers at the lower end of the labour market both in terms of earnings and through encouraging more people into work.

Self-evidently, the impact is more profound in those sectors where pay rates on or around NMW are the norm, notable industrial, food processing and packaging, agricultural work, hospitality and cleaning.

Having a clear national minimum rate for pay helps recruiters supplying into these lower paid sectors, as it brings with it an effective price floor, below which an agency cannot viably charge without underpaying workers, thus levelling the playing field. However, the system is not fool proof, as we will discuss in greater detail later in this submission.

Few clients have a problem with paying NMW but, with the grow of zero hours contracts, we are seeing a growing trend of employers increasingly seeking only to pay workers for time worked as opposed to flat contracted hours. Whilst there is nothing inherently wrong with this in principle, the REC is of the firm belief that for workers can benefit far more by working through a temporary agency as opposed to remaining on a zero hours contract with a single employer - the primary benefit being that a recruitment agency has a vested interest in securing work for that individual, and will be able to source work for them from a range of clients rather than a single employer.

What has been the impact of the minimum wage on young people and what effect do you think it has on their employment prospects?

From an agency perspective there has been no significant demand for, or uptake of, the various youth rates by clients; certainly no REC members have reported specific requests from clients for 16-17 year olds or under-21 workers in high volume.

The fact that clients generally look to recruitment agencies to supply experienced workers who can hit the ground running is one key factor behind this. The restrictions on the working hours and roles that under-18s can undertake also limit employer demand.

The majority of high volume labour supply contracts are negotiated based on the adult NMW – it would be far more complicated and risky for an agency to adjust tender prices based on potentially supplying a set number of under-21 or under-18 workers, and far more difficult for that agency to ensure they always have a sufficient number of appropriately aged workers available to meet the agreed price with the client. The end result is that where an under-21 year old worker is supplied on a large contract, they will generally be paid the full NMW rate.

What has been the impact of the Apprentice Rate of the NMW?

As with the young people rates, we have not witnessed a significant uptake of the apprentice rate by agencies on the whole, for much the same reasons: in large volume contracts, tenders are generally based on adult NMW for ease of administration

We have had some anecdotal reports of abuse of the apprentice rates with a number of workers being supplied on these rates despite not being legitimate apprentices. However we do not believe this practice to be widespread, particularly as only the most wilfully ignorant employer would be able to accept the disparity in tender prices offered by an agency supplying at the apprentice rate of £2.65 versus the full adult NMW of £6.19 without questioning the legitimacy of the arrangement.

This practice has been flagged to the Gangmasters Licensing Authority which licenses agencies supplying into many of the lowest paid sectors, and they now proactively monitor for such sham apprentice arrangements.

What is your view of the Commission's position that the current arrangements for the accommodation offset should be retained, and that it intends to recommend staged increases in the offset towards the value of the hourly adult rate of the NMW when economic circumstances mean the real value of the NMW is tending to rise?

The REC recognises the difficulties posed by a significant and immediate uplift in the accommodation offset and we therefore broadly support the concept of staged increases in line with real terms increases in the value of the NMW.

That said, there can be no doubt that the existing level of the accommodation offset is far too low for it to be a financially viable option for direct employers, let alone for recruitment agencies looking to house temporary workers.

The current offset does not reflect the going rate for good quality accommodation around the UK meaning that it is impossible for agencies to house their temporary workers without incurring significant losses or pricing themselves out of contracts entirely.

This has led to workers having to find their own accommodation leaving them open to exploitation by predatory landlords offering low rent for sub-standard and often over-crowded accommodation. Such private landlords are not subject to any regulatory oversight and even where the accommodation they are providing breaches basic health and safety law, enforcement action is severely lacking. Even where they are living in poor quality accommodation, workers can often end up paying more than they would otherwise pay for better quality accommodation provided by their employer or agency were the level of the offset increased to reflect market rates.

By way of contrast, where an agency operating in the GLA licensed sectors provides accommodation to workers, that provision becomes subject to the Critical GLA standard 4.1 on the quality of accommodation – failure to ensure that the accommodation is of a sufficient standard can result in the immediate revocation of that agency's license, a threat that no licensed agency takes lightly, and that ultimately results in better quality accommodation for workers. Private landlords do not face any commensurate threat, nor do they have a dedicated investigative and enforcement body monitoring their actions.

The REC is also increasingly concerned about the infiltration of criminal elements into the private rental market. The Gangmasters Licensing Authority has highlighted a growth of 'beds in sheds' – crowded temporary structures crammed into the back gardens of private landlords, often lacking basic amenities, electricity and heating. Again, the rise of such arrangements can be put down to a lack of oversight of the private rental market, and the fact that it is no longer viable for agencies or employers to house their workers in any significant volume.

Many of these issues could be mitigated by increasing the offset rate to a level that once again makes providing quality accommodation for workers a commercially viable option for employers and agencies.

How far is there compliance with the NMW? Do particular groups experience problems with NMW compliance (for example apprentices or interns/others undertaking work experience)? Where there is non-compliance are there implications for the NMW rates, or other implications (for example for the quality and accessibility of official guidance on the NMW, or for the enforcement work of HMRC)?

Compliance with the National Minimum Wage rates is a cornerstone of REC membership, and whilst the vast majority of recruiters do comply with the NMW, there are still ongoing issues with travel and subsistence schemes, driven by lack of clarity from HMRC and ineffective enforcement from the NMW unit.

Whilst HMRC believe their guidance is clear on the issue of travel and subsistence, the fact is that a growing sector of wholly unregulated "intermediary" businesses has sprung up over the past three years, marketing ever-changing travel and subsistence models that constantly push the boundaries of compliance, challenge HMRC's guidance and offer all sorts of indemnities and guarantees to agencies and workers that use their services.

The end result is that agencies that do not wish to engage with such intermediary businesses or with travel and subsistence schemes, are finding it increasingly difficult to compete with those agencies that do. Almost without exception, operating a travel and subsistence scheme enables an agency to lower their margin to a client whilst keeping net pay for workers the same, or in some instances even increasing it.

The most aggressive schemes achieve this by deducting expenses from the gross taxable pay of workers, taking that pay below NMW – in breach of HMRC guidance – before topping net take home pay back up with tax free expenses reimbursements. The most market-distorting models see the intermediary business and agency retaining up to 90% of the tax savings, passing on the bare minimum required back to workers to ensure their take home pay nets out above NMW.

Both the REC and REC members have made HMRC aware of situations where such aggressive schemes are being operated, yet there has not been a single enforcement action from HMRC that has been publicly linked to the abuse of travel and subsistence arrangements. Even where high-profile intermediary businesses have collapsed – the recent Legitas/Legal-E case being a good example – HMRC has not publicised or condemned the travel and subsistence model that was in use, meaning that as an industry body, we are unable to point definitively to such cases as examples of non-compliant models that members should strictly avoid.

There are also a growing number of models that do not deduct pay below minimum wage, but that do rely on inflated, often false levels of expense claims to produce savings for clients, the agency and an increase in take home pay for workers. Again, these schemes are growing exponentially due to HMRC's apparently unwillingness or inability to investigate the validity of expenses being claimed, and, perhaps because workers are ultimately increasing their take home pay where these schemes are in use, many compliant recruiters are finding themselves compelled by commercial pressures adopt them.

The fact that all of these schemes are focused on reducing the tax burden on both employer and employee side – particularly employers NICs - does suggest that further raising the income tax threshold and cutting employer national insurance contributions for low paid workers could be a more effective route to driving compliance than case-by-case enforcement.

The REC concurs with the growing political consensus that the penalties for basic underpayment of the National Minimum Wage are too low. In GLA sectors, where revocations and prosecutions around pay are successful, there have been a number of cases where the fines imposed by courts are a tiny fraction of profits generated by avoiding NMW obligations.

At what level should each of the rates of minimum wage be set in October 2014 (i.e. for adults, 16-17 year olds, 18-20 year olds, apprentices, and the accommodation offset)?

The REC favours an increase in line with or even above inflation over a small, below-inflation increase in the NMW. Such an increase will benefit both workers and the economy in terms of increased consumer spending power. REC members also report significant pressure from clients to absorb the cost of smaller increases via a reduction in margin; clients are less able to exert such pressure when the increase is more substantial. We do not believe that an increase in line with inflation will jeopardise jobs growth looking ahead to 2014/15.

Are there any other views or evidence you would like to give us about the operation and impact of the National Minimum Wage?

There has been a growing chorus of opposition to the way that many care workers are paid, particularly the fact that increasingly few are paid for travel time and time between appointments. A number of commentators have argued that when travel and waiting time is factored in to the working days of many care workers, their actual pay rate would fall below national minimum wage.

REC members supplying into the care sector go to great lengths to ensure that the workers they supply – generally to care providers contracted by Local Authorities – are paid correctly, and there is some concern that recruitment agencies are being portrayed as directly responsible for this trend of not paying care workers for travel time (and, by implication, breaches of national minimum wage regulation).

The REC is keen to correct this misnomer. It is essential to note that the working conditions, pay rates and terms on which care workers are engaged are ultimately set by the Local Authorities that are procuring care services in the first place. When Local Authorities are looking to squeeze down costs at every opportunity and are procuring 100% on price, it is inevitable that the pay rates and conditions of care workers will suffer. Agencies and indeed care providers themselves are not able to fix this issue unilaterally. Indeed, they are unable to change anything at all unless Local Authorities first change the way they procure their care services, looking beyond pure cost to the quality, experience and conditions of the workers being provided.

The government has the power to effect real and rapid change on this issue; they can agree at a national level that care workers should be paid for travel time, and mandate that Local Authorities in turn procure on that basis.

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