

Agency workers recommendations

Response from the Incorporated Society of Musicians (ISM)
to the Department for Business, Energy & Industrial
Strategy (BEIS)



Submitted on: Wednesday 9 May 2018

Sent to: awconsultation@beis.gov.uk

Introduction and background

1. This is a response from the Incorporated Society of Musicians (ISM) to the consultation on Agency Workers recommendations by the Department for Business, Energy & Industrial Strategy.
2. The ISM is the professional body for performers, composers, song-writers and music educators. Founded in 1882, we support our growing membership of nearly 9,000 professional musicians with one-to-one legal advice and professional support alongside independent advocacy and policy development.
3. There are currently 865,000 agency workers in the UK (up 30% since 2011), with the number set to reach one million by 2020, if current growth trends continue.
4. A significant number of musicians are employed via agencies as peripatetic teachers, session musicians, function musicians and more.

Agency workers – Peripatetic music teachers

5. The ISM conducts a survey of teachers' fees on an annual basis. This survey is the largest of its kind in the UK. This year our research found that a significant number of music teachers who work as peripatetic teachers are agency workers.
6. Our survey found that self-employed visiting music teachers were paid between £27 and £39 per hour, with most charging £32 per hour. Evidence from the survey and subsequent presentations of the results showed that a significant number of music teachers did not receive the full amount, due to agency deductions¹.
7. While most agencies are fair, we have been made aware of some agencies which charge parents a significantly higher rate than is passed on to teachers e.g. they charge parents £48 per hour and only remunerate the tutor £18 per hour.

¹ [ISM, Private music tuition fees: our survey results 2018](#)

8. The increase in the use of agencies is caused by systemic issues, such as the pressures placed on schools due to funding cuts and the English Baccalaureate (EBacc) policy from the Department for Education (DfE). This means that there are few local authority alternatives and schools often have no choice but to use private suppliers².
9. One consequence of the EBacc is that schools are reducing the number of classroom teachers and replacing them with agency workers to cover the number of hours being taught.
10. This is confirmed by research from the University of Sussex which shows that the average number of full time equivalent music staff is reducing year on year and that single teacher music departments are on the rise. This has resulted in a rise in the number of teachers being recruited through agencies.
11. The major piece of legislation which regulates agency practices is the *Employment Agencies Act 1973*³, though it was modified considerably by the *Deregulation and Contracting Out Act 1994*⁴ which abolished licences. This means that agencies operate without proper oversight.
12. Supply teachers hired under an umbrella arrangement have to pay two forms of National Insurance contributions – both the employee's rate and the 13.8% employer's rate. Agency workers' pay should also cover holiday entitlements and pensions along with admin fees⁵.
13. Many peripatetic teachers are often engaged on substandard contracts which do not give them access to areas of professional development which would support their careers.⁶

Agency workers – music industry

14. A significant number of session musicians are signed up to agencies and rely on these agencies to generate their work opportunities.
15. Agents arrange gigs and negotiate the contract directly between the hirer and the musicians; they then charge a commission on the gig fee under a separate agency contract with the musician or the hirer.

² [Arts Professional, Music teachers 'have less job security and lower pay than ever, Christy Romer, 20 October 2017](#)

³ [Employment Agencies Act 1973](#)

⁴ [Deregulation and Contracting Out Act 1994](#)

⁵ [Umbrella companies: the latest way to exploit Britain's temporary workers, The Guardian, Samantha Downes, with additional reporting by Patrick Collinson, 21 October 2016](#)

⁶ [The Guardian, Ghost jobs, half lives: how agency workers 'get by' in Britain's shadow economy, Aditya Chakraborty](#)

16. We have heard from musicians of instances where agencies have required that musicians must be members of a union; this 'closed shop' practice is illegal. All forms of closed shops in the UK have been illegal since the introduction of the *Employment Act 1990*.

Other issues affecting agency workers

17. A recent report found that agency workers are being paid less for doing the same jobs as employed workers. This is because of a legal loophole known as the 'Swedish Derogation', which lets agencies and employers avoid paying agency workers the going rate.
18. Agency workers are entitled to equal pay for equal value and the same employment rights as employed workers after 12 weeks. The Swedish Derogation loophole arrangement however, provides an incentive to businesses to use short term employment contracts and/or terminate the employment contract before the end of the first assignment. The House of Commons Work and Pensions Committee, BEIS Committee and recommendations made in the Taylor review have urged the Government to end this loophole.
19. The right to claim unfair dismissal after 2 years of continued employment only applies to agency workers who are classed as 'employees'.
20. Agency workers may be classified as either being 'employees' or 'workers'. Therefore agency workers classified as 'workers' are not entitled to claim unfair dismissal even if they have been employed for two years. Although they are entitled to other employment rights such as the national minimal wage and holiday pay⁷.
21. Agency workers are getting trapped in insecure, underpaid jobs long term. Six in ten agency workers have been in their jobs for more than a year. And one in six – more than 100,000 people – are agency workers who say they have been in their jobs for more than five years. This means that instead of agency work providing a route to full employment, more and more people are being stuck in agency roles for longer periods⁸.
22. A recent report found that ethnic minorities are three times more likely to be agency workers than (white workers) and that the rise in the number of female agency workers had generated a 30% rise in agency workers overall since 2011. The report also found that young workers are especially at risk of getting trapped in insecure agency work. (Two-fifths of agency staff employed for more than a year are under the age of 35). If the government is serious about promoting

⁷ Resolution Foundation research

⁸ Number of UK agency workers 'to reach one million' by 2020

social mobility and diversity then providing non-agency work is essential.

23. Recent research has found that agency workers are collectively underpaid by £400 million a year compared to their full time counterparts, with the gap costing temporary agency staff £900 a year on average.

Conclusions and recommendations

- a. Structural external changes such as cuts to music services and the reintroduction of the EBacc by the DfE have resulted in loss of direct employment opportunities. Agencies are being used more frequently to provide musicians in response to these changes.

We acknowledge that agencies provide useful services and that providing such services comes at a cost. We also accept that agencies are in business to make profits.

Nevertheless we have heard instances where agency profit margins amount to more than 80% of the costs billed to the client for the worker's services, including usual employer on-costs such as employers' National Insurance, pension, and holiday pay.

Even allowing for reasonable overhead costs to the agency, this margin strikes us as unreasonably high.

Recommendation: We ask Government to introduce legislation capping the maximum commission charged by agencies to clients and that these proposals allow workers to gain a minimum percentage of the fees charged to clients. This will provide fairness in a sector of workers that have relatively weak bargaining power.

- b. The 'Swedish Derogation' loophole which allows agencies and employers to avoid paying agency workers the going rate for the job means that bosses can use agency workers to reduce their wage bill and undercut the pay and conditions of their staff on a long-term basis. Too often agency workers get paid much less than directly employed staff for doing the exact same work. Two people working alongside each other doing the same job should get the same pay rate.

Recommendation: The Government should follow the recommendations of the Taylor review, The House of Commons Work and Pensions Committee and BEIS Committee and end this loophole immediately.

- c. We have received anecdotal evidence that agency workers were being told that they had to be members of a union in order to get work through the agency is deeply troubling. This practice is wrong and forces people to join a union or lose work opportunities.

Recommendation: The Government needs to make it an obligation that all agencies engaging musicians are clear that membership of a union or

representative body is not a requirement for work. We also call for legislation to penalise those who engage in 'closed shop' practices.
