

Accepting and advertising employer vacancies from within the adult entertainment industry by Jobcentre Plus

Coalition Government Response to the Consultation

Aims and Objectives

Existing Policy

1. As signatory to the International Labour Convention of 1919, the UK is obliged to provide a free public employment service to assist people seeking employment and employers seeking employees. The legislative basis for this employment service is section 2 of the Employment and Training Act 1973. Jobcentre Plus delivers this service in England, Scotland and Wales on behalf of the Secretary of State for Work and Pensions.
2. In discharging the above responsibilities, Jobcentre Plus accepts and advertises vacancies from a wide range of employers and occupation sectors, including from within the adult entertainment industry, providing they comply with civil and criminal law. Vacancies from within the adult entertainment industry account for approximately 0.015% of the total number of vacancies advertised.
3. Jobcentre Plus has not always accepted and advertised vacancies from within the adult entertainment industry. However, a judicial review (brought about by Ann Summers in 2003) concluded that an outright ban on advertising such vacancies was unlawful because it:
 - paid no regard to the benefit jobseekers could gain from such employment opportunities;
 - paid insufficient regard to Jobcentre Plus' legal obligation to help employers fill their vacancies;
 - did not take into account the measure of control that could be deployed by Jobcentre Plus, e.g. providing clear information about the nature of the employment in question; and
 - elevated the Jobseeker's Allowance sanction processes beyond its purpose, i.e. by not requiring people to consider or apply for such vacancies, Jobcentre Plus could advertise without attaching benefit implications.
4. Following the Ann Summers ruling, Jobcentre Plus now advertise vacancies from within the adult entertainment industry, providing they comply with civil and criminal law. However, in recognition of the Ann Summers ruling, a number of [safeguards](#) are in place to make sure jobseekers are able to make fully informed decisions about the suitability of a particular vacancy; and are not required to consider or apply for such vacancies as part of meeting the conditions under which Jobseeker's Allowance is paid.

Operational delivery

5. Most employer vacancies, including those from within the adult entertainment industry, are handled by Employer Direct (part of Jobcentre Plus), which is a

virtual network of eight contact centres, through which employers notify vacancies using a single national telephone number, by e-mail or fax. As part of this process, policies and procedures are in place to ensure all advertised vacancies comply with employment and equality legislation. Contact centre operatives will also ensure the safeguards (see below) are deployed for vacancies from within the adult entertainment industry.

6. Alternatively, employers may place vacancies using Employer Direct online (EDon), which enables employers to notify and manage their jobs on-line via the Business Link website. However, vacancies from within the adult entertainment industry via EDon are **not** advertised until they have been vetted to make sure they comply with employment and equality legislation, and the appropriate safeguards (see below) put in place.

Safeguards

7. When advertising vacancies from within the adult entertainment industry, the following safeguards are deployed to clarify the nature of the work involved and to make sure customers are able to make fully informed decisions about the suitability of a particular vacancy:
 - the nature of the work involved must be made entirely clear by the employer;
 - vacancies must state that applicants must be aged 18 or over;
 - nobody is required to consider or apply for such vacancies, or penalised for failing to do so;
 - these vacancies are only discussed with people who enquire about working in the adult entertainment industry, and not offered generally; and
 - with the exception of vacancies within retail and manufacturing, jobseekers cannot apply directly to employers. Instead, they must first see a Jobcentre Plus personal adviser who will confirm that the jobseeker is at least 18 years of age and is fully aware of the nature of the job.
8. Further requirements are placed on employers wishing to advertise vacancies that involve physical contact and where there is a possibility this could be of a sexual nature. Before advertising such a vacancy, the employer must complete and return a statement, confirming it does not involve contact of a sexual nature.
9. Once advertised, all employers receive a courtesy call from a Jobcentre Plus Labour Market and Recruitment Adviser (LMRA) 48 hours after being notified. Part of the purpose of this call is to provide additional assurance that the vacancy complies with civil and criminal law and the additional safeguards for adult entertainment industry vacancies are deployed fully.
10. The LMRA also contacts everyone who applies for vacancies where physical contact is involved to see whether anything unlawful was subsequently found to be part of the job. If any concerns or complaints are forthcoming, Jobcentre Plus will withdraw services to the employer pending a full investigation and, in the case of possible illegal activity, the Police are informed.

11. Jobcentre Plus also withdraw services to employers who appear to be in breach of written assurances they give when placing adult entertainment vacancies where physical contact is involved. This means that Jobcentre Plus will withdraw services if, e.g. media sources highlight an employer conviction of, or involvement in, illegal sexual services.
12. All adult entertainment industry vacancies are also checked by a central team before they are advertised. However, as this is a manual check, Jobcentre Plus cannot guarantee 100% compliance

Involvement, Consultation and Communication

13. The policy of advertising vacancies from within the adult entertainment industry has been, and continues to be, the subject of ongoing and often intense media and public interest.
14. In December 2008 Jobcentre Plus conducted a diversity impact assessment, which included an initial screening assessment (which did not reveal any disproportionate affect on either their customers or their staff) followed by a full public consultation exercise which began in December 2008 and closed at the end of March 2009.
15. A copy of the consultation document, along with an analysis of the responses received are available on the DWP website at www.dwp.gov.uk/consultations/
16. The consultation document was sent to people and organisations who have already been involved in this work or who have expressed or may have an interest. The full list of those consulted is contained within the consultation document at Annex 2.
17. The consultation sought responses on a number of specific questions about Jobcentre Plus's Gender, Race and Disability Equality duties and other diversity issues such as age; religion or belief and sexual orientation; and the adequacy or otherwise of the existing safeguards.
18. Jobcentre Plus received 240 responses, which included 198 letters of protest signed by members of the public as part of a demonstration that took place outside Brixton Jobcentre Plus office. 238 (99.2%) of the responses were against the policy. Only two (0.8%) supported the policy.
19. All the responses received from consultees are detailed within the analysis document. In terms of the specific questions asked, the analysis of the responses against the policy has revealed generally that they say:
 - For **question 1**, the policy does not:
 - Promote gender equality because for example, "it perpetuates and normalises the sexual objectification of women."
 - Eliminate harassment because for example, "Research carried out on behalf of Glasgow City Council, found that women in lap dancing

- experienced harassment from customers and were approached for sexual activity. As such, the current position risks placing women in situations where harassment is the norm” and “Strip and lap dancing clubs specifically encourage harassment of women.”
- Eliminate sex discrimination because for example, “the sex industry is built on sex discrimination.”
 - For **question 2**, the policy does not pay due regard to the duties under the Race Equality Duty because for example:
 - “The sex industry mainly employs white women.”
 - “Racism is inherent in commercial sexual exploitation.”
 - “Black and Minority Ethnic women are the most vulnerable to exploitation through the sex industry.”
 - For **question 3**, the policy does not pay due regard to the duties under the Disability Equality Duty because for example:
 - “There will be very few disabled people employed in the sex industry.”
 - “Since when did lap dancing clubs hire young women in wheel chairs as lap dancers?”
 - “People with disfigurements would not be welcomed as lap dancers or web-cam performers.”
 - For **question 4**, the policy does not reflect good practice in terms of equality for the other diversity strands such as age; religion or belief and sexual orientation because for example:
 - “The sex industry most often employs white, young, thin, able bodied women who fit a very narrow stereotype.”
 - “Few middle-aged women or old men will be employed as lap dancers or web-cam performers.”
 - “Religious people are likely to find the sex industry thoroughly offensive – as indeed do many atheists and agnostics.”
 - For **question 5**, more can be done by Jobcentre Plus to strengthen the safeguards in place for jobseekers because for example:
 - “To ensure jobseeker safety Jobcentre Plus should simply stop advertising jobs within the adult entertainment industry.”
 - “The only way to ensure safety for women is not to accept them.”
 - For **question 6**, about whether the safeguards go too far and ignore the needs of the employer in favour of the safety of jobseekers, all responses said “the safeguards did not go far enough.”
 - For **question 7**, examples of other comments received about the policy said:
 - “The DWP is essentially acting as a recruitment outlet for pimps and legitimising jobs which are fronts for prostitution.”
 - “Vacancies for escorts, lap dancers, and workers in saunas and massage parlours are not adult entertainment but have strong links with and are routes into prostitution.”

20. The analysis of the responses supporting the policy has revealed they said that:

- For **question 1**:
 - One response “felt strongly that the policy to advertise adult industry vacancies does pay due regard to the Gender Equality Duty and related statutory instruments.”

- The other said, “in terms of promoting equal opportunities there seems to be little imbalance regarding who is applying for the jobs and that clearly, some of the jobs will be gender specific (such as lap dancers) but these will be covered by the relevant laws.”
- For **question 2**:
 - One response said, “they could not see how Race Equality could be either promoted or otherwise in such an industry.”
 - The other said, “in terms of promoting equal opportunities there seems to be little imbalance regarding who is applying for the jobs.”
- For **question 3**:
 - One response said, “as the vacancies that were filled by people I knew were in the retail and manufacturing sectors, I consider that existing provision of Disability Discrimination Legislation should be enough to ensure that best practice is promoted.”
 - The other said, “in terms of promoting equal opportunities there seems to be little imbalance regarding who is applying for the jobs.”
- For **question 4**:
 - One response said, “it is up to any individual as to whether he/she wants to be employed in the legal adult entertainment industry regardless of their religion or belief or their sexual orientation.”
 - The other said, “in terms of promoting equal opportunities there seems to be little imbalance regarding who is applying for the jobs.”
- For **question 5**:
 - One response said, “the onus must be on the jobseeker to communicate concerns to the Jobcentre staff and good communication from the outset is vital in ensuring that only genuine and lawful employers may use the services of Jobcentre Plus.”
 - The other said, “the current process of advertising jobs, as stated in the document, demonstrates that great care is taken by Jobcentre Plus to ensure that the jobs are legitimate and legal. There appears to be appropriate safeguards in place to protect jobseekers. Jobseekers who inquire about these vacancies will be able to make their own decisions about the types of work (as would people inquiring about other industries which have sensitiveness such as working in an abattoir or butchers). The procedure of NOT offering these jobs unless people inquire seems a sensible policy which prevents both staff and jobseekers being offended. The policy as it stands seems adequate as demonstrated in the extremely low levels of complaints from jobseekers.”
- For **question 6**:
 - One response said, “the safeguards are valid and responsible and they promote good practice.”
 - The other said, “the policy relating to employers appears to be fair and given the number of applicants for the 351 vacancies, employers are receiving the levels of interest in the jobs in order for them to be filled. Equally, the safeguards which are in place to protect the jobseekers reduces (dramatically) the mismatch of jobseekers going for jobs without fully knowing the extent and nature of the job.”
- For **question 7**:

- One response said, “I consider the policy to be responsible and balanced. In a democracy, it should be considered the right of a claimant to consider or refuse a vacancy that could be deemed morally offensive.”
- The other said, “It is the aims and duty of Jobcentre Plus to promote work and job vacancies for those who are inactive. Not advertising these jobs would be doing a disservice to those jobseekers who would legitimately consider this type of work”; and “Jobcentre Plus should not have a moral standpoint which informs whether jobs are advertised. If so, then there are many other industries which could be challenged as being immoral, illegitimate, or inappropriate work. Making decisions to advertise vacancies based on moral decisions would not fulfil the basic aims of promoting legal work.”

Monitoring and Evaluation

21. Jobcentre Plus will collect diversity data and will monitor, evaluate and report on their findings by the end of July 2011 on the impact of the policy to accept and advertise adult entertainment industry vacancies on gender, race, disability and age. This data will include information from the previous operational year on the number of:

- vacancies Jobcentre Plus accepted.
- customers Jobcentre Plus submitted.

22. Since January 2009, all adult entertainment industry vacancies have been checked by a central team before being advertised to the public. This ensures they are taken and advertised correctly and that the associated safeguards are in place. However, as this is a manual check, Jobcentre Plus cannot guarantee 100% compliance. Of the 257 vacancies checked since January 2009, 141 did not have all the agreed safeguards in place and were corrected before being advertised.

23. Jobcentre Plus vacancy arrangements have evolved since the Ann Summers High Court ruling in 2003. Additional safeguards have been introduced on several occasions to further protect jobseekers. For example, since 26 June 2008, jobseekers must first have an interview with an adviser before they can apply for any non retail or non manufacturing vacancies.

The Equality Duties

Disability

24. Jobcentre Plus vacancy taking policies and procedures are designed to ensure all vacancies advertised comply with the Disability Discrimination Act.

25. Jobcentre Plus have advertised adult entertainment industry vacancies to any section of the community and provided all jobseekers with the same level of

service should they wish to apply for a vacancy of this nature. Of the total number of people applying for adult entertainment industry vacancies advertised through Jobcentre Plus, 18% stated they had a disability.

26. Jobcentre Plus offices are designed to allow access for customers with restricted mobility or health conditions, to enable them to make best use of Jobpoints and other services. Jobcentre Plus text phone services are available through Jobseeker Direct (their telephone service for anyone who is looking for work) to enable jobseekers who are deaf, hard of hearing or have speech difficulties to be notified about suitable vacancies.
27. Jobcentre Plus services would be withdrawn if they were made aware that an employer appeared to have unlawfully discriminated against or harassed a disabled person in contravention of the Disability Discrimination Act. Jobcentre Plus would co-operate fully with any subsequent legal proceedings.
28. If a customer tells Jobcentre Plus they have been discriminated against by an employer, they will provide advice about their rights and give them details of local organisations such as their local Citizens Advice Bureau that may be able to support them.
29. Jobcentre Plus have also considered the other legal duties for Disability which are to:
 - Promote positive attitudes towards disabled people;
 - Encourage participation by disabled people in public life; and
 - Take steps to take account of disabled persons disability, even where that involves treating disabled persons more favourably than other persons.

However, Jobcentre Plus do not feel that the policy of accepting and advertising vacancies from within the adult entertainment industry has had any positive or negative impact on these duties.

Gender

30. Jobcentre Plus vacancy taking policies and procedures are designed to ensure all vacancies advertised comply with employment and equality legislation. Jobcentre Plus have advertised adult entertainment industry vacancies to any section of the community and provided all jobseekers with the same level of service should they wish to apply for a vacancy of this nature. However, under certain circumstances it is possible for an employer to discriminate against men or women without being in breach of the law when advertising a vacancy, as long as they can provide evidence that an exception to the Sex Discrimination Act applies.
31. Jobcentre Plus services would be withdrawn if they were made aware that an employer appeared to have unlawfully discriminated against or harassed men or women in contravention of the Sex Discrimination Act. Jobcentre Plus would co-operate fully with any subsequent legal proceedings.

32. Jobcentre Plus advisers will signpost customers who are seeking advice about employment rights to local organisations and sources of support, e.g. the Citizens Advice Bureau and the Department for Business Innovation & Skills.
33. With regard to adult entertainment industry vacancies specifically, those that comply with civil and criminal law have been made available to the public through the Directgov website, touch-screen Jobpoints located in all Jobcentre Plus offices and some external sites and their telephony-based jobsearch service (Jobseeker Direct). Although these vacancies have been advertised openly, they have not been proactively brought to the attention of individual customers unless they ask about them specifically.
34. The arrangements did not require that people considered or applied for vacancies from within the adult entertainment industry or penalise any customer claiming benefits who, after expressing an interest, subsequently refused the offer of employment.
35. Safeguards were in place to help identify concerns about harassment, e.g. if having accepted a job, a customer was asked or expected to undertake activities not previously specified and of an illegal nature. In such cases, service to the employer was withdrawn, the Police informed and no further vacancies advertised unless the employer subsequently contacted Jobcentre Plus and satisfied them that their concerns were unfounded.
36. Jobcentre Plus have two recorded complaints of harassment from jobseekers regarding the duties they were asked to perform by the employer – both complainants alleged they were asked to provide sexual services. In both cases, Jobcentre Plus services were immediately suspended with the employer pending further investigation:
- In the first case, the employer did not respond to the allegation made, so service was withdrawn permanently; and
 - In the second case, the employer denied the allegation and despite attempts to communicate with the complainant, no further comment or evidence was provided, so service was reinstated. However, it has been made clear to the employer, the standards Jobcentre Plus expect in terms of the vacancies they are prepared to advertise and the circumstances in which service will be withdrawn. Details of the incident have also been kept on file and would be taken into account should any further complaints be received or concerns raised.
37. In terms of equality of opportunity, the data provided within this initial screening suggested no disproportionate impact in terms of gender. Of the applicants for the adult entertainment industry jobs advertised through Jobcentre Plus 59.1% were male and 40.9% female.

Race

38. Jobcentre Plus have advertised adult entertainment industry vacancies to any section of the community and provided all jobseekers with the same level of

service should they have wished to apply for a vacancy of this nature. Of the people who applied for the 351 adult entertainment industry vacancies referred to in the consultation document, 64% were white, 12% non-white and 24% preferred not to say.

39. In taking such vacancies, policies and procedures were in place to make sure they complied with employment and equality legislation. However under certain circumstances it is possible for an employer to discriminate on the grounds of race without being in breach of the law when advertising a vacancy as long as they can provide evidence that an exemption under the Race Relations Act applies.

40. Jobcentre Plus services would be withdrawn if they were made aware that an employer appeared to have unlawfully discriminated on the grounds of race in contravention of the Race Relations Act. Jobcentre Plus would also co-operate fully with any subsequent legal proceedings.

41. In addition, where a customer tells Jobcentre Plus they have been discriminated against by an employer, they would give the customer advice about their rights and give them details of local organisations, such as their local Citizens Advice Bureau that may be able to support them.

42. Jobcentre Plus have also considered the other legal duty for Race which is to promote good relations between people of different racial groups. However, Jobcentre Plus do not feel the policy of accepting and advertising vacancies from within the adult entertainment industry has had any positive or negative impact on this duty.

Age

43. Jobcentre Plus vacancy taking policies and procedures are designed to ensure all vacancies advertised comply with the Employment Equality (Age) Regulations 2006.

44. Jobcentre Plus have advertised adult entertainment industry vacancies to any section of the community, and provided all jobseekers irrespective of their age with the same level of service should they wish to apply for a vacancy of this nature. However, one of the safeguards in place for these vacancies requires they must state that applicants must be aged 18 or over. Of the people who applied for the 351 adult entertainment industry vacancies:

- 18.5% were aged 18-20;
- 45.0% were aged 21-30;
- 19.1% were aged 31-40;
- 11.8% were aged 41-50;
- 5.2% were aged 51-60; and
- 0.4% were aged over 61.

45. Any employer who, having placed a vacancy, was subsequently found to have discriminated on the grounds of age in contravention of the Employment

46. In addition, where a customer tells Jobcentre Plus they have been discriminated against by an employer, they will give the customer advice about their rights and give them details of local organisations, such as their local Citizens Advice Bureau that may be able to support them.

Assessment and conclusion

47. Jobcentre Plus has an obligation under Discrimination Legislation to have due regard to:

- The need to eliminate unlawful discrimination and harassment;
- Promote equality of opportunity between men and women;
- Promote equality of opportunity and good relations between people of different racial groups;
- Promote equality of opportunity between disabled people and other people; promote positive attitudes towards disabled people; and encourage participation by disabled people in public life.

48. Jobcentre Plus has carried out its obligation to have “due regard” to these anti-discriminatory and promotion of equality duties in relation to its adult entertainment vacancy advertising arrangements, by weighing them up against its obligation to advertise vacancies and help people into work (under section 2 of the Employment and Training Act 1973, as mentioned in paragraph 1) and by taking into account any other factors which might be relevant. “Other factors” would include factual evidence of any harm that specific genders, racial groups or those with disabilities may face in light of the policy. Here “other factors” also included the responses to the consultation.

49. The Coalition Government has had regard to the high number of responses received to the consultation expressing concern about Jobcentre Plus accepting and advertising these vacancies, some of which provided material indicating that certain types of jobs within the industry could lead to harassment of women.

50. The Coalition Government does not believe that it is appropriate for a publicly funded employment service to be used to accept vacancies for jobs whose aim is sexual stimulation.

51. That means jobs that would be likely to entail the jobholder providing services which wholly or mainly involve the individual personally engaging in:

- a performance;
 - an activity; or
 - a live display of nudity (whether full or partial)
- which sexually stimulates others (whether or not the job would include physical contact).

52. As a result, these vacancies will no longer be accepted by Jobcentre Plus from 3rd August.
53. This means Jobcentre Plus would refuse to accept vacancies such as lap dancers, web-cam performers, topless bar staff and strippers etc. However, Jobcentre Plus would continue to accept other vacancies in a personal services business. So, for example, Jobcentre Plus would take a vacancy for a cleaner in a lap-dancing or striptease club. They would also continue to accept vacancies in the retail, manufacturing and distribution sectors of the industry.
54. This will be an interim measure as the Coalition Government intends to bring forward primary legislation to give a statutory basis for such a restriction – ensuring that the statutory position is clarified.