

LOW PAY COMMISSION
WRITTEN CONSULTATION 2013 REPORT
BECTU SUBMISSION
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ECONOMIC & POLICY CONTEXT

The UK economic outlook to 2014 and the media and entertainment sector

The general consensus seems to be that the state of the UK economy will, slowly and painfully, improve over the next two years. We believe recovery would be swifter and better balanced were the Government to abandon its austerity policies. Prospects in the media and entertainment industries are mixed, with significant variations within and between sectors.

In film, the UK continues to attract high levels of inward investment in feature film production, mainly from the USA. But independent domestic producers continue to face difficulties raising finance, and budgets continue to fall.

In TV the BBC faces year-on-year cuts in real terms, but both BSkyB and ITV report improved profits. In the independent sector some large TV production companies are well-placed, adding export earnings to their UK revenues, and hoping to benefit from the introduction of a new tax relief for “high-end” TV projects. Smaller independent production companies may be less well placed to take advantage, and there is fierce competition among facilities companies.

In London, West End and commercial theatres continue to attract audiences. However subsidised theatres throughout the country are suffering from cuts in arts funding.

THE LEVEL AND IMPACT OF THE NATIONAL MINIMUM WAGE

How firms in the media and entertainment sector have coped with the NMW / the NMW as a business pressure

Across most of the media and entertainment industries, most of the time, the NMW is not an issue. The skills levels required by employers are generally sufficient to keep pay rates significantly higher.

However some well-established and highly-profitable companies use the NMW as a point of reference for pay in unskilled and entry-level positions. This is not a response to business pressure, but simply taking advantage of labour market competition for positions which are perceived as stepping-stones to a glamorous career.

In the worst cases the NMW is flouted, as for example in the case of unpaid interns (fashion assistants) on the high profile TV show *The X Factor*. This attracted press attention over the summer. It was referred to HMRC by BECTU and an intern lobby group in late 2011, and following HMRC investigation the young people concerned were paid some thousands of pounds each. This was clearly not a case of a cash-strapped employer struggling to get by: *The X Factor* is made by TalkbackThames, the UK production arm of FremantleMedia, part of the RTL Group, Europe's largest television and radio company.

In theatres, the NMW acts as a key point of reference for Front-of-House and ancillary staff. Some employers pay these positions precisely at the NMW, while others pay just above. These areas are highly casualised, and staff sometimes have no guarantee of a minimum number of hours' work per week.

The NMW's effect on small firms

In the mainstream commercial film and TV sector, regardless of their size, companies generally need access to skilled or highly-skilled workers to stay in business. They may seek to take advantage of labour market competition for entry-level positions, as discussed above, but for the main body of both permanent staff and freelances they need to pay an acceptable rate.

However there is an informal film production sector outside the commercial mainstream, populated by micro-businesses, which operates with very different priorities. This is discussed below.

The impact of the NMW on women workers, black & minority ethnic workers, migrant workers, disabled workers, older workers, and unqualified workers

There has recently been a significant exodus of highly skilled and experienced women from the film/TV industry. However we believe this is primarily due to factors other than the NMW, such as long working hours.

We do not perceive a direct link between the NMW and the position of migrant workers, disabled people or older workers in our industries.

We do perceive a link between the NMW and unqualified workers in some areas – see our response above in respect of theatres.

As argued in our 2011 submission, we are clear that BME workers, especially young BME workers living in and around London, are affected by the trend to unpaid internships and entry-level positions. In London, such young people are twice as likely as their white counterparts to come from low income households without the resources to support them while they work for free. They are therefore actively excluded where entry-level opportunities are dominated by unpaid positions, which in turn means that the ethnically unrepresentative profile of the film/TV workforce will continue to reproduce itself.

The adult NMW rate from 2013

We endorse the position of the TUC that the adult rate of the NMW should be increased in October 2013 by more than the rise in average earnings or RPI whichever is greater.

YOUNG PEOPLE, APPRENTICES, INTERNS

The importance of pay for young people

As argued throughout this submission, unpaid internships and entry-level positions block social mobility by excluding young people from poor and working class backgrounds, whose families are unable to support them while they work without pay.

This means that the level of pay, or the absence of pay, at this critical early moment in young people's working lives, can determine whether or not they ever get a chance to pursue a career in the media and entertainment industries. And this means that these industries – which are increasingly crucial to the UK economy, and which thrive on talent and creativity – are shutting out thousands of talented and creative young people from poor and working class backgrounds.

The impact of the NMW on young people & their job prospects

Despite abuses, the existence of the NMW has a positive impact on young people's job prospects. If there were no NMW, abuses would be worse, and the ability to challenge them would be far more limited.

The impact of the increase in the education & training participation age from 16 to 18

The overall educational profile of the media and entertainment industries' workforce is high, over half of workers having a degree or equivalent qualification. Consequently, most young people entering the industry are in their early or mid '20s rather than their teens.

In addition, in craft areas where a degree may not be considered necessary, responsible employers who wish to take young people onto apprenticeships or onto their establishment generally prefer post-18 individuals with a bit more experience and perhaps a FE qualification.

Consequently we do not anticipate a direct impact from the raising of the education & training participation age.

Our experience of volunteering, work experience, and internships

Universities, film schools and other HE institutions regularly organise work experience placements for their students, which are entirely proper and very valuable. In addition some young people, including graduates, may organise their own informal work experience placements: so long as they conform to the guidelines issued by the sector skills council Creative Skillset, these too are quite proper.

The main area of illegally unpaid work is the large, informal, micro-budget film production sector which operates outside the commercial mainstream. In this area the rhetoric of “volunteering” and “work experience” may be used to mask the reality of unpaid work.

Not all of this micro-budget activity is knowingly exploitative. There are cynical producers whose business model is predicated on taking advantage of the unpaid labour of young people. But there are also honest though naïve collaborations where no exploitation is intended. Sometimes the people involved in these “honest but naïve” projects are simply unaware that by embarking on their filmmaking activities they incur obligations on issues such as health and safety, insurance, and employment.

Within the last three months BECTU has conducted a survey of our young ‘new entrant’ members in film/TV. We are therefore in a position to report directly on their experiences and opinions on pay and unpaid work.

The largest age-group response to our Survey (36%) was 22-25, and the second-largest response (29%) was 26-29. This is consistent with our experience that most young people seek entry to the film/TV industry in their early/mid-20s, after achieving a degree or other qualification.

Of those who responded, 42% reported that they had had more than 10 paid positions since actively starting to look for film/TV work, and 33% had had more than 10 unpaid positions.

Only 26% believed that the availability of “unpaid opportunities” helped them develop their careers. The majority felt, with various degrees of passion, that unpaid work was a hindrance to their careers. And 95% agreed that employers who fail to pay the NMW should be challenged

The impact of the introduction of the Apprenticeship rate

We have not seen any direct impact from the introduction of the NMW Apprenticeship rate. So far, in general, apprenticeship rates in the media and entertainment industries continue to be pitched above the minimum. However we are fearful that if the NMW Apprenticeship rate stays at its current low level, it may over time depress apprenticeship rates in our industries.

Young people's NMW rates from 2013

We endorse the position of the TUC that the 16-17 and 18-20 NMW rates should be increased in October 2013 by more than the rise in average earnings or RPI whichever is greater; and that the Apprenticeship rate should be increased by a greater percentage.

ENFORCEMENT

Our views of HMRC enforcement

We worked with the HMRC Rapid Response Team on their campaign in the media and entertainment industries in late 2011 and early 2012. We passed to them intelligence on actual and apparent cases of abuse, including advertisements for positions that clearly involved work and were clearly intended to be unpaid.

HMRC have come back to us to acknowledge 20 referrals from BECTU within this exercise, all of which they say were investigated, and of which 3 cases are still ongoing.

These statistics are of interest, but clearly there is wealth of valuable data sitting behind them to which we have no access. This reflects a structural problem in the enforcement regime. As we understand it, the HMRC enforcement team operates under strict confidentiality rules. They can only report progress on a particular case to the individual concerned, and they cannot publicise particular cases. The report that unpaid interns on *The X Factor* (referred to above) had been compensated after an HMRC investigation was broken not by HMRC itself but by a graduate lobby group, after it had been contacted by one of the interns – even though the report reflected entirely favourably on HMRC itself.

In our view HMRC's enforcement efforts are seriously undermined by this policy of confidentiality. We believe there is a perception among some employers in the film/TV sector that they can flout the NMW with impunity, and that perception will persist while enforcement activities, and successes, remain closely guarded secrets.

BIS as the responsible Department also carries some responsibility. In 2010 the Low Pay Commission called on BIS to name and shame employers who flout the NMW, and in

January 2011 BIS declared that it would do so. Nothing then happened until September 2012 when a Leicester hairdresser was named in the week of the Cabinet reshuffle. None of this sends a convincing signal.

A new approach to enforcement

We propose three changes to the enforcement regime.

Firstly, following from the argument above, we believe the confidentiality requirements on the HMRC enforcement team should be reformed so that it can report on its activities and publicise its successes.

Secondly, also following from the argument above, we believe BIS should renew its commitment to name and shame employers found to flout the NMW. This should occur regularly and cases in all problem sectors should be highlighted.

If these two measures were put in place, over time cynical employers across the economy would get the message that enforcement is a reality and non-compliance has consequences.

Finally, as we have argued in previous submissions, job advertisements for positions that clearly involve work, and are clearly intended to be unpaid, should be brought within the scope of enforcement.

BECTU recently carried out research into web-based advertisements of unpaid jobs in film/TV. A detailed 'snapshot' analysis was carried out of jobs advertised on [mandy.com](http://www.mandy.com), a website well-known for its policy of posting ads for both paid and unpaid/illegal jobs, mostly in the micro-budget area of film/TV production.

Of 110 job adverts analysed, 51 (46%) specified a rate of pay at or above the NMW, 13 (12%) were unclear, and 46 (42%) were explicit that the work was unpaid or below the NMW.

Of these 46 ads for unpaid work, 9 were placed by companies registered at Companies House. Another 5 were placed by HE institutions (1 university, 3 film school, 1 art school). The remaining 32 were placed by entities whose names implied that they were production companies ("E6 Films", "Fraught Productions", etc.) but which are not registered at Companies House and appear rather to be unincorporated associations. Despite their informality, however, they are by definition traceable by following up the ads.

Alongside this analysis, we also consulted the operators of other websites which have policies of not posting job ads for unpaid work. Despite these policies, they reported that they do receive requests to post such ads, and that it is easy to identify them when they are sent in.

Finally, in our recent survey of new entrants and students, we asked for their views on the subject of ads for unpaid work. 72% of these young people agreed that it should be illegal to advertise work which breaches the NMW.

To sum up: there is an appetite to tackle the problem of ads for unpaid work, including among the young people at whom the ads are targeted; and the problem is capable of being tackled. We believe that if it were known that HMRC would investigate ads for unpaid work, its enforcement team would be able to count on practical support from many organisations and concerned individuals in the media and entertainment industry including of course BECTU.

BECTU
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