

**LOW PAY COMMISSION**  
**WRITTEN CONSULTATION 2014 REPORT**  
**BECTU SUBMISSION**  
**September 2013**



- **Introduction**

The Broadcasting Entertainment Cinematograph and Theatre Union (BECTU) is the specialist trade union for workers in the media and entertainment industries. We have approximately 24,000 members working primarily in TV and radio production and broadcasting; film production, distribution and exhibition; and theatre and live entertainment. Just over half of our members are freelance, casual, or independent contractors.

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

Despite recent revisions of GDP growth, we foresee a continuing weak recovery, with a sustained squeeze on real incomes at work. In our sector there is evidence that volumes are holding up reasonably well, but wages are mostly flat, and in some cases falling in nominal terms.

The squeeze on real income is having a disproportionate effect on the lower-paid, since inflation rates on obligatory expenditure like housing, food, and transport, are consistently higher than the aggregate figure.

We are concerned at the high level of youth unemployment, exacerbating a situation where in many of our sub-sectors low-paid jobs tend to be filled by younger workers, for example front of house staff in cinemas and theatres, and service workers in catering and hospitality. There is no sign that this will change in 2014-15.

The extension of the Help to Buy scheme in 2013, in our view, will lead inevitably to a boom in house prices, and further growth of the buy-to-let market. Whatever threats this may pose macro-economically, one effect in the private home rental market will be further increases in rent, on top of the significant rises already seen.

Once again this will have a disproportionate effect on lower-paid workers, who have effectively been shut out of the owner-occupier market.

Levels of public sector borrowing look set to be maintained, or even increased, putting further pressure on expenditure in areas like in-work benefits payment, which are already facing a disruption next month with the introduction of Universal Credit. It remains to be seen whether the spending power of lower-paid workers is reduced as a result, but it will be even more important than usual to gauge the interaction of wages and benefits when determining the next increase in NMW.

- **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 impact of the NMW overall, in the media and entertainment industries which are our concern, is positive.

Employment in the media and entertainment industries is highly casualised: more than half of BECTU's members are now freelance, casual or independent contractors. Their individual patterns of employment are fragmented and overall earnings can vary greatly from year to year. However, hourly rates of pay for established freelance or casual workers rarely approach the level of the NMW. In general, the skills levels required by employers are sufficient to keep pay rates significantly higher.

The areas where the presence of the NMW is important, and positive, are in junior and entry-level positions, especially affecting young people; and in the informal 'micro-budget' film production sector facilitated by cheap digital technology and the internet. These are discussed below.

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

The existence of the NMW has a positive impact on young people's employment prospects in the media and entertainment industries.

These industries are widely perceived as offering attractive and glamorous careers, and this perception is encouraged by many FE/HE media courses, some of which recruit students by making exaggerated claims about the career prospects they can open up. In this context, with many ambitious graduates entering an already-casualised labour market every year, the potential for abuse and exploitation is self-evident.

Even with a legal minimum wage in place, some employers take advantage of the situation by offering new entrants unpaid entry-level posts, which involve real work but are misleadingly described as "work experience" or "volunteer" or unpaid "intern" positions. If there were no NMW, these abuses would be even more common.

In July and August 2013 BECTU invited young workers in the media and entertainment industries to provide feedback on their career experience so far, including their experience of both paid and unpaid work. About 170 young workers responded, approximately two-thirds being BECTU members and one-third non-members.

Nearly 80% of respondents were in their 20s, most in their early 20s. Most have been in the industry for two years or less. One of the more experienced individuals commented:- "It took me four years to find my first job after graduation and a further year to get established." This is not unusual and demonstrates that for many, a career in the media and entertainment industry involves an extended early period of uncertainty.

Most are looking for freelance work – some because it suits them, but others because although they would prefer a permanent job, they judge that freelance work is all they're likely to get.

The average number of jobs per respondent over the past twelve months is about ten. Just over two-thirds of these jobs have been paid, and just under one-third unpaid.

Just over half of all paid jobs were with broadcasters, or established film/TV companies. Only 15% of paid jobs were in the "informal" low/micro-budget film production sector.

By contrast, 32% of unpaid jobs were in the informal production sector. But another 26% of unpaid jobs were in the mainstream commercial sector, with broadcasters or established film/TV production or facilities companies. This reinforces the point made above, that although the under-funded informal sector is the single biggest

problem area, there is also a major problem with some established film/TV employers, including some which are household names, who are prepared to take advantage of the competition between young people for entry-level posts and experience. One respondent reported that she had been on an unpaid 'work experience' placement in the camera department on a high-profile TV production for a major broadcaster, where she found herself carrying out exactly the same duties as a paid Camera Trainee.

53% of respondents reported annual earnings over the past year of £10,000 or less. The most common strategy for making ends meet is to fall back on private resources: family, friends, savings, loans and overdrafts.

This highlights a point made in BECTU submissions in previous years, that the widespread problem of unpaid entry-level positions, and the pressure to survive an extended period of uncertainty in order to get "established", gives a clear advantage to young people from affluent middle- and upper-class backgrounds who are able to fall back on private resources. And it excludes talented young people from poor and working-class backgrounds, including those from black and minority ethnic households which are disproportionately likely to be poor and working-class, who do not have these private resources to fall back on.

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

As reported in previous years, 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 fear that if the NMW Apprenticeship rate stays at its current low level, it may over time depress apprenticeship rates in our industries.

- **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?**

We have no view on the accommodation offset. This is not an issue on which our members have reported problems or sought advice.

- **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)?**

We endorse the recommendations put forward by the TUC, specifically:-

- That the adult NMW should be increased by more than inflation and average earnings, whichever is the higher;
- That the rates for 16-17 and 18-21 year olds should increase in 2014 by at least the same percentage as the adult rate, and that in the coming period the adult rate should be phased down to be paid at the age of 18;
- That the apprentice rate should be raised to the level of the current youth rates.

We believe that after more than three years of austerity causing an intense squeeze on the real income of workers, particularly those on low pay, the next NMW increases should be large enough to begin restoring the purchasing power of low-paid workers.

A significant increase in NMW is also needed to reduce the high number of low-paid workers who are receiving in-work benefits. For example, the figures used by GLA economics to determine the London Living Wage calculated that for a two-child household with two full-time working parents, the Low Cost but Acceptable standard of living (LCA) depended on both parents earning £10.35 per hour.

This is far in excess of the incoming NMW of £6.31, and higher than the London Living Wage of £8.55, derived by subtracting assumed benefit income from the LCA.

In other words, in London, a worker on the NMW needs benefits payments of more than £4 per hour worked, to achieve an acceptable living standard. Employers of low-paid workers in receipt of in-work benefits are effectively having their labour costs significantly subsidised by the state – a situation that can be eliminated only by generous increases in the NMW.

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

### Enforcement

In previous years we have argued that HMRC enforcement activities are hampered by perverse confidentiality rules, which prevent HMRC from drawing regular attention to its activities and successes. We believe that such regular attention would give the whole NMW regime a higher public profile, which would in turn discourage employers who at present flout the NMW either because they are unclear that it is a legal obligation, or because they perceive practical enforcement to be non-existent or toothless.

We continue to hold to this view, and believe there is more to be done in this area. However we welcome BIS's announcement in August of a new and more realistic set of criteria for "naming and shaming" employers who fail to pay the NMW. This is definitely a step in the right direction, and is a crucial part of the wider picture.

In previous years we have also argued that advertisements for unpaid work should be brought within the scope of the enforcement regime. It is ridiculous that it should be perfectly legal for an employer to advertise their intention to break the law.

We continue to hold to this view, and members of the LPC may be interested to know that BECTU has submitted a resolution on this topic to the 2014 Trades Union Congress. We have already received strong indications of support from other trade unions, and we hope that it will soon be the policy of the trade union movement as a whole that advertisements for illegal unpaid work should themselves be illegal.

#### Online information advice and guidance

We are obliged to comment also on the quality of Government online information, advice and guidance on the NMW. In this particular area, unfortunately we are going backwards.

Over a number of years, valuable content was developed on the 'Directgov' and 'Business links' websites, giving practical guidance on the meaning and implementation of the NMW. These have now been replaced by the 'Gov.uk' site, where the NMW content has been re-written.

We understand the logic of a single online location, a one stop shop for official Government information. But we do not understand why that should involve scrapping valuable content and replacing it with content which is reduced in volume, less comprehensive in the issues it covers, and in some key areas actively misleading. The Gov.uk site represents a significant backwards.

For example, since the entitlement to receive the NMW depends on qualifying as a worker, it is important that potential employers and workers understand what this involves. According to the <https://www.gov.uk/employment-status/worker> page on the Gov.uk site, the key factor defining a worker is the existence of a contract or other arrangement in which the individual performs work or services personally for a monetary reward or benefit in kind. The implication is that if an individual cannot produce evidence of such a contract or arrangement, then they have no entitlement to receive the NMW regardless of the work they have actually performed.

But this is not correct. Both HMRC enforcement notices and ET decisions have established that, where it can be shown that the overall substantive relationship is that of worker-employer, then the NMW is due. In a case supported by BECTU in 2009, the employer had even secured the worker's initial agreement to work

without pay, but we argued successfully at ET that since the relationship was demonstrably a worker-employer relationship, this agreement was invalid and the NMW was due. But the importance of establishing the substantive relationship is not addressed on the Gov.uk site.

The problem is not that the Gov.uk website changes the law. The problem is that it fails fully to explain the law, and is therefore likely to encourage bad practice by employers, to discourage valid claims by workers, and to complicate and undermine the important task of enforcement.

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