

Intern Aware Low Pay Commission Submission

September 2014

Executive Summary

Unpaid internships are impeding social mobility, leaving school leavers and graduates in a Catch 22 situation where they are unable to get a job because they haven't got experience, and unable to get experience because they can't afford to work for free. This situation leads to inequitable access to skills and disadvantages the majority of businesses that operate good practices. Despite continued recommendations by this Commission, the practice continues.

Existing employment law and HMRC are failing to protect interns as the National Minimum Wage Act predates the rise of internships. Consequently, the law is ambiguous and gives no reasonable explanation of how internships should fit into the law (although most interns meet the criteria to be a 'worker' or 'employee'). As a result, businesses and young people alike have been left confused. YouGov polling showed that only 12% of businesses could correctly identify when their interns were entitled to pay or not.

This means that the law is failing to protect young people, and unscrupulous employers may think that using unpaid interns is a 'risk worth taking'. The complexity of the law and the precarious nature of their employment means that few young people have been prepared to challenge exploitative practices. However, where they have done so, there has been a high level of success, with employment tribunals and lawyers' letters forcing employers to pay interns.

Despite the Government's work in increasing some enforcement of the National Minimum Wage for interns, employers still routinely advertise for internships which are clearly unlawful. There now needs to be action, and not just words, from those in a position to make change.

Based on discussions with HMRC, national polling, surveys, and hundreds of conversations with unpaid interns and employers, we have highlighted several areas in which NMW enforcement could be improved to help interns.

Polling

In 2014, we conducted polling with YouGov on the affordability of unpaid internships.

The results were:

- 74% of people said that they, or someone in a family like theirs, could not afford to do an unpaid internship in London.
- 81% of people in Wales said that they, or someone in a family like theirs, could not afford to do an unpaid internship in London.
- 79% of people in the North East said that they, or someone in a family like theirs, could not afford to do an unpaid internship in London.
- 78% of people in Scotland said that they, or someone in a family like theirs, could not afford to do an unpaid internship in London.
- 77% of people in the South West said that they, or someone in a family like theirs, could not afford to do an unpaid internship in London.

We also conducted some polling around businesses and internships.

The results were:

- 26% of businesses with an intern admitted to paying less than the National Minimum wage or nothing at all.
- Of those businesses paying less than the minimum wage, 82% admitted that the interns were providing useful services to the business. This is seemingly a significant breach in employment law.

Similarly, an IPSOS Mori and Joseph Rowntree Reform Trust poll showed that 85% of people believed that interns deserved to be paid, with more than half calling for them to be paid a living wage.

Case Studies

"I took the unpaid internship because there is almost no other way into the fashion industry, they expect you to work for free. I was lucky enough to be able to afford to do this initially but I quickly realised I was being exploited. How could I confront my employer at the time when they held all the cards to my future in the industry? What they don't tell you is that you need another qualification to work in fashion – being from a well-off background. I hope more people feel able to stand up to their employers if they are being exploited and working without pay."

Jordanna, London

"I'm finding more and more that advertised vacancies offer nothing more than a reference often with the statement that "It will look good on your CV" as if this can support my young family on such a policy alone. I feel it's unfair that businesses can exploit applicants in this way."

Eugene, Edinburgh

"Unpaid internships are unfair, exploitative, detrimental to normal graduate recruitment, and illegal. For this reason, Goldsmiths has a policy of not publicising unpaid internships."

Goldsmiths University Careers Service

Developments

After the Low Pay Commission's recommendations in 2014 that the Government act on unpaid internships, there has again been some limited developments

1. Our suggestion that BIS 'name and shame' employers has begun

In June 2014, HMRC announced a number of employers who had failed to pay the national minimum wage (NMW). Having made a promise to do so, they named these employers publicly. Whilst this was a welcome step, there was one pay-out of £168,000 that was not named, but was directly paid to interns. It is disappointing that some employers are being named and others are not. There must be greater transparency to this process.

2. Our suggestion to increase the penalty for non-payment of the National Minimum Wage has been agreed

New higher penalties for non-payment of the national minimum wage came into force in March 2014, increasing the National Minimum Wage financial penalty percentage from 50% to 100% of total underpayments and the maximum penalty applied from £5,000 to £20,000. This is welcome, but requires the law to be made clearer and proper enforcement to be effective.

Our Recommendations

1. The introduction of a new ‘four week limit’ for unpaid internships

A four week limit would cap the length of unpaid internships (see Appendix). At present, businesses and interns are unclear about when the National Minimum Wage (NMW) applies and when it doesn't, leading to widespread non-compliance. This limit would clarify the current law, which is complex and ambiguous. Work shadowing and observing would still be possible, as such programmes tend to last up to two weeks. After four weeks, there would be an automatic assumption that interns should be paid. Current exemptions to the 'worker' status would remain, such as charitable volunteering or placements as part of an educational course.

At no point in NMW legislation is a 'worker' defined sufficiently to protect interns or to help businesses. The law on the issue is notoriously complex and we have noted that advisers at HMRC are not consistent in their advice about when NMW is due and when it is not. This has been relatively confusing for businesses, particularly SMEs, so it is of no surprise that 65% of businesses support the proposal, with only 12% opposing it. In addition, around 74% of people said that they (or someone from a family like theirs) could not afford an unpaid internship in London, with this being much higher in areas such as the North East and Wales.

Businesses are unlikely to recruit 'work experience' positions on a constant rolling basis to support their work. Recruitment for this would not be cost-effective and the training involved to constantly replace paid work with rolling four-week work experience placements would be counterproductive.

2. More prosecutions for non-payment of the NMW

There has not been nearly enough prosecution for non-payment of the NMW in the last few years – and there have been a handful of prosecutions since the law was passed in 1998. While we appreciate that prosecutions are not suitable in all circumstances, if this tool was used properly it would act as a credible deterrent, particularly for businesses which would be less concerned about the reputational effects of "naming and shaming".

3. Third parties should be able to complain about non-enforcement of the NMW

A provision for complaints by third parties is important as it allows for other parties to be the "eyes and ears" for HMRC, which has a Minimum Wage enforcement team of approximately 150 people. It also means that whistleblowers need not be directly affected by the non-enforcement of the law, helping to reduce the impact of vulnerable workers being afraid to report their own employers.

According to BIS guidelines, HMRC enforcement can be initiated by complaints by third parties. However, there is no mechanism for doing this as the complaint form on the Pay and Work Rights Helpline website does not allow third party complaints. Callers to the helpline have been informed that only those in work can complain, contrary to regulations.

HMRC's Pay and Work Rights Helpline should also be updated to provide clarity on the process of investigation and information about confidentiality, as many unpaid interns are currently intimidated by fears of being "blacklisted" if they report illegal practice. This would help address criticisms about guidance on NMW enforcement from the Low Pay Commission in 2013.

4. Improvement is needed to HMRC's "risking" process

HMRC's risking process, whereby sectors and companies are proactively sought out for investigation for non-payment of NMW, leaves out workers who are being paid "off the books". The detection methods HMRC uses to tell who is not paying NMW are based on tax receipts and returns, which do not pick up people who are not being paid at all.

However, there are a very high number of adverts for unpaid internships online that specify set hours and tasks, but specify wages below NMW or none at all. While recognising that these internships could be in breach of employment law, HMRC refuse to consider investigating these adverts or sending letters to companies that advertise for unpaid interns reminding them of their duty to pay NMW.

Conclusions

We now desperately need to see actions and not just words. The practice of unpaid internships continues to leave many young people and graduates behind and excludes them from parts of the job market simply because they cannot afford to work for free. Whilst the recommendations of the Low Pay Commission in the past have been welcomed, they have been ignored by the Government in consecutive years.

A four week limit on unpaid internships would all but end the long-term unpaid internships that the majority of people simply cannot afford to do. It would limit work experience and work shadowing to a maximum of four weeks, meaning that after that point businesses would have to prove that anyone still continuing unpaid would be volunteers within the law.

The integrity and the credibility of the National Minimum Wage Act are being undermined by the large numbers of workers who are being denied their right to pay by being labelled "interns". Whilst the government have made limited progress, enforcement of the minimum wage for interns is not working. Action and change is needed to make the law clearer and more effective for interns and businesses alike.

If the National Minimum Wage Act is to function effectively and protect vulnerable interns from exploitation and other young jobseekers from exclusion, there must now finally be changes made without delay.

Appendix

With the help of leading employment barrister Simon Cheetham, of Old Square Chambers, we have drafted text which, if enacted using section 41 of the National Minimum Wage Act would allow Labour to clarify the law for all concerned. This could be introduced as secondary legislation:

"(1) "Work experience" includes observing, replicating, assisting with and carrying out any task with the intention of gaining experience of a particular workplace, organization, industry or work-related activity.

(2) A "provider" within this section is an employer or other supplier of work who provides an individual with work experience.

(3) Any person undertaking work experience for a single provider for a period exceeding 4 weeks shall be deemed to be a "worker" under section 54 below.

(4) Nothing in this section will prevent a person who has been undertaking work experience for a period less than 4 weeks from being a worker under section 54 below."