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| LPC accommodation offset inquiry 2012 |
| TUC response |

**1:** **Introduction**

The TUC is the UK’s national trade union confederation. Our 54 affiliated unions represent 6.1 million people at work. Our influence extends more widely through the coverage of trade union agreements and the advice that we give. The TUC can be said to be the voice of Britain at work.

This paper sets out the TUC's evidence to the Low Pay Commission's 2012 inquiry into the National Minimum Wage accommodation offset. The provisions of the offset are summarised below:

*“If your employer provides you with accommodation, they can count some of its value towards National Minimum Wage (NMW) pay. ...Your employer cannot count more than the accommodation offset rate which is in force at any given time.*

*From 1 October 2011, the maximum amount your employer can count towards NMW pay as an accommodation offset is:*

* *£4.73 a day*
* *£33.11 a week”[[1]](#footnote-1)*

Our view is that the offset should be retained for employees who have a choice about whether to accept accommodation. Where they have no choice, the employers should pay the full rate. We believe that this is already the position, but more rigorous enforcement is needed.

The existing arrangements are a compromise that was hard-fought on both sides in the early days of the LPC. There is a real danger that broadening the offset would push more workers into poverty. Of course, we might also question whether we need to keep the offset at all, but at the moment we would make a cautious defence of the existing arrangements that we describe above.

**Employers gain from offering workers accommodation**

There is a strand of literature in industrial sociology that examines that way corporate strategies have become sought to gain comprehensive control of all aspects of their business, including a broad ranging portfolio of factors such as relocation subsidies, land and planning permission for expansion, and, of course their pool of labour. One classic study demonstrates how these factors were brought together when Nissan opened their plant in Sunderland in 1986, where a skilled but unemployed workforce was an important component of the company’s decision to site in the area.`

Similar considerations apply to much smaller employers, some of whom have are driven by the imperative to be sure that they have sufficient labour available on site, on time, every day.

The view commonly expressed by people working for agencies and gangmasters where accommodation is offered as part of the employment package is that they are brought much more closely under the control of their employer by this arrangement.

For example, living in the employer’s accommodation has a negative impact on absence. It is also the case that it is simply harder to leave your job if that also means that you must leave your accommodation at the same time, so employers who offer homes as part of the package tend to have lower labour turnover.

In short, having control over where workers live skews the politics of working life further towards the employer.

**The housing bubble has burst**

Set against the employer’s desire to offer accommodation is the question of long-term investment. In buoyant economic times when house prices were rising fast employers could hold onto accommodation and be confident of making a good profit when they no longer needed it.

Holding housing stock meant holding a capital asset that was appreciated rapidly. In these conditions it was obviously good business practice to hold property, both for its immediate utility in providing accommodation (with all the attendant benefits for the employer described above), as a profit making line, and as an insurance policy against the decline of trading conditions in the future.

Sadly, falling house prices and the difficulty in obtaining affordable mortgage finance means that it is no longer always inherently profitable to combine property speculation with employment packages, either for low paid or high paid workers.

**Data from the ONS Labour Force Survey**

The ONS Labour Force Survey (LFS) is the most comprehensive source of information on the provision of accommodation to employees by their employers. A question in this survey asks whether rented or accommodation is tied to the job.

However, there are limitations to the LFS data that we should be aware of. The survey is drawn from a list of residential postal addresses, and thus excludes employees living in hotels and guest house, which is a state of affairs which may include employees across a range of industrial sectors rather than just those employed in the hotel sector.

It also excludes those living in mobile caravans, tents and barns, which means that it understates the extent of the agricultural workforce during the summer months.

It also seems likely that it will under-report migrant workers, who may be less likely to answer the survey because English is not their first language, because of concerns about the validity of their employment status, or simply because short-term migrants may feel that they have less of a stake in answering UK Government surveys.

Nevertheless, despite these limitations, the LFS is a large-sample survey taken on a quarterly basis, so it provides the most comprehensive and timely statistical evidence that we have. In the following sections we use this data to explore aspects of employer-provided accommodation in order to examine whether the NMW and the accommodation offset has made any difference.

**Tied accommodation has declined**

The table below show that the number of employees in tied accommodation has fallen since 1998, with half of the fall coming since the recession.

What is less easy to understand is that the overall number of people living in tied accommodation has fallen much less sharply. The latter figure includes the entire household, including other workers and non-workers including children. Our working hypothesis is that the recession has disproportionally affected accommodation offered to single people.

**Employees and families in tied accommodation**

|  |  |  |
| --- | --- | --- |
|  | Employees in tied accommodation | People living in accommodation tied to another member of the household’s employee job |
| 1998 | 455,000 | 926,000 |
| 2008 | 406,000 | 827,000 |
| 2012 | 325,000 | 724,000 |
|  |  |  |
| Per cent change 1998-2008 | -10.8% | -10.7% |
|  |  |  |
| Per cent change 2008-2012 | -20.0% | -12.5% |

Source: LFS spring quarters

**Public and private sector tied accommodation**

The next table greatly increases our understanding of what has happened. The decline in tied accommodation in the decade up to 2008 was largely in the *public* sector. This decline has continued during the recession, but it has been greatly outstripped by the sudden decline in the *private* sector from 2008 onwards.

**Employees in tied accommodation - public and private sectors**

|  |  |  |
| --- | --- | --- |
|  | Private sector | Public sector  |
| 1998 | 266,000 | 188,000 |
| 2008 | 258,000 | 147,000 |
| 2012 | 205,000 | 130,000 |
|  |  |  |
| Per cent change 1998-2008 | -3.0% | -21.8% |
|  |  |  |
| Per cent change 2008-2012 | -20.5% | -11.6% |

Source: LFS spring quarters

Is the trend simply a function of the economic downturn and the decline of the property market? This certainly must be the largest part of the explanation for the sudden onset of decline in the private sector. More recently, the onset of public sector austerity may also help to explain the increase in the speed of the rate of decline in the public sector.

However, we should also consider the effect of the SIMAP (2000) and Jaeger (2003) European Court of Justice Judgments, which classified “inactive” on-call time spent on the employer’s premises as working time for the purposes of the relevant EU directive. It is reported that these cases have led to the public sector moving away from on-call time, which had been part of the rationale for providing accommodation in the first place.

For example, before the ECJ judgements the London Borough of Harrow employed wardens in old people homes to be on duty or on call on the premises for 113 hour per week. Clearly this was not acceptable.

Average weekly working hours are longer for those in tied accommodation (40.1 mean, 40.3 median) than for the employee workforce as a whole (38.1 mean, 36.0 median), largely because around 80 per cent of tied employees are full-time workers. In addition, about 60 per cent of tied employees are male.

**Decline of inward migration**

The TUC’s hypothesis is also that the decline may partly be the result of the recession reducing both the demand and supply of short-term migrant labour coming into the UK.

Those coming here to work for relatively short periods – a few months or a few years – have tended to be younger workers without families. Looking just at migrants arriving in the UK for the first time, in 2007, 25,000 new migrants entered the UK to take up employee jobs with tied accommodation. By 2011 the figure had fallen to 10,000.

**Is tied accommodation just a low paid workers issue?**

For the purpose of the LPC inquiry, it is important to understand whether this has been an issue for low paid people on or near the NMW.

The table below shows that most people in tied accommodation are on rates far above the NMW. As is the case with many other employment related benefits, accommodation is more likely to be given to those with relatively high-status jobs.

Tellingly, the bite of the NMW against median earnings for employees in tied accommodation has not changed. In 1998, the NMW was 64.2% of the median pay rate for employees in tied accommodation. In 2012 the position was virtually unchanged, with the NMW constituting 64.7% of the tied employee median.

**Average hourly pay of employees in tied accommodation and adult NMW**

|  |  |  |  |
| --- | --- | --- | --- |
|  | 1998 | 2008 | 2012 |
| Median  | £5.60 | £8.60 | £9.40 |
| Mean | £6.80 | £10.20 | £13.20 |
|  |  |  |  |
| Adult NMW | £3.60 | £5.52 | £6.08 |

Source: LFS spring quarters

Furthermore, whilst the number of tied accommodation employees has declined faster than the whole-economy average in the elementary and personal services occupations during the past four years, the same has also been true for managerial and professional occupations.

This suggests that the decline in tied accommodation has applied across the income range, rather than particularly affecting low paid workers. It seems that the recession and the collapse of the housing market are the main factors.

**Self employed workers in tied accommodation**

This hypothesis was further supported when we examined the position of self-employed workers, the majority of whom are not covered by the NMW.

In 1998, 80,000 self-employed people had tied accommodation, but that figure had fallen to 49,000 by 2012.

In fact, the decline in accommodation offered to the self-employed since 1998 (29.3 per cent) was slightly more than the fall for employees (28.6 per cent).

**Cases where the worker has no choice about taking employer accommodation**

The TUC argues that the accommodation offset should only be available in cases where the employee has a choice about accepting the arrangements. Where living in the accommodation is an essential condition of employment then the employer should pay at least the full minimum wage rate.

This test has numerous applications including, for example, the local authority wardens mentioned above. One extreme example is the case of seafarers, where the shipping union RMT has found that many employers deduct the accommodation offset for the use of the cabin while on ship. Some companies have already backed down when challenged on this practice, but it should be made absolutely clear to all that this is not a proper use of the offset.

**Employers should not be allowed to abuse the accommodation offset**

We have seen how tied accommodation may bring mutual benefits, but in some cases employers seek to make further gains by cheating their workers.

The most common way has been to split the operation into two separate businesses, one of which provides work and the other accommodation. The last government took the view that this practice was prohibited in cases where it was simply an attempt to avoid the NMW legislation and issued guidance accordingly. Unfortunately, what was agreed is no longer easy to find, as the guidance note is not linked from Directgov or Businesslink – it is however, still on the web[[2]](#footnote-2), but it needs to be made more accessible.

Another abusive practice that has declined since the collapse of the property market is the practice of offering migrant agency workers poor quality accommodation and little work, so that the employer makes as much of a living out of being a landlord as running an employment agency.

Even now, the 68,000 part-time employees with tied accommodation have below average weekly working hours (17.5 hours per week mean with tied accommodation, somewhat less than the 19.0 hour mean for part-time employers without accommodation).

The accommodation offset has also been claimed by employers in circumstances where accommodation is illegally overcrowded or unfit for human habitation.

 We have also gathered some evidence of some very heavy-handed illegal evictions and attempted evictions from tied accommodation. One such case will go before an Employment Tribunal at the end of September.

**Conclusions**

There has been a decline in the amount of tied accommodation offered to employees in the UK. The fall has only been felt in the private sector since the onset of the recession.

In the private sector, the fall appears to have been driven by the UK’s significant economic difficulties and the collapse of the property market. A further component is the decline in the demand for migrant labour.

The trend goes back further in the public sector, where the ECJ judgements clarifying the Working Time Directive have prohibited very excessive hours of on-call time in tied employment. The old idea that some employees were effectively on-call all the time has been swept away, which has in turn diminished the attraction of providing accommodation to some public sector employees. This is not without its problems, but the previous situation was clearly untenable. There was no excuse for contracting people to be on site for well over 100 hours per week.

But the issue has not been driven by low pay or the NMW. The decline in tied accommodation has affected the self-employed (where the NMW does not apply) slightly more than employees and the highly paid employee occupations as much as those low paid jobs. The “bite” of tied-employee average earnings against those of employees in the whole economy has not changed, so there is no hint at all in the official statistics that the NMW might be a factor.

Employers offer accommodation because they gain something by doing so, in terms of employee availability, attendance and retention.

On balance, this often brings mutual benefits, but the decline in provision can only be reversed by reviving the economy and the housing market, not through tinkering with the provisions of the NMW.

We also note that employers also sometimes abuse the relationship by evading the NMW, providing accommodation that is overcrowded or unfit for human habitation, keeping workers in poverty or carrying out illegal evictions.

The current review should address this issue. The accommodation offset should continue to be related directly to the adult rate of the NMW where living in the accommodation is not a direct requirement of the job, but the offset should not be available in cases where the employee must live in the accommodation in order to be able to do the job, such as seafarers.

In addition, new guidance should be introduced to rule out unfit or overcrowded accommodation and to prohibit the use of a bogus division between employer and landlord when in fact they are one and the same entity.

1. DirectGov, calculating the minimum wage when your employer provides accommodation: <http://www.direct.gov.uk/en/Employment/Employees/TheNationalMinimumWage/DG_175108> [↑](#footnote-ref-1)
2. DTI, National Minimum Wage and the accommodation offset- guidance note, 2007: [www.**berr**.gov.uk/files/file38769.pdf](www.berr.gov.uk/files/file38769.pdf) NB, Page 8 deals with bogus separation of landlord and employer. [↑](#footnote-ref-2)