



Response to the Low Pay Commission's Consultation on the National Minimum Wage

Introductory Comments

Equity is the union for actors, performers, singers and other creative workers. We represent over 38,500 people working in the UK's film, television, theatre, dance, variety and music industries. Our membership includes actors, singers, dancers, circus artists, theatre directors and many other performers and creative workers.

As in previous years, Equity welcomes the opportunity to raise with the Commission those issues that affect our members and to detail instances that demonstrate where we believe the legislation and enforcement mechanisms could be improved. We hope to continue this constructive relationship with the LPC and the Department for Business, Innovation and Skills in order to resolve the outstanding areas of concern for our members.

Low pay trends in the entertainment industry

Equity's most recent survey of members found that 11.18% earned nothing from their work in the entertainment industry and 67.26% earned either nothing or under £10k per year. Nearly half of respondents (46%) had worked in the entertainment industry for no pay in the past twelve months and of those who had 51.80% received no expenses. Theatre and film were identified as parts of the entertainment industry in which no pay practices were widespread. Of those who had worked for no pay in the past twelve months 46.69% had worked in theatre and 25.39% in film. Information received informally from members suggests there is also a widespread culture of unpaid work affecting dancers and models.

Younger members continue to tell us they expect to work for free for up to five years at the start of their careers. Clearly it is important for the sector to preserve a degree of flexibility with respect to the mobility of its workforce and the short-term nature of engagements. That is something that is expected and understood by performers. However this must be balanced against ensuring that performers, from all backgrounds, are able to enter the industry build sustainable careers.

Despite Equity's success in concluding collective agreements covering our main areas of work – TV, film, theatre and radio – low pay and in some cases exploitation of workers in the sector is increasing. Partly this is to do with a decrease in funding for organisations, but there are also cultural factors and perceptions of the industry that need to be tackled.

Low pay and no pay work is especially noticeable in areas where some of the lowest Equity minimum rates are already in existence, for example for background performers (or walk-on artists) working in film and television.

Where possible, Equity seeks to reach new and adaptable agreements with producers and employers in order to ensure compliance with National Minimum Wage legislation, particularly in areas such as fringe theatre, however the amount of non paid work is growing and an ever increasing proportion of Equity members report that they are being asked to work for free on a frequent basis.

The most pressing current issues in terms of low pay for Equity members are:-

Charitable status

Many organisations in the arts and entertainment industries, particularly film schools, continue to reference section 44 of the National Minimum Wage Act in their attempts to avoid paying the National Minimum Wage to performers. Equity has sought to highlight the obligations of employers and challenged them to provide evidence that such work is truly “voluntary” under section 44 of the National Minimum Wage Act. In the absence of such evidence we have requested that the performers be paid at least the NMW rate.

This approach is often successful and has led to a number of significant productions reversing their proposals to offer unpaid work, but the approach is reactive in nature and limited to helping individuals.

We do not believe that the use of professional performers for free by any organisation is compatible with the intention of either the National Minimum Wage Act or the Charities Act and believe that this practice should be challenged by the Low Pay Commission.

Advice and guidance

In order to tackle the increasing prevalence of low pay and no pay in the entertainment industry there needs to be a much greater understanding and recognition of the employment status of entertainment industry workers, particularly by advice services such as the Department for Business Pay and Work Rights Helpline which has in the past advised businesses that performers are not workers.

In its 2010 Report the Low Pay Commission agreed with Equity that sector specific advice was needed to help businesses and employers understand the application of the NMW to the entertainment sector. The LPC recommended “that the Government produces, in conjunction with interested parties, sector specific guidance on the National Minimum Wage for the entertainment sector.” - LPC Report, para 4.50, 2010. This recommendation was accepted by both the last Labour Government and by the former Parliamentary Under-Secretary of State at the Department for Business, Innovation and Skills, Ed Davey, in a ministerial statement of 21st June 2010. The LPC repeated its recommendation in its 2012 report and at paragraph 4.166 of its report published in 2013 the LPC called on the Government to provide clear and accessible guidance in line with the 2012 report and criticised the new guidance that transferred to the gov.uk website.

In early 2013 the need for sector specific guidance was raised in a number of Parliamentary Questions and in late 2013 Equity met with Parliamentary Under-Secretary of State at the Department for Business, Innovation and Skills, Jo Swinson MP, to discuss the urgent need for revised and tailored guidance. This was a constructive meeting and Equity welcomed

the further commitment given by the Parliamentary Under-Secretary on 14th May 2013, in response to a Parliamentary Question from Stephen Doughty MP, when she said BIS would 'continue to work with the Government Digital Service to publish further detailed guidance, including entertainment sector specific case studies.' (see <http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm130514/text/130514w0002.htm#13051457000316>). Despite this commitment Equity is still waiting for improved guidance to be published.

In April 2014 the LPC recommended at paragraph 4.79 of its report that the "Government should address the issue of making clear and accessible guidance readily available. There is now some guidance on the issue of volunteers, but clearly there is scope for this to be much more comprehensive." We agree with this analysis and believe this guidance is absolutely essential and long overdue.

In April 2014 Equity appointed a full-time member of staff to the new role of Low Pay No Pay Organiser, a role specifically created in response to the crisis in pay which has come to characterise large parts of the entertainment industry. Equity's Low Pay No Pay Organiser leads the union's work on improving awareness of creative industry workers' entitlement to the NMW and creative industry employers' liability to pay it. However, it should not be left to trade unions to pick up the pieces of the Government's failure to promote and enforce NMW compliance in this way. The Government's reluctance to issue sector specific NMW guidance encourages the exploitation of vulnerable groups of workers and perpetuates low and no pay practices throughout the creative industries.

Enforcement

Across the economy many workers with minimum wage problems are too scared to enforce their rights. In most cases where individual members believe their employment rights have been breached, Equity is able to provide legal assistance. We continue to take cases to the Employment Tribunal to enforce NMW rights, in addition to which numerous other cases dealt with by Equity officials have been settled out of court.

Most recently the union successfully pursued a National Minimum Wage claim in the Employment Tribunal for artists working in a small pub theatre, which was heard in May 2014. The Tribunal found in the favour of the union members on almost all points. Particularly notable was that the artists were all young women. Included in the claim was a successful ruling in favour of one of those members under the provisions of the Equality Act 2010. This case is an incredibly good example of the continuing prevalence of National Minimum Wage avoidance in the live performance sector – and also of how low pay environments are likely to harbour other significant employment related problems, not least around equality, health and safety and inappropriate management styles.

Whilst Equity is able to support enforcement of individual rights through Employment Tribunals there is a serious failure by HMRC to enforce the law against employers in the entertainment industry, despite the manifestly widespread breaches of the NMWA. Equity has frequently raised this with HMRC, notably through the TUC Low Pay Enforcement Group, but has yet to receive any indication from HMRC that this is a priority to be tackled. The reluctance of performers to risk identifying themselves at Tribunal against potentially

influential employers means such enforcement action by government agencies is essential to changing the low pay culture in the long term.

Enforcement of employment rights would be greatly enhanced if the Government removed the barrier of Employment Tribunals only hearing cases brought by individual workers and enabled unions to launch collective enforcement actions. This change would be particularly welcome in the entertainment industry, where short-term contracts and other practices further contribute to the insecurity and fear felt by workers.

Equity welcomed the Government's decision to increase the financial penalty percentage from 50% to 100% of the unpaid wages and to increase the financial penalty for non-payment of the NMW from £5,000 to £20,000. However, we are concerned that there has been very little evidence of the effectiveness of these new enforcement measures in the entertainment industry. Whilst employers continue to receive inaccurate and misleading advice on NMW compliance from Government agencies and whilst effective enforcement action by HMRC within the entertainment industry remains highly unlikely, unscrupulous employers will continue to exploit Equity members by failing to pay the NMW notwithstanding these changes to the financial penalty regime.

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