

Outcomes from the Unpaid Trial Shifts Workshop

Introduction

The Notice of Motion passed at Full Council on 19th July 2018 agreed that the city council would look at how it could end the practice of unpaid trial shifts. It requested that information should be gathered to help understand the scale and nature of unpaid trial shifts through a wide data gathering consultation.

A planning workshop was held on 25th January 2019. The workshop was attended by people invited from the private, public, third sector and young people from various organisations.

The workshop heard a brief overview of the city's economy, and why it is particularly impacted by unpaid trial shifts, and it heard from local businesses, the Bagelman and Real Patisserie about why unpaid trial shifts make poor business practice for them as a good recruitment practice encourages staff to have a positive impression of the organisation. The workshop also heard from young people who have been affected by unpaid trial shifts and who have been moved to set up their own campaign 'No To Unpaid Trial Shifts' to combat the practice. The young people explained that they have set up a website and done some initial data and information gathering about the practice.

The workshop the broke into four groups to discuss:

- 1) the methods of a consultation;
- 2) who to consult with;
- 3) how to get businesses to commit to ending the practice, and
- 4) how to ensure the precarious workforce is protected.

Background

The most relevant legislation linked to unpaid work trials is the National Minimum Wage Act 1998. It states that any person, who performs work for a business or organisation of any sort, is entitled to at least the minimum wage. However, it does allow for exceptions when it comes to an individual who is involved in a scheme for the 'seeking or obtaining of work' or that is 'designed to provide training, work experience or temporary work.'

HMRC states that it is for HMRC enforcement officers/tribunals to decide whether the minimum wage should be paid in any particular case. There are currently no definitive rules or tests, however it must be considered as to whether a work trial is genuinely for recruitment purposes; whether the trial length exceeds the time that the employer would reasonably need to test the individuals ability to carry out the job offered; the extent to which the individual is observed while carrying out the tasks; the nature of the tasks carried out by the individual and how closely these relate to the job offered; whether the tasks carried out have a value to the employer beyond testing the individual; whether trial periods are important (aside from recruiting) to the way the employer runs its business. (National minimum wage and national living wage: Calculating the minimum wage. Department for Business Energy and Industrial Strategy)

The general view at the meeting was that the HMRC definition still leaves room for doubt and that a clearer definition of unpaid trial shifts is:

“Where an employer fails to pay for work which either makes money from a prospective employee or saves money for the employer.”

The practice of Unpaid Trial Shifts occurs in organisations across a range of sectors but is most prevalent in the hospitality and retail sector. Businesses in this sector can be broken into three sizes and the practice of unpaid trial shifts occurs in all three sizes:

- Independents; whilst some organisations deliberately run unpaid trial shifts, the practice can often be attributed to ignorance of the law.
- Brighton and Hove or Sussex chains
- National Chains; some of these businesses have HR procedures in place attempting to legitimise the practice.

Workshop recommendations

‘Say No To Unpaid Trial Shifts,’ a Brighton and Hove-based grassroots organisation aiming to end the unfair and unnecessary practice of unpaid trial shifts, has done some preliminary consultation work. A survey with over 200 responses has recently been carried out with 18+ year olds. Aimed mainly at those who may have been affected by this practice; the response showed that the majority of people strongly disagreed with the practice. The next step is to make the consultation wider and make it more inclusive of businesses which will also help to raise awareness. A number of recommendations and actions came out of the workshop, many of which should be guided by a working group that the city council will facilitate and enable. The working group will be made up of many of the people who were at the workshop.

Recommendation 1: Data Gathering Consultation

The workshop agreed that further data gathering is required to see the scale of the practice across the city. This will be done through a consultation process consisting of:

- Two questionnaires of 10 questions to be aimed at applicants and businesses. Working with the Student Room and Brighton Chamber of Commerce a large scale survey of over 1,000 participants will be conducted to reach more employers and applicants
- Focus groups will be organised with both businesses and applicants to drill further into issues and resolutions
- Case studies will be used to show experiences from businesses and young people

It is felt that this will help with a better understanding of the impact of unpaid trial shifts on gender, age and race. Collating more data, on a large enough scale, will enable the Council to approach HMRC for further discussions around ending this practice.

Consultation Next Steps:

- The working group will look at the design and delivery of the consultation.

Recommendation 2: Working With Businesses

Information supporting businesses and applicants should be provided through the Council webpages linking to nounpaid.com website. For example

- Preparing guidance for businesses and applicants about the law around the use of unpaid trial shifts
- Preparing information for businesses on how to set out a recruitment policy so that applicants know what to expect
- Preparing information regarding paying for trial shifts without having to put applicants on the payroll and managing tax implications
- Case studies and testimonials of experiences of unpaid trial shifts and the positives of not practicing linked to a strong economic argument for ending the practice
- Businesses will be encouraged to endorse the campaign through window stickers and written statements on their websites.

Working with Businesses Next Steps:

- The working group will collate this information and nounpaid.com website will post it
- The city council will prepare its own web page and link to nounpaid.com and HMRC
- Explore options for an employment lawyer to draft a simple unpaid trial shift policy that businesses can adopt: The working group will approach lawyers to carry out this work, ideally on a *pro bono* basis.

Recommendation 3: Work With Job Applicants

It was agreed that we should develop a campaign to raise awareness amongst job applicants so that they know their legal rights. This could include:

- Signposting to information explaining the applicant's rights, including going to nounpaid.com
- How to report businesses who may be breaching minimum wage legislation with a link to HMRC
- Encourage those who have been exploited to report their experience to HMRC via the website
- Identify places where information can be promoted, e.g. schools, colleges, and public spaces.

Work With Job Applicants Next Steps

- The working group will collate this information and nounpaid.com website will post it
- The city council will create a page on its website about unpaid trial shifts that will also include the relevant information about the rights of applicants and will also include a link through to the HMRC website so people can report exploitative practices.

Recommendation 4: Other actions

- The Council can explore using the social value role in its procurement power through contracting, so that firms who practice unpaid trial shifts are deemed ineligible for council contracts. Officers will consult with Legal Services regarding the legality of this proposal
- Working collaboratively with other councils such as Reading Borough Council to enable the sharing of best practice and links to the nationwide campaign. Contact with Reading Council has been made, further communication will continue.

Conclusion

It was agreed by the workshop that the overall message of the campaign to employers should be positive, emphasising the benefits of not practicing unpaid trial shifts. Experience from the Living Wage campaign suggests that this approach is more successful with business than naming and shaming.

The following policy statement has been drafted for consideration:

As a Local Authority, Brighton & Hove City Council believes people should be paid when asked to undertake training or trial shifts prior to being considered for work, and this is consistent with our support of the Brighton and Hove Living Wage campaign. The Council believe that where this practice leads to profit it is unfair and is committed to working with businesses and partners to end this practice.

It is proposed that the Council adopts this policy as an overarching vision and strategy to underpin the work set out above and the specific actions to end the practice of unpaid trial shifts. The Council will facilitate and enable the working group.