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LOW PAY COMMISSION CONSULTATION ON THE APRIL 2017 NATIONAL MINIMUM WAGE RATES SUBMISSION BY THE ASSOCIATION OF LABOUR PROVIDERS

Contact

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Introduction

The Association of Labour Providers (ALP) is the trade association for organisations that supply seasonal, agency and contingent labour into the UK food production, horticultural and agricultural sectors. The ALP supports and represents its members and provides a range of services to help labour providers achieve labour standards compliance and implement good practice.

The ALP has approximately 290 organisations that voluntarily choose to be members of the Association on payment of an annual subscription and commitment to abide by the membership regulations. ALP member organisations supply approximately 70% of the temporary workers into the food supply chain. All organisations that supply labour into these sectors are required to be licensed by the Gangmasters and Labour Abuse Authority (GLAA).

Labour providers operate in a very competitive market largely resulting from the downward pressure on costs exerted by food growers and producers seeking to maintain cost viability during the ongoing and long running supermarket price war. It follows that margins are thin, although just adequate to allow viable businesses to continue.

ALP's members predominantly provide workers for unskilled work in the agriculture and food packing and processing and consumer goods supply industries. Market pressures mean that unskilled work is either at, or very close to, national minimum wage (NMW). Few British workers are willing to work at or near NMW in such roles. For many years these irregular low-paid jobs have been largely filled by migrant workers, able to earn more than they can in their home country.

It should be noted that pay rates and terms of employment for temporary agency workers supplied by labour providers are set not by the labour provider but by the hiring client (also referred to as the "labour user") in accordance with the requirements of the Agency Workers Regulations 2010. As such, the basic rate of pay for the temporary agency workers be it NMW or NLW is a cost passed on to the labour user.

The actual hourly rate charged by a labour provider for the supply of temporary workers is ultimately a commercial agreement between the labour provider and user. Any agreed rate should take into account the particular costs of supply. Labour users that pay unrealistically low rates are knowingly or recklessly conniving in illegality as these rates can only be achieved either through worker exploitation or tax evasion or both.

The ALP produces indicative charge rate guidance (see table below). Charge rates lower than those in the rates tables plus a sustainable net margin may indicate illegal activity - unless there is a legitimate and demonstrable explanation.

NATIONAL MINIMUM WAGE OCTOBER 2015/16 AND NATIONAL LIVING WAGE APRIL 2016/17	Apprentices	Age 16-17	Age 18-20	Age 21-24	Age 25 plus
1. Minimum wage	£ 3.30	£ 3.87	£ 5.30	£ 6.70	£ 7.20
2. Employers' NI Contributions	£ -	£ -	£ -	£ 0.39	£ 0.46
3. Annual Holiday Pay (5.6 weeks entitlement)	£ 0.40	£ 0.47	£ 0.64	£ 0.86	£ 0.92
4. Pensions Auto-Enrolment Cost (1% of qualifying earnings)	£ -	£ -	£ -	£ 0.04	£ 0.04
5. Total Wage Costs	£ 3.70	£ 4.34	£ 5.94	£ 7.98	£ 8.62
6. Guideline Statutory Sick/Maternity Pay cost	£ 0.11	£ 0.11	£ 0.11	£ 0.11	£ 0.11
7. Guideline Minimum Labour Provider Overhead & Service Cost	£ 0.60	£ 0.60	£ 0.60	£ 0.60	£ 0.60
8. Hourly Cost of Supply (not including Labour Provider Margin)	£ 4.41	£ 5.05	£ 6.65	£ 8.69	£ 9.33

ALP Submission

The ALP makes the following points to the LPC to take account of in considering its recommendations to government on future wage policy.

1. The impact of the National Living Wage on labour costs

“Following pensions, living wage, NI increases and the apprentice levy about to come there is only so much businesses and our industry can take. I am concerned for our high volume low margin business which is predominately in the GLA sectors and the future viability of this on the very thin margins we are working on.” *ALP Member July 2016*

The National Living Wage (NLW) has introduced a higher rate for workers aged 25 and over and is subject to a target of 60 per cent of median earnings by 2020 with greater tolerance by government of negative employment consequences. The LPC estimate the NLW to be around £7.60 in April 2017, rising to just over £9 by 2020.

ALP Point 1.1 - The cost impact on business is not limited to the effect of the NLW increase alone. There is an accelerator effect on other social charges causing a significantly greater increase on total wage bills than the increase in NLW alone, as the indicative table below shows:

FORECAST NATIONAL LIVING WAGE RATES 2016–2021	NLW £/Hour	% Increase on Previous Year	Employers NI	Holiday Pay	Pensions	Total	% Increase on Previous Year
April 2016 - March 2017	£ 7.20	7.46%	£ 0.46	£ 0.92	£ 0.04	£ 8.62	8.06%
April 2017 - March 2018	£ 7.60	5.56%	£ 0.51	£ 0.98	£ 0.05	£ 9.14	5.96%
April 2018 - March 2019	£ 8.00	5.26%	£ 0.57	£ 1.03	£ 0.10	£ 9.70	6.20%
April 2019 - March 2020	£ 8.50	6.25%	£ 0.63	£ 1.10	£ 0.17	£ 10.41	7.26%
April 2020 - March 2021	£ 9.05	6.47%	£ 0.71	£ 1.18	£ 0.19	£ 11.13	6.90%
Average Increase		6.20%					6.88%
Total wage bill increase		31.00%					41.26%

ALP Point 1.2 – The Ethical Trading Initiative (ETI) has made it clear that companies paying the NLW will not be complying with the [ETI Base Code](#) on living wage [saying](#) the NLW “is not in fact a living wage. UK employers wishing to pay their staff a living wage should use the figures provided by the [Living Wage Foundation](#).”

ALP Point 1.3 – Employers in a limited number of cases have sought to consolidate premium and ancillary payments to offset the additional cost of the NLW. A number of cases have been reported in food manufacture trade media, particularly where challenged

by trade unions. The Resolution Foundation survey found that 8% of businesses have cut back on staff terms and conditions.

ALP Point 1.4 – The ALP ran webinars for labour providers and the food industry on “Implementing the National Living Wage”. Growers and producers were asked, “What impact will the National Living Wage have”. The answers were as follows:

11% We can absorb the NLW cost increase

48% We will have to make cost savings, productivity improvements and price increases but our business will stay essentially the same

41% We will need to substantially change the way we operate to survive

Anticipated consequences of the NLW are that:

- Automation solutions replacing manning with technology become viable as NLW increases impact on return on investment decisions replacing workers with machines and robots.
- It becomes economically attractive for organisations to either relocate more/all growing and food manufacturing operations overseas to where production labour costs are significantly lower or to outsource and to import produce from third party growers or manufacturers.

2. National Living Wage and discrimination

ALP Point 2.1 –The Equality Act 2010 contains a specific exemption to the usual rules on age discrimination in relation to payments in keeping with the National Minimum Wage and this allows employers to lawfully base their pay structures for young workers on the National Minimum Wage pay bands and pay workers different rates.

However, the differential rate for younger workers has been described as “state endorsed age discrimination” and results in “non-conformance” when audited against by social compliance auditors.

The suppliers to the supermarkets are required to comply with the [ETI Base Code](#) with regards to labour standards and are audited against this by social compliance auditors. The ETI base code is a supra national legislation labour standards framework. The ETI has [stated](#) “Will paying under 25 year olds less than the National Living Wage for the same work constitute discrimination? Yes. Although it will be legal to pay workers different amounts for the same work when the new rate comes in, this would constitute discrimination according to the ETI Base Code.”

This means that to be compliant with the ETI Base Code suppliers to the supermarkets (including their labour providers) must pay the higher NLW rate to all workers with the incumbent increase to overall labour cost that this incurs

ALP Point 2.2 – The ALP wrote to the Equality and Human Rights Commission (EHRC) to ask them to provide clear and unequivocal statutory guidance on potential discrimination issues surrounding the National Living Wage. The EHRC responded as follows: “*We will not be issuing guidance on the national minimum wage or the national living wage as this falls outside our statutory remit. It would be best to take this up with the Low Pay Commission or Department of Business Innovation and Skills directly.*”

No such guidance was produced. The ALP subsequently produced guidance for its members and for the wider food industry.

The differential rate of the NLW has opened up a number of discrimination traps for employers. One example of how employers may inadvertently discriminate is as follows. An employer pays a 24 year old £6.70 and a 25 year old £7.20 for performing the same role. Overtime rates are 1.5 times the basic rate. The overtime rate is discriminatory because the age discrimination protection is lost as the rates go above the minimum.

3. Brexit, NLW and labour supply

Point 3.1 – Brexit has exacerbated fears that the UK food and horticultural sectors will be unable to source an adequate labour supply:

“Robots 'could replace' migrant workers post-Brexit. Britain's departure from the EU may see firms relying on robots to fill a void left by migrant workers, Resolution Foundation study finds. Brexit has the potential to fundamentally change firms' business models if promises to end freedom of movement are delivered. Some sectors of the fresh produce industry might consider the use of robots and greater automation, while others will require a carefully considered immigration policy to prevent damaging staff shortages.” *Fresh Produce Journal July 2016*

If there are limits on EU nationals' right to work in the UK in future, then a seasonal workers' entry permit scheme must be introduced instead. "The decision by the UK electorate to leave the EU will mean that there is now a serious question mark over the future availability of sufficient numbers of seasonal workers to harvest our 100,000 tonne annual crop of berries between March and October". *British Summer Fruits July 2016*

"Apples and pears are harvested by hand, for which seasonal workers are required. Despite enormous efforts by growers, which has included joint action with labour providers, government departments and Job Centres, it has proved impossible to recruit from the UK any more than a small proportion of the numbers necessary. In short, the British are not prepared to undertake this type of work. Consequently, almost all seasonal workers are from abroad, and at present, mainly from eastern Europe." *English Apples & Pears July 2016*

“The NFU has called on the government to introduce a new student workers' scheme after a survey revealed a third of growers experienced problems in recruiting a seasonal workforce last year. The union's 2015 End of Season Horticultural Survey revealed that 29 per cent of growers experienced problems in securing an adequate supply of seasonal workers in 2015. That figure was as high as 43 per cent in the fruit sector. The report also indicated that 84 per cent of growers expect increased labour costs, not including the new National Living Wage, by 2018, with 66 per cent anticipating reduced labour availability by the same year.” *Fresh Produce Journal March 2016*

Labour fears are top priority. The union, has called on the government to establish a student agricultural workers' scheme, open to students from all around the world, to help meet the industry's labour needs. Without it, NFU claims, the horticulture sector faces a future in which growers could quit or move production overseas, defeating aims to increase British production.
NFU president Meurig Raymond – July 2016

Point 3.2 – Labour supply has been tightening for the last two years. In 2016 labour providers were able to supply the labour demand for the UK food and agricultural sectors. Labour providers, whilst facing greater challenges, state that they will source a labour supply for 2017 but understandably are less certain about 2018.

With regard to labour supply and demand factors:

- At 74.2%, there is the highest level of employment in UK since records began in 1971. This means there is availability of regular / permanent work over temporary / seasonal work as well as strong demand for temporary workers in other sectors.
- Across the 28 countries in the European Union, unemployment fell to 8.7 percent in April, the lowest rate for the EU since April 2009. German unemployment has fallen to 6.1%, its lowest level since reunification in 1990. Germany also introduced the first nationwide wage floor of 8.50 euros per hour
- There have been since 2014 no new labour markets – Romania and Bulgaria are the current principal sourcing regions for new workers
- At present it is too early to report on the effect of Brexit on migrant labour flows. Immediate impacting factors will be the growth in overt anti-migrant sentiment and perceptions of how best to pre-empt future labour migration policy
- Whilst the introduction of the NLW increases the attractiveness of work in the UK to EU migrants, the increase in the rates has been more than counteracted by the fall in the value of the pound in relation to the euro

The consequences have been:

- A smaller pool of workers to select from resulting in a lower quality and English levels
- Increased labour sourcing costs as labour providers must invest more in advertising and recruitment costs
- Higher turnover as workers are presented with availability of other work options
- Peak period supply challenges
- Increasing focus on workforce planning and “employer of choice” strategies to source and secure labour supply

Point 3.3 – Certain sectors of UK horticulture are debating the merits of the reintroduction of a student workers scheme for workers outside of the EU. The perceived benefits are that:

- It provides a ready source of workers into work that does not appeal to a UK labour market
- The student workers are tied by visa restrictions to the farm, ensuring that the grower is guaranteed a workforce for the harvest
- Student workers will generally be under the age of 25, entitling them to the lower rate of the NMW
- The workforce is young, fit and, coming from agricultural colleges, used to and interested in farming and horticulture
- It enables long standing relationships to be formed between UK growers and international agricultural colleges and students who go onto work in agriculture in their own countries

However the converse arguments are that:

- Labour Users who had not used such schemes previously would now be attracted because of the savings of paying the National Minimum Wage to these young workers as opposed to the National Living Wage. Consequently such a scheme will drive growers towards an indirectly discriminatory recruitment mechanism.
- Seasonal student worker schemes are viewed by many as no more than “official bonded labour schemes” despite the reassurances of those who benefit from their operation. Such workers are bound by visa restrictions (much as those currently on a Domestic Workers in a Private Household visa). With no opportunity to leave and seek employment elsewhere such workers must accept whatever conditions they face. The employer can terminate such workers at will. Problems that arose under previous schemes could flourish because of inadequate scrutiny by official bodies and that workers have no effective access to remedy. As one ALP member has put it to me, *“I have been horrified at the expectations and demands of the supervisor from the growers group. He has obviously been used to dealing with students in the past and expects workers to work excessive hours, to turn up at 5a.m. in the morning with the minimum of notice, always to be readily available to work whenever he wishes and generally do exactly what he wants otherwise they are dismissed.”*
- Seasonal workers’ schemes whilst delivering perceived immediate short term benefits are not conducive to driving sustained efficiency and productivity. Having now operated in a post Seasonal Agricultural Workers Scheme environment, successful growers have found that this is achieved by investing in training of seasonal workers, developing engagement and maximising year on year return of experienced, reliable and high performing workers.

Point 3.3 – There should be a review of NMW policy where this inhibits UK industry to source an adequate labour supply. Two such areas are the provision of accommodation and the provision of transport to and from work.

3.3.1 - Provision of accommodation and the impact of the “Accommodation Offset” in limiting the supply of labour to the UK

For migrant workers coming to the UK, their primary priorities are finding a job and finding somewhere to live. The NMW Accommodation Offset levels inhibit employers from legally supporting their workers to find accommodation and limits labour flow to the UK. Please see the account provided by an ALP member in Appendix 1.

Under the accommodation offset arrangements, employers who provide accommodation to their workers can count up to a specified amount, £37.45 a week from October 2015 as payment towards the minimum wage.

Historically, many labour providers offered accommodation as an option to incoming workers. The accommodation offset arrangements were not understood and they were rarely enforced. Enforcement by the Gangmasters Licensing Authority changed this. Almost all labour providers that did provide accommodation ceased to do so. Most labour providers now choose to do nothing, leaving workers to make their own arrangements.

The level of the accommodation offset means that employers economically cannot legally provide accommodation to their own workers paid at or around NMW other than in the most basic forms of accommodation.

The impact of the level of the accommodation offset on workers is that:

- When provided by housing by employers they can only be accommodated in caravans, mobile homes, hostel style accommodation or houses of multiple occupation with multiple workers sharing a living space
- They are left to the vagaries of the open market prey to the exploitation of those seeking to exploit vulnerable individuals

The impact of the level of the accommodation offset on employers:

- It is not economically viable to invest in building / adapting / improving accommodation for workers
- They are unable to enter into arrangements with letting agents to supply accommodation to their workers

The 2013 LPC review of the accommodation offset correctly found that the provision of accommodation by employers had decreased which the LPC described as a “concerning trend in cases where it was beneficial to both employer and employee” and that “a higher offset would help encourage mutually beneficial provision of accommodation.” The LPC confirmed that it would continue with its “signalled intention to increase its level when there were real increases in the NMW.”

However the increase recommended by the LPC for the October 2016 NMW rates and accepted by the government, whilst helpful, is merely tinkering around the edges.

There should be a further LPC consultation with employers and representative trade associations together with a working group to develop proposals regarding the accommodation offset to be considered by the LPC which:

- Are fair to workers and protects them from exploitative landlords and employers
- Enables employers to invest in developing higher standards of accommodation for workers
- Enables employers to provide accommodation to workers
- Assists in encouraging supply of labour to the UK
- Recognises the difference where worker must live in employer provided accommodation or has a choice over taking the accommodation.

The LPC should take into consideration the currently developing accommodation certification scheme being led by a number of retailers, the Fresh Produce Consortium and others. Independent, professional certification of accommodation against a set of technical standards should allow for the operation of varying levels of the accommodation offset to be applied.

3.3.2 - The impact of NMW rules in limiting the ability of employers to offer transport to work to workers

The provision of Transport continues to be not only a substantial expense but also has competitive implications. Compared to other LPs who do not have to subsidise transport, we seem to be very expensive. However, I believe there are fundamental issues with the way they are operating. I heard about a competitor who buys up vehicles for £400.00 to £500.00 and gives/ rents them to a worker at a charge of £35.00 per week. This worker then is responsible for the cost of fuel and charges other passengers accordingly. I am not sure who owns the vehicles and who is responsible for vehicle duty, insurance and MOTs. However there is no way that any passengers will be covered by the vehicles insurance. This also encourages a situation where one individual, the driver, controls who goes to work and also what they pay which leads to potential for abuse and exploitation.

Other problems with not being allowed to make deductions from wages and charging people cash is that some workers cannot afford to go to work if they are charged daily. On the other hand if they have to pay in cash weekly you then have a situation where people have a large amount of cash and are vulnerable to assault and theft. There is also the problem of knowing how much cash has been deducted and is subsequently declared to HMRC. Deducting cash from wages avoids these problems as it is completely transparent. *ALP Member July 2016*

This issue describes a situation where a labour provider operates a voluntary provision of transport to and from work for workers and.

- The employer makes no profit from the transport service it provides; and
- The workers are wholly free to choose to use it or not; and
- If the workers do choose to use this service, they would pay, for illustrative purposes, £5 a day. Market forces dictate that clients do not pay sufficiently for free transport to be provided, in any case, free provision of transport by employers is the exception rather than the norm.
- The charge, with the prior signed authority of the workers, is deducted from workers' pay in the week following that in which the transport is used.

Labour providers would prefer not to have to provide a transport to work service due to the legal, operational and administrative burdens involved but are obligated to:

- To deliver workers to factories and farms in predominantly rural areas not serviced by public transport
- To provide access to work for workers who do not have their own means of travel

Since 2007 HMRC interpretation has been that the deductions of such sums did reduce pay for NMW calculation purposes. However, HMRC does accept that, if the workers were paid their remuneration and then charged in cash, or by way of direct debit, for the (optional) transport charge, the sums would not stand to be deducted for the purposes of calculating the NMW.

This has resulted in significant operational difficulties for labour providers (see submissions at Appendix 2). Many have withdrawn from providing transport to work denying access to work to those workers unable to source transport themselves.

LPC is requested to recommend the introduction of a process whereby unintended consequences of NMW legislation which impose burdens on business and/or have negative consequences on low paid workers may be discussed and resolutions – such as HMRC agreeing not to enforce such “technical” breaches – may be developed and formally agreed.

4. National Minimum Wage Guidance, Engagement and Enforcement

Point 4.1 Guidance - Government NMW guidance has improved. GOV.UK generally does a good job in getting the basics of the NMW across. Whilst not accessible from GOV.UK and consequently harder to find, the 56 page BIS guidance [Calculating the Minimum Wage](#) provides useful additional information for workers.

Point 4.2 Engagement with BIS and HMRC - As per good practice in other government departments (see ECHO - Employer Consultation with the Home Office) the ALP proposes that trade associations representing businesses operating in low pay sectors should be able to:

- Meet formally and regularly (every 6 months) as a group with appropriate individuals within BIS and HMRC to raise and address policy matters
- Access and work with NMW Technical Advisors to develop their own sector relevant guidance and to assist with complex and challenging issues.

Point 4.3 - Government NMW name and shame policy - ALP supports a name and shame policy but asserts that the current system is heavy handed and disproportionate. There is a world of difference between reputable companies with a good reputation who inadvertently fall foul of a complex technical breach of NMW where guidance is absent and those businesses which deliberately set out to pay workers below the NMW. It is the latter, not the former to whom enforcement activities should be directed and who should be named and shamed. The Government should comply with the [Regulators Code](#) in that “Regulators should choose proportionate approaches to those they regulate, based on relevant factors including, for example, business size and capacity.”

Point 4.4 – Reporting non-payment of NMW - There is a disconnect in providing access to remedy for workers who are not paid the national minimum wage.

The main GOV.UK NMW webpages direct individuals to the Acas helpline. Acas [policy](#) on sharing information does not indicate that relevant information on non-compliance is forwarded to HMRC NMW Enforcement. However it is understood that this does take place. If so, then this should be made clear on the main NMW webpages.

There is a GOV.UK Pay and work rights complaints webpage at <https://www.gov.uk/government/publications/pay-and-work-rights-complaints-individuals> : but this is not linked to from the main NMW webpages. There is a complaint form to complete and submit but there is no indication as to whom this form will be sent or what will happen to the complaint once it has been submitted.

Point 4.5 – NMW Enforcement - The ALP has been unconvinced for many years about the effectiveness of NMW enforcement by HMRC.

An examination of [NMW offender name and shame lists](#) shows that attention has appeared focused on addressing minor technical misdemeanours rather than addressing sectors and businesses which wholly ignore and are contemptuous of NMW legislation.

The Migration Advisory Committee (MAC) report [Migrants in low-skilled work](#) found that, "There is the risk of a continuum of exploitation starting with failure to pay minimum wages and ensure decent working conditions, leading to workers being forced to accept sub-standard accommodation, being forced to pay for things that they do not need through deductions from their wages, having their passport retained, and losing both work and accommodation with no prior notice. MAC recommended that resourcing for enforcement activities needs to be enhanced and that "Incentives to encourage compliance need to be improved. There is little incentive for rogue employers to be compliant given the minimal chance of inspection and even smaller risk of prosecution."

The ALP supports the establishment through The Immigration Act 2016 of the role of Director of Labour Market Enforcement to bring a focus on coordinated, intelligence-led work across the Employment Agencies Standards Inspectorate (EAS); HM Revenue and Customs (HMRC) National Minimum Wage (NMW) team and the Gangmasters Licensing Authority (GLA) with an intelligence hub and associated data sharing gateways to identify trends/ patterns in areas of the economy where workers are at risk of exploitation.

The ALP with other bodies has formed a Labour Market Enforcement Roundtable to engage with the Director of Labour Market Enforcement and the enforcement bodies.

Appendix 1

Provision of optional accommodation by the Employer

Submission by: Bernard Gaughan, Total Labour Solutions

I am the proprietor of Total Labour Solutions, a labour provider business which operates throughout Central and Southern Scotland. We have over 30 years' experience of supplying workers with accommodation. East Lothian, where we are based, has the highest property prices in Scotland outside Edinburgh. My wife has a property company, Tarn Properties, from which we rent 3 houses for £1400.00 per month. This is at least £600 per month less than could be obtained on the local market. In addition we have to pay £4000 per annum Council tax on these properties and HMO licence fees of £675.00 and an average of £100.00 per month on maintaining the gardens. In total, the opportunity cost of using these 3 properties is in excess of £13,000.00 per year.

Over the years I have encountered anomalies regarding accommodation:-

- A worker earning the minimum wage for a portion of the year and in excess of £15.00 per hour when paid on a piece-rate basis later in the year.
- People in the one property earning different rates of pay.

What would the Low Pay Commission recommend that I do in the above 2 instances?

Two years ago I was approached by a worker and asked if I would be prepared to rent him and his family a house that was due to become vacant. I explained that because of the accommodation offset rules, the maximum rent we could charge would be insufficient to meet the costs of the house. They went into accommodation for homeless families and he, his wife and 3 children were housed in a double and a single room, with shared cooking, toilet and washing facilities. After 6 weeks he obtained a private let and is now living in a 3 bedroom flat and receiving both rent and council tax allowance.

2 of my children are living in Glasgow and Edinburgh and they currently pay £85.00 to £100.00 per week rent plus Council tax. Now while I am not advocating that I charge my workers similar rents to my children, I think the example illustrates that the current amount permitted is completely unrealistic.

I believe that a crucial factor for the Low Pay Commission to take into account is whether or not accommodation is conditional on the workers doing their job. This is a completely different scenario to ourselves, where workers are free to find their own accommodation. We supply accommodation to workers, not out of choice but necessity. In an area such as East Lothian there is great shortage of suitable rented accommodation. The requirement of a substantial deposit, not having a bank account and being unable to supply references, make it impossible for new arrivals to find accommodation themselves.

I fully appreciate that the system needs to be monitored as it is a potential opportunity for employers to exploit workers, I am only too well aware that many workers are housed in filthy, dangerous, unacceptable and grossly overcrowded conditions. I myself have witnessed:-

- 4 people living in a two berth caravan with no electricity or running water on a fruit farm in Angus.
- 17 people living in a 4 bedroom flat in Edinburgh which had only 1 toilet.

However I am convinced that the accommodation offset is not only an unsuitable and unfair means of doing so but it is totally ineffective. Indeed it very often drives some of the most vulnerable people – migrant workers arriving in the UK with limited English – into the hands of unscrupulous landlords who house them illegally in grossly overcrowded and unsafe properties.

The most effective action is for Local authorities to be much more rigorous in enforcing and inspecting the requirement for HMO licenses. Any property housing more than 2 "units" is required to hold a HMO. Not only are these properties regularly inspected by the Fire Brigade and Environmental Health department but in our case, are also inspected by the Gangmasters Licensing Authority (GLA) and some of our customers when they conduct their annual inspection audits on us. (another reason why the remit of the GLA should be broadened to include all sectors using agency workers). However a HMO inspector in Edinburgh once told me that they were often reluctant to take action because if they condemned accommodation, Edinburgh City Council then had the legal responsibility for housing the inhabitants.

The reality is that people who want to exploit workers will always do so and because they operate below the radar will very rarely be caught. In contrast people like ourselves, incur a lot of hassle and problems by supplying accommodation and risk prosecution from the Local Authority and even the loss of our GLA license for the slightest oversight. All of this while grossly subsidising the accommodation. Is it any wonder that labour providers are giving up supplying accommodation?

Out of curiosity, I phoned a local camp site, Seton Sands, and was quoted charges of £75.00 per person per week for 4 people pitching a 4man tent and £1130.00 for a 6 berth static caravan. In other words the Low Pay commission think it acceptable for the accommodation offset allowance to be set at 50% of the cost of living in a tent!

Appendix 2

Extracts from 2013 ALP Submission to LPC Consultation

Optional use of Employer provided Transport

Submission by: Lionel Sheffield, Director, Rapid Recruitment Ltd, Wisbech, Cambs

RE. -DEDUCTIONS FOR TRANSPORT FROM WORKERS PAY.

I am the director of an employment agency, that supplies workers to a number of factories in the Cambridgeshire / Norfolk area. Like many agencies, we have traditionally supplied transport by minibus for many of our staff. Work is often in rural areas and the majority of workers do not have their own cars.

The 5 minibuses that we have are registered Public Service Vehicles and are driven by drivers with PSV licenses. Workers get to work safely and securely. We charge between £3.50 and £5.50 for a 2 way journey, depending on where they are going. The distances travelled range from 10 to 40 miles. Running the transport operation of the business costs us £5k - £10k p.a.

However, there is a problem. The HMRC have ruled that employers cannot deduct the workers' transport charges from their wages. The HMRC argue that this is because deductions would take workers' pay below the national minimum wage. Instead, we now have to collect the money as cash from the workers and this has become increasingly burdensome. Large amounts of our office staff's time and resources were spent organising and collecting transport charges. It is an example of red tape bureaucracy at its worst.

It is also tiresome for our temps. to have to trek to our offices every week to pay. Inevitably, some transport charges are never paid.

We would rather not provide transport. But, many of our clients are in rural locations and 95% of staff and candidates do not have their own transport. If we were to have stopped providing transport, some staff would probably find a way of getting to work, but probably in old cars, which will be expensive to run, some may be uninsured and driven often by people inexperienced of driving in this country. Whereas with us, they get to work in an insured minibus, driven by an experienced PSV driver, at a cost much cheaper than running their own car; also, there are emissions from only one vehicle as opposed to the 5 or 6 vehicles used to get 15 people to work. Our transport is voluntary and the deductions from wages are clear and transparent for all to see.

As a business, the burden of having to monitor the collection of transport charges, paid by cash, is too great. We don't want to stop providing transport, but we may have to.

We wouldn't stop though if we were allowed to simply collect the wages from deducting the charge from the staff's wages. Travelling in our minibuses is voluntary and by deducting from wages, payment is transparent and clearly shown on workers' payslips.

As they stand, the regulations are bureaucratic, illogical and have unintended consequences. The rule is there because the HMRC argue that deductions take workers' wages below the NMW. Yet, they still have to pay for their transport, but with the current rules, they can only do so once they have received their wages. If they travel in their own car, that costs them money even before they have received their wages. It is nonsensical. They would prefer to have the charge deducted from the wages; it is clearer and more simple. For the business, it is much less bureaucratic and efficient.

Submission by: Kevin McCormick FIRP, KHS Personnel Ltd Bridge Recruitment Ltd, City House Stanford St Nottingham NG1 7BQ

RE. -DEDUCTIONS FOR TRANSPORT FROM WORKERS PAY.

Report on the Ramifications of the HMRC and NMW Restrictions on the Deductions of Travel from the Wages of Temporary Staff

Along with many agencies, KHS provided various forms of transport sometimes based on in-house travel arrangements with mini buses and latterly PSV vehicles, for a nominal and always lesser charge than would have been possible for temporary staff using public transport. Records were maintained and deductions for travel were made from wages at point of payment, thus ensuring that returns due to KHS (although these never covered the costs) were met in full and that there was no inconvenience to temporary members of staff.

Following the HMRC and NMW guidelines, we struggled to find a convenient way of getting staff to contracts and out of consideration for our clients wishes and our own desire to manage our business

effectively, we decided to continue hiring contractors to transport staff, so that they provided the PCV, PSV licensing, but this necessitated devising a system for payment.

We know that there are a number of systems utilised by labour providers to effect this, including tickets, notional loans etc. but decided that the only effective way was to continue monitoring the number of trips and to charge the travellers weekly in arrears, in cash. I am sure you can imagine the problems that this creates.

When introducing this process, we had to accept a highly more labour intensive operation and the costs inherent in that. What we failed to appreciate, were the losses through unpaid travel. The methodology that we have adopted is as follows:

1. Travel lists are made up, people are told to report to bus collection points, checked on the bus, taken to the client, checked off at the client site, so there can be no doubt as to who has travelled.
2. From this process we get a list of who has travelled when and how many days travel they owe in each week.
3. Payment is made to the temps by BACS, weekly in arrears, as has always been done. Deductions are not made from these payments, at this stage.
4. Whilst it would be better for temps to call in at the office to make payment, due to the work schedule, a great many find that difficult and we would end up dealing with travel expenses throughout every day of every week. Therefore, on Friday of each week, we have to attend various sites and rely on the integrity of the temps to attend, so that they can pay whatever is owing. I should say that the majority of temps are very good in meeting their obligations.
5. There are many reasons why payment isn't made on time, ranging from having had no time to draw out cash, to having had to buy an extra flagon of beer, tax a car, or pay rent.
6. In view of the above, we give extended time, but after two weeks failure to pay, we tend to make payment by way of cash, which is available from the office, or taken to site and at the point of receipt we then ask if they will please make payment for their travel.
7. The problem arises when somebody works one week and doesn't return, or works two or three weeks with repeated excuses and doesn't return, having already received wages paid by BACS into their account. There is no way we can reclaim this money at that stage of the proceedings and frequently we can end up being owed travel expenses for 3,4 or 5 weeks.

That is the nuts and bolts of the situation. What we failed to appreciate when embarking on this, out of necessity, certainly not choice, was the almost universal objections that were raised by the temps we employ. They could not understand why we weren't deducting travel from their wages as we had done, as it made so much more sense. All temps are aware that they have a choice of using our transport or not. We prefer them to use it, because it gives us greater control, but we cannot enforce it. Fortunately our client appreciates that.

That said, temps also appreciate that by utilising travel provided by us, they are saving money on their potential travel costs if done individually and that generally, buses are there to take them to work and to collect them, shortly after the end of the shift, without having to travel to a bus stop "out in the middle of nowhere and wait for rural services".

Nor did we appreciate the hidden cost. Whilst deductions made from travelling temporary staff have never covered the costs of travel, it used to be easier in the days when we ran our own fleet of mini buses for there was a below the line cost, which also created a benefit and enabled us to recoup some cash upon selling older vehicles. Unfortunately, having to use contractors means that there is no below the line cost, it is all above the line, as indeed are the losses which therefore have a marked impact upon profitability.

In conclusion, I would say that in my opinion, HMRC and the NMW have failed to put a realistic evaluation on the travel implications of temporary staff and have simply put in a restriction, which I believe is meant to assist the GLA in weeding out those disreputable Gangmasters and Labour Providers, who have historically overcharged workers for anything and everything that they could provide, by way of PPE, accommodation and transport. This has been done to the detriment of the industry as a whole and all those registered GLA "stakeholders", who are trying to run their businesses effectively.

Everybody knows that however little you earn, there is a cost in going to work, be it in shoe leather, bus fares or petrol. Nobody gets a free ride. Therefore any company paying the minimum wage, should if what has been imposed upon agencies is logical, be making a contribution or covering the travel costs of their employees. This is obviously not practical, but this is actually what is being imposed upon honest, labour providers.