

Services Industrial Professional
and Technical Union (SIPTU)

Submission to the Low Pay

Commission regarding Board

and Lodgings

January 2017

Introduction

SIPTU is Ireland's largest trade union, representing workers in the public and private sectors across a broad range of industries including services, manufacturing, construction, health, transport, utilities, education and local government.

SIPTU wishes to bring the perspective of workers affected by the issue of board and lodgings to bear on the Low Pay Commission's deliberations on the matter of employer deductions from employee wages for board and lodgings.

The largest number of SIPTU members affected by this issue work in the hospitality and agriculture industries. SIPTU is the recognised trade union of hotel, catering, canteen, restaurant, café, food production, food processing and agricultural workers.

The Christmas and New Year period is an ill-advised time during which to seek submissions on an issue which affects hospitality and food workers as it is the busiest time of year for the sectors and poses considerable difficulties in relation to consulting with workers who find it next to impossible to get time to meet with union officials. Notwithstanding the challenges posed by the timing of the public consultation, SIPTU engaged in a wide-scale consultation with members on board and lodgings and wishes to highlight a number of issues and concerns to the Commission. We are happy to meet with the Commission to elaborate on the issues raised in this submission and any other related matters which the Commission may wish to discuss.

Sectoral Collective Bargaining

As referenced in the information document on the Low Pay Commission's consultation website¹, heretofore the matter of the provision of board and lodgings and the rate of any deductions pertaining was the subject of national sectoral collective bargaining within the Joint Labour Committee (JLC) framework.

The Joint Labour Committee framework is the State's industrial relations system for the conduct of sectoral collective bargaining in industries with a high propensity for low pay, worker exploitation and low levels of trade union organisation. In industries so designated, the State has established a system within which employee and employer representatives negotiate statutory minimum wages and conditions, such as board and lodgings. Proposed changes to wages and conditions are subject to public consultation over a prescribed period.

When the prescribed period of public consultation has occurred, and the views expressed have been considered, the Joint Labour Committee sends a proposed Employment Regulation Order (ERO) to the Labour Court. If satisfied that it meets the legislative criteria set out in the Industrial Relations (Amendment) Act 2012, the Labour Court will seek ministerial approval, with review by the Oireachtas. By law, EROs must take regard of a number of pertinent factors including the potential impact of wages and conditions on employment levels, the desirability of maintaining competitiveness, the general level of wages in a sector, and the level of intra-EU competition in that sector. The 2012 Act provides for an enforcement mechanism involving complaints by workers to the Workplace Relations Commission (WRC).

¹ <http://www.lowpaycommission.ie/consultations/board-and-lodgings-note-revised.pdf>

Heretofore, and for a period spanning decades, board and lodgings was a term and condition of employment considered by the JLC system and subject to collective bargaining.

National sectoral bargaining via the JLC system is operating effectively in other low pay industries (e.g. contract cleaning, private security) to the benefit of job creation, competitiveness, productivity and the domestic economy. SIPTU is the employee representative body in the industries where the JLC system is operating effectively.

The JLC system came under attack from an employer group – the Quick Service Food Alliance - and was struck down by the decision of the High Court in *John Grace Fried Chicken Limited v The Catering JLC* [2011]. Legislation was subsequently introduced – the Industrial Relations (Amendment) Act 2012 – to re-instate the JLC system and place it on a firm constitutional footing including through review by the Executive Branch of Government and through scrutiny by the Oireachtas of EROs.

Statutory Instrument (SI) No 28 of 2014 established JLCs in the hotel, catering and agriculture industries. However, and in spite of SIPTU's on-going efforts to establish JLCs in hospitality, as a consequence of the effective vetoing of the JLC system by hotel, catering and agriculture industry employer bodies, sectoral collective bargaining does not take place in these industries.

Signing the Ministerial Order which re-introduced the JLC for Hotels and the JLCs for Catering on 29th January 2014, Minister for Jobs, Enterprise and Innovation, Richard Bruton TD said,

"For vulnerable workers, the advantage of the JLCs is that they see fair terms and conditions such as wage rates, sick pay etc. agreed and given effect by Employment Regulation Orders. For employers, the advantage of the JLC system, based on the principle of self-governance, means they can agree and set minimum pay and conditions, agree on work practices which are custom-made to their industry – a flexibility which cannot be achieved by primary legislation."

SIPTU supports the view expressed that the JLC system provides a better and more appropriate framework for employee and employer representatives to deal with the particular issues and circumstances pertaining in an industry at a point in time than primary legislation.

The issue of board and lodgings as it presents itself in various industries is an ideal issue to be addressed by means of national sectoral collective bargaining by a Joint Labour Committee for the relevant industry.

With respect, therefore, SIPTU would request that the Commission would use its influence to encourage the re-establishment of collectively bargained Employment Regulation Orders in industries where board and lodgings are a condition of employment, such as hotels, catering and agriculture. SIPTU is of the view that if the Low Pay Commission were to involve itself (by way of recommending primary legislation on board and lodgings, or amendments to same), in matters which are proper to, and have traditionally been addressed by, sectoral collective bargaining that it would act to undermine the State's established industrial relations machinery for the setting of such terms and conditions.

Furthermore, it would put Ireland outside the norm which pertains in most EU, EEA and OECD countries whereby the provision of board and lodgings in the workplace is a matter for social dialogue and the subject of sectoral collective bargaining between employers and employee representatives in particular industries and sectors.

In the event of the continued refusal of employer bodies (such as the Irish Hotels Federation, the Restaurants Association of Ireland, the Irish Farmers Association and IBEC) to engage in the Joint Labour Committee process, SIPTU calls on the Low Pay Commission to recommend that the Oireachtas introduce appropriate measures so as to guide the Labour Court to deal with the matter of board and lodgings and that legislation be introduced to re-enact the provisions of Section 11 of the Industrial Relations Act 1969 to enable the Labour Court to set fair provisions in respect of board and lodgings after consultations with bodies that are representative of employers and employees for the class, type or group of workers affected.

International Labour Convention C172 Working Conditions (Hotels and Restaurants) Convention

Not alone does the veto by the Irish employer bodies contravene the wishes of the Oireachtas and public policy within this jurisdiction, it also obstructs the Irish State in meeting various international obligations including ILO Conventions. The Irish State is a signatory to ILO Convention - Working Conditions, (Hotels and Restaurants) Convention 1991 (No172) – which states:

“Noting that the particular conditions characterising work in hotels, restaurants and similar establishments make it desirable to improve the application of these Conventions and Recommendations in these categories of establishments and to supplement them by specific standards designed to enable workers enjoy a status corresponding to their role in these rapidly expanding categories of establishments and to attract new workers to them, by improving working conditions, training and career prospects, and noting that collective bargaining is an effective means of determining conditions of work in this Sector”

Paucity of Data

The Low Pay Commission's information document states that:

‘There is no reliable data as to the number of employees who are impacted by the board and lodgings provision in the NMW’².

The prospect that the Commission may consider making recommendations in the absence of such data is deeply concerning.

At a minimum, SIPTU calls on the Low Pay Commission to ensure that the necessary steps are taken to address this deficiency. In the absence of objective data, it is imperative to exercise caution.

SIPTU is very concerned that it is currently not possible for the Low Pay Commission to measure or anticipate the extent or degree to which any recommended change to the status quo might have a detrimental impact on low paid workers, in-work poverty and social deprivation of affected workers, the majority of whom are women, young and migrant workers.

² Ibid

Lodgings

While the provision of lodgings may have been common place in the past, in SIPTU's experience, it is now somewhat of a rare occurrence. However, where it does occur, it tends to involve a highly disproportionate number of migrant workers, particularly migrant workers requiring an employment permit in order to work in this country.

Migrant workers, particularly those requiring an employment permit, are especially vulnerable to exploitation by unscrupulous employers, owing to a lack of awareness about employment rights here, language difficulties and cultural issues and/or the fear of becoming undocumented involuntarily.

No definition of 'board' and 'lodgings'

Currently there is no definition whatsoever of what constitutes and what does not constitute 'board' and 'lodgings'. In the absence of definitions, what is required is that appropriate definitions be arrived at through collective bargaining by the social partners. Ideally these definitions would be clearly set out in Employment Regulation Orders that are freely available for employees and employers so that everyone has a shared understanding of what is acceptable and what is not acceptable in terms of provision and standards in respect of accommodation and meals in the workplace. Further, what is then required is a wide scale education and awareness campaign so that employers know their obligations and workers know their rights and how to vindicate them.

In other jurisdictions, the social partners have agreed statutory definitions of what constitutes an adequate meal and accommodation. They have also agreed on appropriate legal sanctions against employers who are in breach of regulations. There are numerous examples of definitions to draw upon internationally, such as in Australia where, by definition, lodgings means a single private room for an employee rather than a shared room in which to sleep.³

At a minimum, a single private room with heating, wash and toilet facilities which are private and facilities for cooking and laundry are what is required by definition in Ireland.

Abuse

SIPTU is aware of cases in recent years where the Health and Safety Authority had to step in to instruct employers to ameliorate situations of extreme sub-standard lodgings for workers. In one case in the Midlands which was dealt with by the HSA, a number of hotel workers were forced to sleep in a room in a 'portacabin' on the grounds of a hotel. Other cases, particularly affecting agricultural workers, involved migrant workers, mainly women workers, being 'housed' in grossly sub-standard mobile homes and caravans on farms and being deducted full board and lodgings by their employers. In late 2016 a SIPTU organiser visited lodgings provided by an employer in Co. Louth that housed a large number of migrant workers in conditions described by the official as 'total squalor'. The house had no heating whatsoever despite it being the middle of winter.

Currently, there is a lack of specific regulation regarding the nature and quality of board and lodgings that employers provide. Standards for adequacy need to be placed on a statutory footing. In addition, there needs to be a registry of employers who take deductions for board and lodgings and regular official

³ Information from United Voice trade union, Australia

inspections by the Health and Safety Authority and other independent State bodies to examine for building regulations and health and safety standards.

SIPTU calls on the Low Pay Commission to support a proper inspection system for lodgings, involving the relevant state inspection authorities.

Only 16% of workers who pay for board believe that they are provided with proper meals

In an online survey of workers in Ireland from whom deductions are made for meals, only 16% said the meals for which their employers deduct wages from their earnings are proper meals.

As with lodgings, a system needs to be put in place whereby adequate meals are defined and employees are protected against unscrupulous employers who may abuse the provisions in the legislation to profit from low paid vulnerable workers.

Opt In/Opt Out for Provision of Board

It should not be lawful for an employer to make a deduction for board that is sub-standard, inadequate, unsafe, unwanted or not provided. SIPTU is aware of hundreds of workplaces where the provision of board meets one or more of the aforementioned descriptions.

Workers regularly advise SIPTU Officials of situations where the only 'meal' provided by their employer is the left-overs from a meal or function on the previous day or from a previous serving e.g. sandwiches from a wedding the night before or breakfast items only available all day or soup as a dinner meal. During our consultations, we frequently heard workers describe hot meals provided to staff in their workplace which are a mixture of a number of left over dishes. The meals provided to staff would not be on the menu for paying guests. A hotel in Dublin deducts full board for the provision of the exact same 'chicken' curry (made from reconstituted chicken) lunch every day of the year. Due to the lack of nutrition and poor edibility, staff do not eat the meal except maybe for casual staff.

Based on wide scale experience of bad employer behaviour in respect of the provision of and deduction for board, SIPTU's position is that any provision of board should be on a voluntary basis with the express agreement of the employee/ his or her representative and the employer.

International Comparisons

In most EU and OECD countries the matter of board and lodgings is the subject of sectoral and/or enterprise based collective bargaining by employer and employee representatives.

The information note makes reference to the fact that in the United Kingdom an accommodation offset is included in the minimum wage framework whereas board is not⁴. It is therefore unlawful to make a deduction for meals in Northern Ireland, England, Scotland and Wales. Instead, employers typically absorb the cost of providing food to employees in the workplace during working hours.

⁴ <http://www.lowpaycommission.ie/consultations/board-and-lodgings-note-revised.pdf>

In Denmark, where the social partners have collectively bargained a provision for an employer to make a lawful deduction for meals, the maximum deduction is €1.61 per meal and the national minimum wage starting rate for an unskilled adult hotel worker is €15.94 per hour.

No increase in the rate of deductions

SIPTU's position that there is no justifiable basis for an increase in the amounts which can be deducted for board and lodgings.

Numerous studies have shown that hospitality workers in Ireland are at a significant disadvantage in terms of earnings and disposable income in comparison to hospitality workers in other EU and EEA countries. Employee compensation (or labour costs) in the Irish hospitality sector rank 12th out of the 14 EU countries. Irish hospitality wages are 20% below the average of the EU-15 countries. They are 26% below one of our peer groups – Northern and Central European economies (which excludes the poorer Mediterranean countries) and they are 36% below other small open economies (Austria, Belgium, Denmark, Finland and Sweden). Compared to their fellow workers in other European countries, Irish workers in the hospitality sector are ultra-low paid.⁵

Data from the Central Statistics Office shows that wages and weekly income have stagnated in the hospitality sector despite a dramatic recovery in profits and enterprise activity. Between 2008 and 2016 average weekly earnings have fallen from €334 to €321 while profits are over 40% above their pre-crash levels. Between 2014 and the first quarter of 2016, restaurants and catering has seen an increase of 19.2% in real gross value added. In the same period hotels increased by 22.3%. This is strong indication that profits are continuing to grow at a brisk pace.

Research undertaken by the think-tank TASC highlights that:

'In 2015 the average weekly wage in the Accommodation and Food Services sector was €324.86, only just over half of the national average of €697.52 per week'⁶.

The decrease in average earnings of hospitality workers in Ireland since the employers in the industries have effectively refused to operate the JLC system has been very dramatic and significantly out of step with workers in low pay industries that avail of the many advantages of the JLC mechanism.

Following the temporary dismantlement of the JLC system in 2011, the rate of pay for hospitality workers dropped from an industry norm of €9.08 per hour to the minimum wage rate at the time of €8.65. In the absence of functioning JLCs for the hotel and catering industries, the small but significant wage premium which hospitality workers enjoyed over the national minimum wage has been eroded so that now it is the norm for an adult, skilled and experienced hospitality worker to earn only the national minimum wage rate which in 2017 stands at €9.25 per hour.

Low-paid workers in this sector have already been placed at a disadvantage by the failure of employers in many instances to maintain pre-2011 industry rates of pay and must not be further penalised by the imposition of higher deductions for board and lodgings under the current consultation.

The prospect of higher deductions for board and lodgings must also be seen within the context of other disproportionate benefits which hospitality industry employers already enjoy, i.e. a reduced VAT rate of 9% which appears is largely being pocketed rather than passed on to customers, an increased spend on

⁵ 'Enforced Flexibility? – Working in Ireland today', James Wickham and Alicja Bobek, 2016, TASC, p27

tourism promotion and effective wage subsidisation through the Family Income Supplement (FIS). Rather than countenancing further concessions, the Low Pay Commission should exhort the industry to bargain adequate working hours and pay to allow families earn a decent standard of living.

The national minimum wage has been increased on the basis that the changes are sustainable by employers within the Irish economy. The minimum wage of €9.25 falls short of the Living Wage rate of €11.50⁷ per hour which, given full-time working hours, would provide an adequate income to enable workers to afford a socially acceptable minimum standard of living. The imposition of higher deductions for board and lodgings should not be used as a way to claw back the necessary and insufficient national minimum wage gains to date.

Any increase in deductions for board and lodgings would be an unaffordable squeeze on already low take-home pay.

⁶ See methodology underpinning the Living Wage benchmark rate developed by the Minimum Wage Technical

⁷ The construction of the estimated 'Living Wage' is based on an examination of single adult households and the cost for a basket of over 2,000 items (Living Wage Technical Group, 2015a). Focus groups and expert opinion informed the decision of which items were deemed essential for a minimum standard of living. The items examined include food, furniture, housing and transport. Separate costs were calculated for individuals living in rural areas, towns, cities and the Dublin area. The national living wage was then calculated by averaging the minimum income needed to afford the essential living standard in each of these four regions, weighted by the proportion of the labour force resident in each region. See methodology underpinning the Living Wage benchmark rate developed by the Living Wage Technical Group, http://www.livingwage.ie/download/pdf/living_wage_technical_document_july_2015.pdf

Summary

1. The issue of the provision of and deductions for board and lodgings has been and should remain a matter for social dialogue and collective bargaining by the representatives of employees and employers in a sector.
2. Board and lodgings is a term and condition of employment addressed via social dialogue in most other EU and OECD countries.
3. There is a paucity of official data available to the Low Pay Commission at this point in time. Without official data it is not possible for a state body to gauge the impact of recommendations on earnings, in-work poverty and social deprivation. Equally, the potential impact on the Exchequer of subsidies to low pay employers through the social welfare system is unknown.
4. There is no definition of what constitutes and does not constitute board and lodgings. Clear definitions need to be agreed. The best vehicle for setting forth definitions is an Employment Regulation Order.
5. The overwhelming majority of workers who have deductions made from their wages for board do not receive appropriate meals therefore any provision of board should be on a voluntary basis with the express agreement of the employee/ his or her representative and the employer.
6. There is no inspection programme of the lodgings provided by employers which attract a deduction from employees' wages. A robust inspection and monitoring programme by state agencies is required in order to ensure that lodgings are safe and meet the needs of workers.
7. Workers in the Irish hospitality are extremely low paid. Hospitality workers in Ireland are lower paid than workers in comparator industries here and their counterparts in other EU countries. This is due in large part to the refusal of employers in Ireland to engage in sectoral or enterprise based collective bargaining on wages and conditions.
8. The imposition of higher deductions for board and lodgings should not be used as a way to claw back the necessary and insufficient minimum wage gains to date.
9. There is no justification or basis for the Low Pay Commission to issue a recommendation to increase the rates that are deductible from low paid workers for board or for lodgings.



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