

APPENDIX F: FREELANCES AND UNION DUTIES

DTI REVIEW OF FACILITIES FOR WORKPLACE REPRESENTATIVES: BECTU'S RESPONSE

1. BECTU is the trade union for workers (other than performers and journalists) in the audiovisual and live entertainment sectors. A majority of our members are permanently employed but more than a third are freelances or atypical workers - with a range of particular problems concerning facilities for union representatives.
2. Many of our general views on facilities for representatives are well reflected by the TUC. We therefore concentrate in the submission on the particular problems facing freelance members. These concerns span all of the specific issues and questions raised in the Consultation Document - time off, training, facilities, and guidance/regulations. We therefore set out our concerns in the following paragraphs rather than repeating them under each separate heading. These comments should be taken as addressing each of the more specific chapters and related questions.

FACILITIES FOR REPRESENTATIVES OF FREELANCE WORKERS

3. We represent over 10,000 freelance or atypical workers. They work particularly in the film and television industry but in other areas as well. Their contracts can vary from a single day (eg on a television commercial) to many months (eg on a feature film). They will sometimes work for companies which have an established workplace and staff (eg broadcasters such as BBC and ITV); and sometimes on projects (eg films or independent productions for television) where most or all of the workplace is freelance. Such projects could involve working in established workplaces (eg film studios hired for the production) or in temporary workplaces (eg locations).
4. The common problem for freelances in all such situations is that the temporary nature of employment and the workforce does not allow for a permanent structure of trade union representation. Freelances are faced with the need to develop ad-hoc and temporary representation on each and every job they do or - very often - to forego any system of representation from within the freelance workforce. This is a serious problem and may well be reflected in other sectors characterised by freelance/atypical work.
5. There is a parallel in the area of training (ie vocational rather than TU training). Employers of predominantly freelance labour will not find it worthwhile to develop in-house training and to invest in workers who will only be engaged on a temporary basis. The solution has been to develop common pools of funding (eg the freelance training fund in television) which are then used - via the national training organisation Skillset - to provide training for freelances. Through this common approach the whole industry gains - the freelances by means of individually improved skills and employers by means of a developing skillsbase.
6. While the general principle (a pooling of resources to provide common benefits) is admirable, there is no easy transposition of such solutions to the separate issue of

TU facilities, especially when account is taken of the strong underlying public investment in and infrastructure for vocational training.

7. The problems are best illustrated by examples:

- As an illustration of one desirable and workable solution, BECTU has negotiated TU facilities for the freelance workforce on the television series 'The Bill'. In this situation - characterised by a permanent workplace and regular freelances (ie freelances who have regularly renewed contracts) it has been possible through negotiation to achieve facilities/paid time off for freelance representatives which are equivalent to those for staff representatives. The only proviso is that such facilities are only available for representatives while they are under contract (ie they cannot use the facilities nor act as reps between contracts). NB: This has been achieved entirely through negotiation and without any reliance on underlying legal entitlements.
- We are attempting to replicate this approach in other areas with similar characteristics (permanent base, regular freelances) eg the BBC National History Unit, Lee Lighting. However, each such initiative has to be negotiated on its own merits. There is no secure underlying system of entitlement.
- In situations where there are permanent workplaces but an irregular and variable pattern of freelance working, no such solution has been found. Thus, even in film studios (eg Pinewood) where there are TU facilities (a room, paid time-off) for the (small) permanent workforce, these are not available to visiting freelances (who are not engaged by the studios but by production companies hiring studio space).
- For freelances working on one-off projects in varying workplaces (including studios and locations) there are, effectively, no TU facilities for freelance representatives - which means that in a majority of situations there is no representation from within the workforce, who have to rely on the ultimately time-limited back-up of full-time union officials. If an individual freelance does, in this situation, taken on the role of union representative, this is done at their own risk and without any secure system of entitlements to rely on.

SOLUTIONS FOR FREELANCE REPRESENTATIVES

8. There is no easy and ready-made solution to the problems. However, we believe that this consultation should take the opportunity to give careful consideration to proposals such as the following:

- Give rights to external lay representatives or full-time officials to provide on-site representation for the freelance workforce. This is the model already provided for by Regulation 8 of the SRSC Regulations in respect of Equity and the Musicians Union. The attached submission by BECTU to the HSC's consultation on 'Improving Worker Consultation' sets out BECTU's case in this area. We believe consideration could be given to extending this approach not just to safety reps but to freelance union representatives more widely.
- Give facilities/time off rights to freelance representatives within the duration of their contracts ie freelances could act as union reps with access to facilities

while engaged on a contract but not outside of or between contracts. This is the model which we have negotiated on 'The Bill', as described above.

- Allow facilities/time off to be negotiated between unions and employers associations, for subsequent application to all member-companies. This has the advantage of a common approach (as with vocational training) but involves problems of application and enforcement since employers associations do not directly engage the freelances concerned.

9. While recommending these as models for debate and being open to all other relevant proposals, we ask that DTI takes seriously this current gap in the system of facilities for TU representatives and seeks to provide a remedy. A system of facilities for representatives which only addresses the needs of permanently-employed workers is clearly, in our view, inadequate - especially in the light of the growth in atypical working across many sectors of industry. We believe that this consultation should be used as a starting point to remedy these problems.
10. Having set out our concerns above - which should be taken as applying to each of the specific chapters/questions set out in the Consultation Document - we have some limited additional comments on particular questions.

SPECIFIC CONSULTATION QUESTIONS

Q2A: What is the future of workplace representation?

11. We agree with the Government that 'there is a strong business case to engage employees in the running of their employer's organisation, and most good employers involve their workforce in one or more ways'. (paragraph 2.15). We further agree that 'representatives provide a very effective form of employee voice to the workplace' (2.16)
12. Our strong contention is that these arguments apply just as forcefully to freelance/atypical workers as to permanent employees. We believe our concerns on freelances should be addressed in this context.

Q3A: Do you agree that any of these (five specified) issues constitute a significant problem for representatives?

13. We note that 'off-site representation' has been identified as a particular problem issue. This focuses on reps who are responsible for workplaces other than just their own site.
14. While recognising that this can pose particular problems, we would ask for an acknowledgement that there are potentially even greater problems for freelances without any regular workplace and for whom each engagement provides a new set of circumstances. The problems of providing TU representation in this situation are set out above.

Q4A: To what extent do problems with securing time off for training exist and how best should they be addressed?

15. Apart from the general freelance issue outlined above, this is one area where we

have particular concerns for representatives of permanently employed workers as well.

16. Specifically, we have concerns in the area of paid time off for safety representatives undertaking training above basic level.
17. There is a widely recognised system of health and safety training for representatives under the auspices of the TUC. This involves three levels: Stage 1 H&S course (60 hours of guided training); Stage 2 courses (also 60 hours); and 'Stage 3' or the TUC Certificate in Occupational H&S (undertaken over a year).
18. In common with other unions, we have experienced problems in obtaining paid time off for safety representatives to attend Stage 2 and Stage 3 courses. Employers have disputed reps' rights to attend and have argued that such training is excessive and unnecessary for the role they undertake.
19. We recognise that there is a growing body of case law in this area eg Rama v South West Trains (concerning Stage 2); Catten v Department of Social Security (Stage 3); and Debenham v KLM UK Engineering (also Stage 3). All of these cases were successful from the viewpoint of the safety representative. However, the entitlement to undertake more advanced H&S training remains uncertain and employers continue to block access to such courses.
20. We believe that greater legal/regulatory clarity is now needed on access to such training - especially in terms of concepts such as 'necessary' and 'reasonable'. We believe that the benefits of safety representation to the workforce and to industry are well established and that access to such training should therefore be set on a more secure basis. It is no longer acceptable, in our view, that safety reps should have to go to law just to achieve the right of access to training which can be to the benefit of industry as a whole.

Q6A: Do you think the ACAS Code of Practice needs to be updated to reflect modern circumstances?

Q7A: Should the law on workplace representatives be revised?

21. We have set out, in paragraphs 3-10 above, our strong concerns about the lack of entitlements to facilities for representatives of freelance workers. We have also indicated some potential solutions for further debate.
22. We believe - especially in the light of the general growth in atypical working - in the need for a reform of the guidance and regulations in this area so as to provide for clear and unequivocal access to facilities for representatives of freelance workers. Union representation is arguably even more necessary and beneficial for this highly insecure and mobile section of the workforce. We believe that the opportunity should now be taken to address and remedy this problem.

CONCLUSION

23. We hope you will give full consideration to the problems facing freelance workers as outlined above. We further hope that progress can be made in the more specific area of paid time-off for health and safety training above basic level. We look forward to the further progress of the consultation.