

AGENCY REGULATIONS

Q1

Our particular concerns in respect of vulnerable workers in the entertainment sector are for walk-ons (ie film/television extras). We have therefore carefully monitored the working of the 7 day cooling off period since it came into force in April 2008.

The experience of our members is that it has not been effective and does not in any way address the problems they face as a result of the charging of upfront fees. We are not at all surprised that the Employment Agency Standards Inspectorate has continued to receive complaints and has reportedly issued warnings to a number of agencies.

Walk-ons have therefore continued to be vulnerable to fees for entirely spurious services - especially in a context where agents (even reputable ones) cannot in any normal circumstances ever provide them with work within 7 days anyway ie there is never any basis for judging, within this timescale, how genuine and effective an agency might be.

Q2

Of the approaches outlined in the consultation paper, we have a strong preference for 1A since we have consistently argued for a complete ban on upfront fees for work-finding services.

We recognise there is a consequential problem for legitimate publication/directory services in the entertainment sector such as 'Spotlight', who we believe should continue to be allowed to charge for their services. We believe they should be clearly distinguished from agents since they do not proactively match individuals with jobs and receive no consequential fee/commission from hirers/workers. If necessary, we believe the legislation/regulations should be amended to reflect this.

Our reasons for supporting option 1A rest primarily on the arguments outlined in our response to Q3. Additional relevant points are as follows:

- Some agents take on many more walk-ons than there is work available simply in order to maximise their income from upfront fees. Such work as they can find has to be spread extremely thinly among the many walk-ons on their books. This means that when such very limited work is found, they can immediately deduct further fees from these limited earnings - often leaving the walk-on with less than the minimum wage. Agents can lawfully do this since they are not acting as the employer (which is the production company or producer hiring via the agency). We believe this is unacceptable and indicates a gap in the minimum wage legislation in respect of such 'triangular' relationships.

- The problem of upfront fees is compounded by the fact that walk-ons will usually have to register with a number of agencies (perhaps six) rather than one - because many such agencies are sectorally specialised eg in feature films or commercials or photographic work. This simply multiplies the number of fees payable by walk-ons.

We oppose Option 2 since upfront book fees are essentially charges for spurious services. No amount of tightening of the provisions for the cooling off period can address the basic problem that the fees are not justified in the first place.

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Q3

We do not believe the banning of upfront fees would damage legitimate agencies in any way. Our underlying point is that there is simply no justification for upfront book fees for walk-ons and no legitimate agency would charge such fees:

- Walk-ons are typically hired in a different way to other performers. They are typically engaged on a group or collective basis and are not selected as individuals.
- There is no need or justification for a publication/website describing the walk-on's individual characteristics. The production company seeking walk-ons will not make use of such publications/websites, which we believe serve simply as marketing devices for the agencies.

- If a production company - very unusually - ever did require an individual walk-on, they would hire by means of a casting session rather than by using such a publication.

Q4

This question is clearly geared to agencies rather than to representative organisations such as BECTU and we would not, therefore, need to make any revisions to our 'business model'.

We do, however, have one observation about the way in which agencies responded to a previous consultation concerning agency regulations in 2004. At that time it was widely assumed that upfront fees would be banned. Many agencies therefore raised their commission rates in order to compensate. Even though the ban was not in fact introduced at that stage, the increased commission rates remained.

We do not believe any such rise in commission rates can be justified. We believe such rates should if necessary be capped so that they do not reduce walk-ons' earnings to below the minimum wage. This is a significant point since agencies are not acting as employers and are not, therefore, subject to legal redress under the minimum wage legislation.

Q5

We do not believe that the conditions attached to option 1B address the only relevant underlying issue, which is the distinction between legitimate publication/directory services and agencies (as outlined in our response to Q2).

Furthermore, we do not believe these conditions (eg a minimum of 4 acting jobs...) can in any way be effectively monitored. The system proposed is therefore open to abuse even on its own terms, let alone the separate issue of defining publication/directory services.

Q6

For agencies, we do not believe these are any circumstances justifying exemption from such a ban. As indicated in our response to Q2, we recognise that there is a consequential need to define legitimate publication/directory services in a legally separate way to agencies.

Q7

We support the banning of upfront fees and do not wish to advocate any alternative solution.

We do, however, wish to reiterate our continuing additional support for the reintroduction of a licensing system for agents in the entertainment sector in order to underpin the regulations. We further advocate:

- Adequate resources for enforcement via the inspectorate.

- The increased power for EASI to impose financial and other penalties (such as prohibition orders) on agencies failing to comply with the regulations.
- The power for such penalties to be imposed without prior need for a prosecution.
- The right for third parties, specifically including representative organisations such as trade unions, to report complaints on behalf of anonymous individual members (or groups of members) and to receive feedback on EASI's follow-up activity.

Q8

We support a ban on upfront fees for photographic or show reel services - again on the basis that in respect of walk-ons, such fees would be unjustified and spurious. In practice, such 'services' for walk-ons would amount to no more than photographing someone with a digital camera and uploading this to an agency website. Such individual digital images have no more practical relevance to the hiring of walk-ons than do entries in a casting book (as outlined in our response to Q3).