

Unpaid Internships

A note by the Union President – Paul Beaumont

- Imperial College Union has never had a stance on unpaid internships before, though the possibility has been discussed a number of times previously.
- There are Pros and Cons to unpaid internships, and, with the help of other sources, I hope us to have a debate on what Imperial College Union's stance should be, and to what extent we want that to effect the organisations we collaborate or have ties with.

Attached is a paper from the National Union of Students and University and College Union against unpaid internships. I have unfortunately not been able to find any material 'justifying' unpaid internships in quite the same form, but hope below to try balance the arguments slightly.

Cons

- Access – wealthy students can afford to do them whilst poorer students are excluded because they need payment, or to work part-time jobs to support themselves
- They are normally jobs that deserve payment, so why should students – who are working for the company – receive no wage for their efforts?

Pros

- Small charities might not be able to function without them
- The cost to a company of taking on an intern, developing their skills, is real – in that the person looking after the intern is being paid to not do their normal duties
- They give insight into the workings of a hard to access career

Possible things to consider

- Not all unpaid internships may be bad – small charities v big charities v private companies
- What relationship with external organisations this would foster

Discussion

- On the above
- Any potential resolves?



Internships

Advice to students unions
and UCU members

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Introduction

In the last decade there has been a considerable growth in the number of unpaid internships on offer to young people. The phenomenon of unpaid internships inherited from the United States has now become fully ingrained in the UK, with graduates stating that a stint of unpaid work has become the expectation in order to gain employment. Last year an Institute for Public Policy Research Publication titled [‘Why Interns need a fair wage’](#) noted that internships in the UK were on the rise, with more than one in five employers telling the Chartered Institute for Personnel and Development that they planned to hire an intern between April-September 2010. Moreover, evidence is now emerging that internships are getting longer, with less chance of interns securing a job at the end of them. There is a real concern that employers are seeing internships as a way to gain free labour and often, at the end of an interns’ placement, they are simply replaced with another intern.

Despite the growing presence internships have no legal status. There is no jurisdiction in law governing their application, and now there is widespread fear that the expansion of unpaid internships has the potential to further ingrain existing inequalities in the job market, limiting opportunities to those who have the financial and parental support to work unpaid. Simply put; unpaid internships exploit those who can afford to do them, and exclude those who cannot.

There has been a growing focus on unpaid internships in the last year, with the Deputy Prime Minister publishing a new [Social Mobility strategy](#). However little movement has taken place,

and there is widespread disagreement in government about whether to act to rectify unpaid internships which could in many cases be breaking the law.¹

The purpose of this briefing is to inform students' unions and UCU branches about the issues surrounding internships. The briefing outlines NUS and UCU policies on the informal system of unpaid internships and also highlights the development of graduate internship schemes in further and higher education. We provide information on what advice you should be providing to students and what students' unions and UCU branches can do to exert pressure on your institution to encourage good practice with the employers they work with.

NUS, UCU and other interns' rights groups are concerned that many students and graduates are not fully aware of the facts of internships, particularly on their rights to receive fair pay, in line with National Minimum Wage legislation. A survey by Internocracy shows that only 10% of graduates know that unpaid internships are illegal. This briefing aims to provide students with information they need to know about internships and their rights before they enter the job market.

This briefing aims to explain the legal framework and provide branches and students' unions with links to resources to help support students and graduates. This briefing is largely concerned with internships post graduation or taken outside of a students' course. Student placements taken as part of a students' course are exempt from the National Minimum Wage (NMW), and largely do not require remuneration. However, with the increased emphasis on

¹ Cameron and Clegg differ publicly on internship places, BBC News, 23/04/11
<http://www.bbc.co.uk/news/uk-politics-13173505>

'employability', there is likely to be an expansion of short work placement schemes as part of individual courses. As a result, we do offer links to resources to help students unions and UCU members lobby their institution to implement best practice in this area.

Why are NUS and UCU concerned about unpaid internships?

NUS and UCU are concerned about the growing number of unpaid internships. We believe some internships are exploitative forcing students and graduates to undertake long periods of unpaid work with no remuneration. These internships can see students/graduates contributing significant financial benefit to the organization while they are left in additional debt, or forced to take on extra work outside their placement to pay for the experience. Whilst there aren't concrete estimates on the financial contribution of unpaid interns to the UK economy, a Unite the Union report estimated that Parliament alone was saving an estimated £5 million a year from using unpaid internships². NUS and UCU believe internships are further contributing to growing inequality in education and the job market, with those with financial support able to undertake unpaid work, whilst unpaid internships remain inaccessible to those from poorer backgrounds or those who live outside London.

Paid internships or student placements can provide students with valuable experience and networks, without resulting in significant financial hardship. We would encourage more institutions to make these opportunities accessible to students as well as highlighting the long term benefits in terms of graduate employability.

² Unite the Union report into Unpaid internships in UK Parliament, October 2009;
http://www.unitetheunion.org/news_events/2009_archived_press_releases/unfair_working_conditions_of.aspx

NUS and UCU believe that:

- Unpaid internships lead graduates into further debt, unable to make repayments on their student loans, and faced with ever increasing interest payments.
- Socio-economic inequalities are perpetuated through unpaid internships, with those who have access to alternative forms of income or housing in London, able to afford to pursue these opportunities³.
- Unpaid work experience and internships help to undermine the provisions of the NMW, potentially reduce paid opportunities, and affect starting salaries within many industries.

What is an internship?

There is no absolute definition of an internship but it tends to be used to mean a set period (often around three months) of employment in a junior (often graduate level) role. Some internships are paid in line with, or above the National Minimum Wage, others pay below the NMW (perhaps £100 a week), some reimburse travel and/or lunch expenses – and others pay nothing at all.

There is no official or agreed definition of what an internship is, and therefore no definitive data source on the overall number of internships currently operating. However, studies suggest that there has been a growth in unpaid internships since the start of the recession. A possible indication of trends in the supply of internships is provided by higher education leavers' destination data (Higher Education Statistics Agency,

³ IPPR, 'Why Interns Need a Fair Wage', July 2010, pp.7

2010). The most recent survey data (2008/09) showed a rise in the small proportion of all graduates undertaking voluntary or unpaid work six months after graduation, increasing to 1.6 per cent from 1.1 per cent the previous year. Between its inception in July 2009 and September 2010 more than 24,000 vacancies appeared on the Government's Graduate Talent Pool website, with nearly two-thirds paid with a third unpaid or receiving expenses only. The Chartered Institute of Personnel and Development's Labour Market Outlook found that between April and September 2010, 21 per cent of employers planned to hire interns, up from 13 per cent of the employers surveyed in summer 2009⁴.

The increase in unpaid internships has caused concern about the access to the professions, in particular in competitive industries like media, arts, law and politics where there is an over supply of graduates and a under supply of paid employment opportunities⁵. However it appears there is an increasing trend developing where interns are undertaking serial unpaid internships in the quest for employment. Interns Anonymous, an online forum where interns can anonymously relay information about their experiences, submitted evidence to the Low Pay Commission which looked at the issue of unpaid internships in this year's annual report. Interns Anonymous conducted a small-scale survey of ex-interns, in which it received 235 responses. This found most interns surveyed were either in politics and public affairs (20 per cent); charities/non-governmental organisations (20 per cent), or arts and heritage (14 per cent). Around 50 per cent had an internship lasting 1–3 months. For the vast majority the internship did not lead to employment with that organisation (82 per cent) nor did their employer help them with their job search (83 per cent). Where the internship did not lead to a

⁴ Low Pay Commission Report 2011, *NMW*, pp.81-3

⁵ Milburn Report: '*Unleashing Aspiration – the Final Report of the Panel on Fair Access to the Professions*' and *Social Mobility Strategy – Opening Doors, Breaking Barriers*

job in their chosen sector, over 40 per cent were now unemployed and over 23 per cent working in another sector. Moreover, at least 37 percent of respondents had undertaken 3 or more internships.

There has also been a growth in internships across different sectors with large corporations and multinational corporations offering unpaid internships. We have seen third party agencies charging companies to find unpaid interns, like [Inspiring Interns](#), with some taking a percentage of the future earnings from the company for interns that are successful in getting a job with the company they interned with. Worryingly we have seen the [auctioning of internships](#), where students or graduates are encouraged to pay for an unpaid internship opportunity and the growth in international internships where students/graduates are being [sold internships abroad](#) because of difficulties in finding work opportunities here in the UK.

The legal framework

NUS, Intern campaign groups, trade unions and the Low Pay Commission have all raised questions about the illegal nature of many existing internships. We have repeatedly highlighted that many opportunities, including over 2,000 internships advertised on the Government's own Graduate Talent Pool website, are in direct contravention of the National Minimum Wage legislation.

Who is eligible for the national minimum wage?

Many people wrongly assume that internships are not eligible for the national minimum wage (NMW). The term 'intern' has no legal status under NMW legislation and is treated in the same manner as other forms of work experience, meaning many internships exhibit conditions which require the NMW to be paid. Below we have tried to explain the different scenarios that determine whether payment should be received or not.

Getting the NMW does not depend on your job title. For example you are not prevented from qualifying for the NMW by:

- Being called a work experience trainee, an unpaid intern or a volunteer;
- Having your role in the business described as a placement or internship, or unpaid work.

If you are entitled to the NMW, you cannot give up your entitlement even if you agree with your employer to be paid a wage below the NMW.

The meaning of a 'worker'

You will be a worker who is entitled to the NMW if you have either:

- a contract of employment;
- A contract to perform work or provide services personally for your employer.

The contract does not have to be in writing, it can be oral or implied. If you are self-employed you are not entitled to receive the NMW.

The worker test

There are a number of things that can help you determine whether someone should be classified as a worker or whether they are not and are exempt from the NMW.

In most cases it is clear whether an individual is a worker or not but there are borderline cases. In Appendix A we have provided examples of the types of factors a court or tribunal would consider to help them decide whether an individual is a worker. In brief they may ask:

- **Is there a contract?** Either written or oral.
- **Must the work be performed personally?** To be a worker an individual must be obliged to do the work themselves.

- **Is there mutuality of obligations?** Mutuality of obligations means an obligation on the “employer” to provide work and an obligation on the individual to accept that work. For example is there any expectation in relation to terminating the job, or taking holiday.
- **Is the individual self-employed under the contract?** An individual who carries on a profession or business undertaking will not be a worker if the body to whom they are providing work or services is their client or customer under the contract, rather than their employer.

Who is exempt from the NMW?

Almost all individuals who are workers in the UK are entitled to the NMW. The exceptions if you are doing work experience are:

Students

You may not get the NMW if:

- You do work experience as part of a UK-based higher education course, or further education course which qualifies in the legislation.
- Your work experience placement does not exceed one year.

However, this exemption does not cover students who:

- undertake gap year work (so long as you are above compulsory school leaving age)
- undertake work or work experience which is not part of your course

Compulsory school age

If you are of **compulsory school age** and do work experience you are not entitled to the NMW.

Voluntary workers

You will be a voluntary worker if you have an employment contract or contract to perform work or provide services for a charity, voluntary organization, associated fund raising body or statutory body and, under the terms of your employment, you are **not** entitled to and do **not** receive either:

- any monetary payments other than for expenses incurred, or likely to be incurred, in the performance of your duties
- Any benefits in kind other than for subsistence or reasonable accommodation.

Voluntary workers are not entitled to the NMW wage. They can only work for charities, voluntary organizations, associated fund raising bodies or statutory bodies. This covers a large percentage of some advertised unpaid internships. However students and graduates should be encouraged to double check whether the organization they are assisting falls under this category as the organization may appear charitable but not be classified as a charity or one of the other exemptions listed above.

Further advice

In Appendix A. we provide further information on interpreting the National Minimum Wage.

Further guidance can also be found here:

<http://www.agcas.org.uk/assets/download?file=1202&parent=464>

Registering a complaint

You should encourage students to keep records of agreements they make with their employer whilst on work experience, detailing the tasks they are asked to perform and the hours they work. This information can be used as evidence if the person wishes to make a complaint about not having been paid the NMW.

Whilst enforcement from Her Majesty's Revenues and Customs (the body responsible for enforcing the NMW) has been slow there have been some successful court cases brought to [tribunal](#), resulting in the employers in question having to back pay the interns for their work. The two successful tribunals which have been taken to court were supported by the trade unions BECTU and the NUJ. Below is some further information about the NUJ case, along with advice should any student/graduate from your institution wish to take their case to tribunal.

Case Study:

National Union of Journalists

The NUJ has been campaigning on the issue of internships helping union members claim back the National Minimum Wage. The campaign draws together trade unions and other organisations to bring exploitative employers to book, using minimum wage legislation and other legal means, to steadily change internship culture from one of exploitation to one of genuine learning opportunities. Former interns can claim up to six years after they finished their unpaid stint, through the county courts. The NMW rules do not apply, however, to students on work experience placements.

Internships tend to be longer than work experience, with a greater time commitment and deadlines, and involve making a contribution to the work of the organisation. To recover the NMW through an Employment Tribunal, you will need to make a claim no later than three months after payment would have been due.

NUJ member Keri Hudson, 21, was successful at a Central London employment tribunal in May, proving she had a right to be paid for work carried out over several weeks at the My Village Website in late 2010. The tribunal heard that despite the fact she worked each day

from 10am to 6pm and had been personally responsible for and in charge of a team of writers, for training and delegating tasks, collecting briefs, scheduling articles and even for hiring new interns, the company had told her she was not eligible for any pay because they considered her an intern. In her evidence Keri Hudson said she had been asked when the site was taken over by TPG Web Publishing Ltd if she would stay on and work for the new company. She was assured her pay would be fixed. After five more weeks she was informed she would not now be receiving a payment for the work she carried out – she resigned and took out a grievance. With the support of the NUJ she took her case to a tribunal. The tribunal found she was a worker in law even though she didn't have a written contract and was therefore entitled to be paid at least the National Minimum Wage and holiday pay.

There is guidance available as a download document on this web page -

<http://www.nuj.org.uk/innerPagenuj.html?docid=1754>

Taking a case to tribunal

NUS and UCU are encouraging students unions and union branches to alert students and graduates to the legal routes available for redress for unpaid internships which constituted work that should have received the National Minimum Wage.

Interns can take cases to employment tribunals up to three months after their internship finishes or six years later if taken to a county court. Interns will need to demonstrate how their experience fits the 'worker test', highlighting how the experience went beyond the duties and responsibilities commonly found in work experience, and instead was reflective of tasks that a worker would be expected to carry out. A detailed list of what comes under 'the worker test' can be found on page 19.

Further advice on taking a case to tribunal can be found on the following websites:

National Union of Journalists, Cashback for Interns campaign:

<http://www.nuj.org.uk/innerPagenuj.html?docid=1754>

TUC Rights for Interns website:

http://rightsforinterns.worksmart.org.uk/rights/how_can_i_enforce_my_rights_as

Pay and Rights helpline:

http://www.direct.gov.uk/en/DI1/Directories/DG_177940

Pay and Work Rights helpline; 0800 917 2368

What is the situation in higher and further education?

Universities and colleges have been organising student work placements or work-based learning for a number of years. Usually, these are part of formal course requirements.

Although there can be variations in the quality, availability and supervision of undergraduate work placements, there is now a significant body of 'good practice' in the sector. ASET has a number of good practice documents available on its [site](#).

More recently, university careers services have been asked to advise on, or in some cases facilitate, internships for unemployed graduates. In addition NUS and UCU have become aware of more institutions talking about creating graduate internship opportunities either internally or through brokered relations with employers. NUS and UCU welcome genuine attempts by institutions to create meaningful and accessible job opportunities for their students, particularly in the current climate of high youth unemployment. However we are concerned about institutions advertising unpaid opportunities, creating unpaid opportunities internally for graduates, and working with third parties who charge employers to find unpaid interns.

HEFCE have recently funded 8000 graduate internships in a number of different sectors, including life sciences and pharmaceuticals, professional and financial services and engineering construction. A review of the HEFCE scheme is due out shortly and will be available on the HEFCE website [here](#). One of the requirements of the scheme was that 'Employers will be expected to contribute to ensure that graduates are paid to at least the level of the minimum wage.'

Some fear the UK could be pursuing similar patterns to the US where unpaid internships are embraced by the University sector and are heavily prevalent in careers department⁶. However, there is evidence that careers professionals here in the UK are equally uneasy about the consequences of unpaid internships. A recent poll conducted by the Association of Graduate Careers Advisory Services, showed that 87% of those polled want the Government to take more action against unpaid internships⁷

NUS and UCU don't currently have a full picture of the use of unpaid internships within higher education institutions and further education colleges, where unpaid interns are used for internal purposes (for example, in areas such as Knowledge Transfer Partnerships and spin-off companies). However, we do know that HE organisations, such as the 1994 Group, have

⁶ Ross Perlin, Intern Nation, 2011, pp.200

⁷ Association of Graduate Careers Advisory Services poll, conducted in May 2010;
<http://www.agcas.org.uk/assets/download?file=1631&parent=612>

previously recruited unpaid graduate interns and urge members to get in touch should they become aware of the use of unpaid graduate interns at their institution.⁸

Take action!

We are at a crucial turning point. The issue of unpaid internships has gathered increasing political attention and occupied various newspaper headlines. However with youth unemployment at a record high there has never been a more important time to defend young workers rights, and push for valuable and accessible opportunities for students and graduates to gain experience to enter the job market.

Students Unions and UCU branches are vital in pushing for these opportunities to be made available, and lobbying our institutions to protect young, vulnerable workers from exploitation. Together local students unions, UCU branches can play a fundamental role in also educating existing students and recent graduates on their rights at work.

⁸ Janet Murray, 'The 1994 Group of universities advertises for graduate volunteers, The Guardian, Tuesday 21 September:

<http://www.guardian.co.uk/education/2010/sep/21/internships-increasing-graduates-public-sector>

What UCU branches can do:

- Contact UCU colleagues in the careers service about graduate internships and work placements and ask what existing internship provisions they advertise to students.
- In your institution, monitor the use of 'internal' internships across campus and in private, sub-contracted companies and notify UCU and NUS of the use of unpaid internships at your institution.
- In your institution, monitor academic and academic-related job descriptions for the addition of extra duties related to graduate internships;
- Contact national UCU if you need additional support or advice.
- Contact your local students unions to discuss joint publicity to students about their rights at work

What students' unions can do?

- Pass a motion in your union council to support NUS in campaigning against unpaid internships, and affiliate to the Intern Aware campaign; <http://www.internaware.org/>
- Identify case studies from your students' body, of students who have faced exploitation from unpaid internships. Send case studies to neighbourhood@nus.org.uk;
- Write newspaper articles for your local and student media and produce guidance online for your members of their rights at work. Examples of guidance can be found here; www.rightforinterns.org.uk
- Promote organizations in your job shops that promote paid internship opportunities, like www.internavenue.com and Stop Gap Apprentice scheme <http://www.stopgap.co.uk/apprentice>
- Ask your student advice centre to provide assistance to students who wish to take their employers to tribunal. More information and advice is available here; www.direct.gov.uk/en/Employment/Employees/TheNationalMinimumWage/DG_175112

- Ask your institution what advice they provide students, graduates and recent alumni on their rights at work, and ask the institution to produce joint guidance with the students union
- Check if your institution offers internships within the institution, and if so lobby for them to be paid;

Further information

TUC - Rights for Interns

www.rightsforinterns.org.uk/

Interns Anonymous – a forum for interns to share their experiences and discuss the ethics of unpaid employment

<http://internsanonymous.co.uk/>

Intern Aware - a campaign focusing on promoting fair access to the internship system-

www.internaware.org/ , briefings and legal advice available here; www.internaware.org/the-problem

Internocracy – a social enterprise working with organizations to support and accredit internship programmes

www.internocracy.org/

Skillset (Guidelines for Employers offering Work Placement Schemes in the Creative

Industries) – useful guidelines setting out the law and employment duties in the creative industries

www.skillset.org/companies/your_staff/placements/

Graduate Fog- Publicise this website to students complete with advice on searching for jobs and surviving internships: <http://graduatefog.co.uk/advice/>

Directgov- Information from the Government about employment rights and pay:

www.direct.gov.uk/en/Employment/index.htm

Arts Group: Emerging Workers report: <http://www.artsgroup.org.uk/wp-content/uploads/2010/01/EmergingWorkersFinalWeb.pdf>

Skillset: http://www.skillset.org/uploads/pdf/asset_14734.pdf?1

NUS Society & Citizenship zone- Keep up to date with our work in this area by visiting

www.nusconnect.org.uk/unpaidinternships

Appendix A

Factors determining whether someone is a worker

- **Is there a contract?** An individual is not a worker unless there is a contract. For there to be a contract some remuneration or benefit in kind would be expected. Payment of genuine out of pocket expenses is not remuneration. However, an expectation of regular payments of “expenses” which do not correspond to costs the individual has actually incurred might mean there are contractual obligations. Simply stating in a written agreement that an individual is not a worker or is a volunteer does not mean that they are so for the purposes of NMW legislation. They may still be a worker who will qualify for the NMW. It would depend on the facts of the individual case. Similarly, stating in documents that the NMW does not apply will not limit the employer’s liability to pay the NMW when it is due. NMW legislation ensures an employer cannot avoid paying NMW in this way (even if the individual who is engaged agrees).
- **Must the work be performed personally?** To be a worker an individual must be obliged to do the work themselves. A limited right to provide a substitute or delegate work to someone else may not be inconsistent with personal service – provided that there is a primary obligation under the contract to do the work personally.
- **Is there mutuality of obligations?** Mutuality of obligations means an obligation on the “employer” to provide work and an obligation on the individual to accept that work. An individual will not be a worker unless there is sufficient mutuality of obligations under the contract, at least for the period in which work is expected to be performed. In considering whether there is sufficient mutuality of obligations, it may, for example, be relevant to assess when, how or with what frequency work was offered, any notice of termination on either side, any sickness, holiday or pension arrangements, any grievance and disciplinary procedures, and whether the employer can impose sanctions on the employee for failing to

do work. Mutuality of obligations must be contractual: merely “moral obligations” are not enough. It is necessary to consider the actual legal obligations of the parties having regard to all the circumstances of the case.

- **Is the individual self-employed under the contract?** An individual who carries on a profession or business undertaking will not be a worker if the body to whom they are providing work or services is their client or customer under the contract, rather than their employer. In assessing whether an individual is self-employed it may be relevant to consider the degree of control exercised by the purported “employer”, the exclusivity of the engagement and its typical duration, the level of integration into the purported “employer’s” operations, the method of payment, what equipment the individual supplies, and the level of financial risk the individual undertakes. The fact that an individual is regarded as self-employed for tax purposes is relevant but not decisive. There may be some facts which suggest an individual is a worker and others that they are self-employed. In balancing competing factors the dominant characteristic of the contract should be considered. The factors considered for assessing whether an individual is a worker are similar to those used for assessing whether an individual is an employee, but there is a lower “threshold” for being a worker than being an employee with full employment rights.



National Union of Students

4th floor, 184–192 Drummond Street

London NW1 3HP

t. 020 7380 6600

f. 020 7380 6627

w. www.nus.org.uk