



HOUSE OF COMMONS

Business and Trade Committee

Oral evidence: Labour markets reform: Workers' rights and protections, HC 703

Tuesday 7 May 2024

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Members present: Liam Byrne (Chair); Ian Lavery; Andy McDonald; Charlotte Nichols.

Questions 77 - 115

Witnesses

[II](#): Sean Toal, Managing Director, WHSmith; and Albert Ellis, Chief Executive Officer, Staffline Group PLC.



Examination of witnesses

Witnesses: Sean Toal and Albert Ellis.

Q77 **Chair:** Welcome to the second panel of this morning's session of the Select Committee on Business and Trade on labour market enforcement regulation. I am grateful to you, our witnesses from WHSmith and Staffline Recruitment, for joining us. We asked you to come along because your companies unfortunately featured in the list of companies that were not paying the minimum wage. Would you like to take this opportunity to apologise to those members of staff that were not paid the minimum wage? Mr Toal, do you want to start?

Sean Toal: Of course. Our situation dates back to 2018, and at the time—

Chair: Sorry, the question was just: would you like to take this opportunity to apologise?

Sean Toal: We already did when the situation arose.

Chair: Do you want to repeat that to the House of Commons today?

Sean Toal: Of course. We are sorry to all the members and colleagues that were affected.

Chair: Mr Ellis?

Albert Ellis: On behalf on Staffline, we deeply regret it and apologise. I was not the CEO at the time of the breach—I was recruited in October 2020—but on behalf of the group, we take full responsibility and do apologise.

Q78 **Chair:** Thank you very much. Mr Toal, could you tell us why you failed to pay workers the minimum wage? Did you not read the regulations, or not understand them, or not care about them?

Sean Toal: The HMRC conducted an audit six years ago, in 2018, and concluded that we had misinterpreted the guidelines particularly in relation to colleague uniforms, between 2012 and 2018. The specific issue was that we provided T-shirts, shirts, fleeces and name badges for our colleagues, and asked colleagues to wear black trousers, black skirts and black shoes. The expense of that meant that we fell below the national minimum wage for that period.

Q79 **Chair:** So it was a case of not understanding the regulations?

Sean Toal: We misinterpreted that. We concluded that with HMRC. We apologised to our colleagues immediately, and then took steps to remedy it with all our colleagues in conjunction with HMRC.

Q80 **Chair:** What steps did you take to de-risk your interpretation of the national minimum wage regulation?

Sean Toal: First, we changed our internal policies—



HOUSE OF COMMONS

Chair: No, no. Before the error was made, what steps did you take as a business to de-risk your interpretation?

Sean Toal: HMRC came into our business before 2012 and identified no issues with our policies at that time. They identified that the same policy was inaccurate in 2018, and at that point we changed our internal policy to ensure that nothing could happen again.

Q81 **Chair:** So you had two different judgments from a regulator?

Sean Toal: Yes.

Q82 **Chair:** Interesting. Mr Ellis, what went on in your business?

Albert Ellis: Our particular problem was that the food production sector required employees to don protective equipment and protective clothing. That took on average about two to four minutes before a shift started and a similar amount of time after the shift ended. When the HMRC visited the company in 2017, it was identified that there were many sites at risk. Where the sites did not pay for the donning of these gowns, if the workers were paid at the minimum wage level, they would fall below when those extra minutes were counted into the pay. It has been referred to as a technical breach, but of course it was ultimately below the minimum wage.

Q83 **Chair:** What steps did your business take to de-risk implementation of the rules before you found yourselves on the wrong side of a judgment?

Albert Ellis: I am looking at the evidence now. I was not there at the time, but I am looking at the evidence now, and it was clear that the training provided wasn't as good as it could have been.

Q84 **Chair:** To?

Albert Ellis: The training to our staff—the people on site who were responsible for this. It was clear that the training wasn't as good as it could have been. There were lots of anomalies, nuances and ambiguity in the guidelines and the interpretation, and therefore it just wasn't as good as it could have been.

Q85 **Chair:** Are the regulations just not clear enough?

Albert Ellis: The definition of an effective law is that it is well known and well understood. The list we appeared on had over 500 companies. This is no excuse at all, but the fact that household names and brands across the country have all—in some way, shape or form—stumbled in this area does indicate that the guidelines were not as clear as they could have been. But that's not an excuse, Mr Chairman.

Q86 **Chair:** No, no—I am just trying to get to the root of what happened. And what sanctions have you faced, Mr Toal, as a result of the breaches?

Sean Toal: We were fined for the breach—just over £641,000.

Q87 **Chair:** Okay. And Mr Ellis?

Albert Ellis: We were fined £3.9 million.



Q88 Charlotte Nichols: How did you calculate how much each worker was underpaid? Perhaps I can start with you, Mr Ellis.

Albert Ellis: These calculations were done by HMRC in conjunction with us over a period of 18 months—they detailed 37,600 workers, and each case, each worker, each element, each site.

HMRC actually visited our sites with our staff and with the customers, and each shortfall was identified. Each site, where the risk was, was catalogued. In fact, there were times when our staff were walking through the process, again to make sure that the site actually fell in that list, and then we remediated all of the workers, including any allowances, such as annual leave allowances, and so on, that were due.

Charlotte Nichols: Mr Toal?

Sean Toal: Very similar. We worked in conjunction with HMRC to calculate, on an individual colleague basis, the remedy that we needed to put in place. We calculated the average cost of the items—black trousers, black skirt, black shoes—from a number of different retailers and agreed those levels with HMRC. Then, based on the length of service over that six-year period, pro rata'd up to the national minimum wage changes, we refunded and remedied that for every individual colleague who was affected.

Q89 Charlotte Nichols: Does that explain the discrepancy? WHSmith has told the Committee that the underpayment is, on average, £40 per worker, but the Department for Business and Trade say it is £57.80 per worker. Is that where the difference is?

Sean Toal: It was a highly complex process. What I did in preparation for today was ensure that the figures that I had were accurate. I can confirm that the accurate figure on average was £57.80. The highest amount was just over £190 for somebody who worked for that full six-year period, but I can confirm that the £57.80 is the correct figure.

Q90 Charlotte Nichols: And for both of your companies, you said in some cases that the period of underpayment went back six or seven years, for example. Would you have factored in an interest payment when refunding these workers what they had been underpaid? Of course, for the time that that money had been sat with yourselves, it would have accrued value over that time in interest. Is that something that you factored in as part of the payment in either case?

Albert Ellis: No, I am not aware of that, no.

Sean Toal: No, I am not aware of that. It was pro rata'd, though, for the changes in the national minimum wage over the time period.

Q91 Charlotte Nichols: Just to check: one of the things that I am slightly troubled by is where employees might have changed their bank details since leaving the businesses, if they have gone somewhere else during that period. Were there any workers that you were unable to pay? If so, what steps have you taken to ensure that everyone who was underpaid



HOUSE OF COMMONS

has received the full amount that they were underpaid? I will start with you, Mr Ellis.

Albert Ellis: That's a good question and a question that we are rightly focusing on.

HMRC is quite robust in this regard and it has its own processes. The company has gone through 18 months of constant monitoring and investigating by HMRC, and what I can see from the evidence, in hindsight in particular, is that HMRC is very robust; it knows what it is doing and it has clear processes.

HMRC follow up in their accounts and of course naturally in this area many of the workers were not born in this country; the workers have come from the European Union, mainly. Two events caused their return. One was the exit of the country from the European Union. The second was the pandemic.

Naturally, we got returned bank details and bank account transfers—it was about 11% of the total. So 89%, which HMRC said was quite a high figure in this context, was paid. We reserve a pot; that pot is there today. We continue with multiple efforts to contact workers, and HMRC is appraised of our progress on a daily basis.

Charlotte Nichols: Thank you. Mr Toal?

Sean Toal: We successfully paid 99% of our colleagues after three attempts. For existing colleagues, where we had their bank account details, that went in. We then chose to use the last known bank account details for any colleague who had left us, and where that was unsuccessful the last known address.

That left a small proportion of colleagues—around £14,000-worth—which we again have held on account for colleagues to contact us, should anyone need to. We really want any colleague who has been affected to contact us. That money is held on reserve.

Q92 **Charlotte Nichols:** Thank you. And if the colleague has died, would their family be able to contact you?

Sean Toal: Of course.

Albert Ellis: Absolutely.

Q93 **Andy McDonald:** Mr Ellis, correct me if I have got any of this wrong, but yours is a recruitment agency for temporary workers, yes?

Albert Ellis: Staffline is a staffing and recruitment agency, correct.

Q94 **Andy McDonald:** The sort of sectors we are talking about are logistics, food, manufacturing and automotive. For example, I have in my mind food production—you are top of the list—and you have been found to have underpaid workers at several food production facilities because you excluded the time that it took workers to change in and out of their work clothes. What were you thinking of, to think that that was a non-work



activity? That is critical in the food industry, where the levels of hygiene are enormous. A critical part of the process is ensuring that people are in the right clothing when entering into a very highly controlled environment. I know you said that HMRC gave you different advice, but surely the right thing to do was to say that that was a critical part of the job.

Albert Ellis: You make a good point, and in hindsight it does look like that. I wasn't there at the time, but I can tell you that it was widespread among many companies. It appears that it was an inadvertent error. It appears that the clarification and the guidance did not get the right result—that is all I can say. In hindsight it looks perfectly obvious.

Q95 **Andy McDonald:** Apologies, but just to open that up a little, isn't this part of a pathway of exploiting workers by using their time and devoting it to the benefit of the company or the agency?

Albert Ellis: No, that wasn't the intention.

Q96 **Andy McDonald:** That wasn't the intention. Let me ask you about some of the hard facts. According to media sources you have put aside £7.9 million to cover historical underpayments, but am I right in picking up that, through discussions with HMRC, you have increased that provision to £15.1 million?

Albert Ellis: Let me break the numbers down very clearly. The notice of underpayment from HMRC was £5.1 million for 37,767 workers. We actually ended up paying £6.65 million to workers, because it included annual leave allowances and additional workers not covered by the notice of underpayment. We had a fine of £4 million, which takes you to just over £10.5 million. Then we have £650,000 that was reserved, and we have not been able to locate the workers. There was a couple of million in national insurance and taxes that was also paid. Then we had some costs. We made a further provision of £900,000, which took us to £15 million, in the event of further claims coming up that were not identified originally.

I want to make the point that the shareholders bore the full cost of that—that is a point worth mentioning. There were subsequent multiple equity raises to plug the hole in the balance sheet for that.

Q97 **Ian Lavery:** I think, if I heard right, it is £57.80 for a uniform. What does that include?

Sean Toal: In agreement with HMRC at the time of understanding our misinterpretation, we benchmarked the cost of the trousers, skirt and shoes across a number of retailers that we thought our colleagues would use—retailers like Asda, Sainsbury's, Marks & Spencer, H&M and Matalan—and concluded an average cost. Then, based on the length of service of the colleague over that period pro rata, that is what established an average cost of £57.80. As I said, the highest cost, for somebody who had worked over the six-year period having to pay for those items on an annual basis, was just over £192, which was pro rata'd up for the changes in national minimum wage.

Q98 **Ian Lavery:** Did the workers provide part of their own uniform before



HOUSE OF COMMONS

2012? HMRC only agreed that payments should be made for between 2012 and 2018. What was the situation before 2012?

Sean Toal: As I said, HMRC had been in a couple of years prior to 2012 and had not established an issue for us. It said that the issue that we had was between 2012 and 2018. It was at a time when many businesses were being asked to change or adapt their interpretation of this specific uniform requirement.

Q99 **Ian Lavery:** So, there were people providing their own uniforms before 2012. Did you ever consider any uniform rebates for the employees before 2012, or was it just because HMRC investigated a certain period of time that you thought, under their ruling, you would have to pay these workers?

Sean Toal: We complied with what we agreed with HMRC, which was for the years of 2012 to 2018. As I said, they came into our business before that and had not established an issue at that point.

Q100 **Ian Lavery:** And did you not pay anybody before 2012?

Sean Toal: No.

Q101 **Ian Lavery:** Did you consider that?

Sean Toal: We complied and agreed payments over that period.

Q102 **Ian Lavery:** I understand that, but the fact that HMRC suggested that payments should be made during the period of 2012 to 2018 established a clear principle. Perhaps you should have been contributing towards the uniforms, either partially or wholly, but you did not consider that before 2012. There were people who were actually paying for their own uniforms before then—is that right?

Sean Toal: As I said, they came in before 2012 and did not establish that we had an issue at that point in time. We complied with the agreement that we had made for between 2012 and 2018. We successfully ensured that we remedied that with over 99% of the colleagues.

Q103 **Ian Lavery:** What is the situation for employees now?

Sean Toal: We have now updated all our internal policies so that they are very clear. We still provide the T-shirt, the fleece, the shirt and the name badge for our colleagues, but we now allow them to wear the items that they wish, such as trainers or jeans. I was up and down the country visiting stores and I have seen colleagues come in wearing jeans. Our colleagues tell us almost unanimously that they come to work in the items of clothing that they feel comfortable in.

Q104 **Ian Lavery:** Mr Ellis, did you pay workers on the food production lines for changing in and out of work clothes before 2013?

Albert Ellis: I can't know that—I was not here and I was not part of the investigation. HMRC and the management team chose the six years—2013 to 2018—and we remediated all the workers who were identified. We paid the fine and the shareholders bore the cost for that.



Q105 **Ian Lavery:** So you are not sure whether there was any payment made before 2013?

Albert Ellis: I can't know that.

Q106 **Ian Lavery:** That is again similar to what Mr Toal is saying—you just simply adhered to an instruction. I know you say that it is an agreement, but it is basically an instruction from HMRC to give workers rebates during the period that HMRC stipulated.

Albert Ellis: Correct.

Q107 **Ian Lavery:** What is the number of workers affected by this policy? Do you have any idea whatsoever?

Albert Ellis: Well, 37,767 workers were identified.

Q108 **Ian Lavery:** And you are happy with the situation as it stands?

Albert Ellis: I am delighted to say that a new management team, led by myself and my CFO, has led a transformation of the business in the last four years. It is a totally different business to what it was, based on what I can see in the evidence from 10 or 11 years ago. The market has changed, and the single most impactful event has been the constraint on the supply of labour, which has been dramatic. You would have known from the reports during covid of shortages of workers, such as the widespread shortages of HGV drivers or workers in food production. The power has really moved to the worker here. For example, our average worker pay is 40% above the national minimum wage today. In 2013, 7% of our workers were on minimum wage, which is broadly in line with what the Low Pay Commission estimates the size of the market to be. That is because there is a constraint on the supply of workers, and employers are desperate to find workers, which is reflected in the pay.

Q109 **Andy McDonald:** Mr Ellis, you have obviously been looking at this very carefully and perhaps have been trying to improve the picture. Have you identified non-compliance with other areas of employment legislation? If you have, can you give us a little bit more information about that?

Albert Ellis: Yes, the specific one that was reported in 2018 was to do with the processing of leavers, and there was an inconsistency reported in the accounts in terms of leave. The processing of a leaver in a temporary business is not as straightforward as it sounds. First of all, many of our temporary workers could be students, or could be individuals who simply want to work Mother's Day, Valentine's Day, the summer barbecue season, Christmas—or Black Friday for the retail sector. They come and go, and there might be months in between. They don't want to deregister—and neither do we, or our customers, want to take them out of the database, so they remain as active workers. That is because there is a tremendous cost in re-registering them: right to work, security clearances, and so forth. That is where the inconsistencies were—there wasn't a process, as I understand it, that was clear.

What we have done is totally change that. In 2018 that process was



changed, and all workers who asked to leave the company were immediately given a leaving process. That included totalling up all outstanding pay, annual leave allowances, and so on, and processing that worker as a leaver. Now we even take the situation where the worker has been inactive for a period of time but kept on the books, and after 12 months, we automatically process them as a leaver. The process is very clear—the minute they ask to leave the company, they are immediately tagged as a leaver in the computer system, and that triggers all the right payments and makes sure that there are no outstanding liabilities. That was cleared up in 2018, and the accounts obviously have not reflected any subsequent breaches in the four years since then.

Q110 Andy McDonald: So you have corrected the position when people expressed a wish to leave the company, you've got a tighter regime and processes to make sure that that is right—what was the extent of the deficit on that, for those who left the company and were effectively owed money for their work? Have you a handle on that?

Albert Ellis: We don't, but what I can say is that obviously all liabilities are accrued—we are a public listed company, and we employ one of the largest audit and accounting firms in the world, and these are material amounts and they are scrutinised and they are audited. Not only that, but we are also licensed by the Labour Abuse Authority, who specifically look at this area, and our licence is up for renewal every year. We were just renewed a couple of weeks ago. This is the area that they govern.

Q111 Andy McDonald: So if there are any employees have who have left the company who think, "Well, I didn't get my dues", they can come back to you and say, "Please, tip up"?

Albert Ellis: One hundred percent.

Q112 Charlotte Nichols: Both of you have said in your evidence today about other companies who have also fallen foul of these regulations—Mr Ellis, I think you said there are around 500 companies who had made the same technical breach that you had. Why do you think this is the case?

Albert Ellis: First of all I just want to correct something—I get irritated by the term "technical breach" because I think it implies there is some sort of excuse for it, and there is not. I see it is used widely in terms of press release, but it's a breach, and a breach is a breach.

I have been in recruitment for 30 years—I was in IT recruitment for 20 of those years, and I've been a public company CEO for over two decades—and I have only recently, in the last four years, come to this sector. It is an exciting sector, and a different sector, but I've never seen so much audit control, legislation, and challenges in terms of the detail.

I will give you a good example: we are subject to 10 audits a year by our customers on the very issues we are talking about this morning. Our training business had 50 audits last year, and of course we have the main audit from the independent financial auditor, and we are also subject to



HOUSE OF COMMONS

the GLAA audits and licence renewal. We take it very seriously and it's a very challenging area, so that is our comment.

Good laws, let's be honest, are laws that are well known, well understood, and are enforced—effectively enforced. It is apparent to me from the last 10 years that this has happened to Staffline. The law wasn't as well understood, people weren't trained as well as they should have been—that has all been changed. We have a compliance function now that has over 10 people. We have upgraded the expertise: we have brought in people from the regulator. For example, I think we have one ex-policeman. We have a new head of compliance, a specialist in this area. We take extensive advice: as I have mentioned to you, we took £1 million worth of advice just on these issues that my colleague and I have been talking about. In that respect, it is interesting that it has caused so much of a challenge for the industry. We should be reserving some time this morning to talk about the future, because, in some respects, we are we are fighting the war of the past. The labour market has changed—

Q113 Charlotte Nichols: This is my question, essentially. You have outlined the levels of complexity around auditing, different lines of accountability and things like that. My question is, what recommendations should our Committee be making to Government in order to ensure that national minimum wage compliance is a more straightforward endeavour for companies that want to do the right thing? As you have outlined, clearly your company wants to be paying at least the national minimum wage.

Albert Ellis: I think I can probably speak for WHSmith and Staffline on that. This is now clear to us, so in that respect the job has been done. The enforcement from HMRC has been tremendous, from what I can tell. The naming and shaming is quite challenging for a public company. We have had all kinds of challenges with that, because it was a long time ago. Our only recommendation is that the naming and shaming is current, is accurate, and refers to the—I mean, some of our customers thought that it was about new breaches that had happened since the breaches that they were aware of in 2018, so we had to put the record right.

Q114 Charlotte Nichols: But without naming and shaming, how would it work? We have spoken today about people being able to come to you for redress where these breaches have taken place in the past. Without the breaches being made public information, and without it being clear which companies were affected, how would people know that they could come forward?

Albert Ellis: I 100% agree with that, but it should just be timely, that's all. The Department gave a very valid reason about covid and so on, so I am sure this was a one-off.

Q115 Charlotte Nichols: Mr Toal, is there anything that you would like to add on what we could recommend in order to make it easier for companies to comply with national minimum wage legislation as-is? Do you think that a simplification of the regulations could take place, or do you think that, now that you understand what the regulations are, further amendments to them are not needed?



HOUSE OF COMMONS

Sean Toal: First and most importantly, we now understand the regulations and therefore we have complied with them in full, and we have had no further breaches since 2018. However, I think that, in every case where an audit has taken place and the word “misinterpretation” comes up, at that point, that particular rule should be reviewed. For example, back in 2019, the British Retail Consortium, which represents all the large retailers and independent retailers, was asked to consult on the regulations, and at that point it said that this particular ruling on uniform was causing concern for many retailers and needed reviewing.

However, I would say that this is our issue. We should have caught this earlier. We apologised to all of the colleagues who were affected, and we put that right. But any time that the word “misinterpretation” comes up, I think that should trigger a point to say, “Is the rule clear enough?”

Chair: Thank you. That has been very helpful evidence. You have both given a very fulsome apology for the breaches that were committed. You have both flagged some challenges in understanding the regulations, and perhaps posed the question about how further clarification of the law is going to be needed. I think that you both sang the praises of HMRC enforcement but made the point that it needs to be more real-time than retrospective, and for both of you, that has beefed up your own compliance functions too. Thank you very much indeed for your evidence, and thank you for spending some time with us this morning. That concludes this panel.