

Submission to the Low Pay Commission Consultation Process 2016

Name [REDACTED]

Organisation _____

- Are you (Please tick)
- Employer
 - Employee
 - NGO
 - Union

Other (please specify) FATHER IN MOST FAMILY OF AN PAIRS

- Size of Organisation (Number of Employees)
- 0-10
 - 11-25
 - 26-50
 - 51-100
 - 100+

Submission Topic (Please tick all that apply)

The board and Lodging allowances provided for under the National Minimum Wage

Consultation

The National Minimum Wage

Please indicate if you would be willing, if requested, to meet with the Commission to present your views on this topic Yes No

[REDACTED]

Submission on the allowances for board and lodgings provided for under the National Minimum Wage

I understand that The Low Pay Commission has been requested to review the allowances for board and lodgings provided for under the National Minimum Wage Act 2000. These allowances are amounts which an employer is permitted to deduct from wages where meals or accommodation are provided by the employer. I understand that in so far as Au Pairs might be considered to be employees that these allowances would apply to Au Pairs receiving the National Minimum Wage (NMW).

It is my submission that any calculation of a “board and lodgings” rate for Au Pairs should be made with specific regard to the unique au pair sector and should be entirely separate from any general board and lodgings rate applicable to other categories of NMW employees. A separate au pair specific allowance is necessary to reflect the fundamental distinction between au pairs and any other category of NMW employees, given that the facilities and provision available to Au Pairs are much more significant than just meals and accommodation.

Background

This submission is made in the context of the uncertainty which currently exists in the au pair sector, which by way of summary is as follows:

1. There is a lack of regulation of Au Pairs in Ireland, caused by Ireland’s failure to recognise the au pair programme in legislation, in contrast to other European countries.
 2. There is no legal definition of Au Pair in Ireland.
 3. A very small number of atypical stories of exploitation of Au Pairs have been reported, along with a couple of cases appearing before the State’s employment rights adjudication services. These cases seem mainly to involve domestic workers who are not genuine au pairs participating in genuine au pair programmes with genuine host families.
 4. An initial attempt to legislate for Au Pair placements was recently defeated in the Dáil.
 5. The Government has suggested (presumably as an interim measure) that the situation concerning Au Pairs and NMW could be addressed by reviewing the allowance for board and lodgings under NMW legislation.
 6. Government Ministers have recommended that host families concerned about the uncertain and unsatisfactory situation concerning Au Pairs should make submissions to the Low Pay Commission on the issue.
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As such, my submission is based on the current understanding that the allowance for board and lodgings under NMW legislation does apply to Au Pairs, a position that may change if proper regulation of, and/or legislation for, the genuine Au Pair sector is forthcoming in due course.

I understand that the matter of regulation of the au pair sector is not a matter for the Low Pay Commission but by way of explanation I will simply point out that in other European countries Au Pairs are generally regulated and are generally treated as a sui generis status of worker/working student, namely being part of a cultural exchange or similar (such as, for example, in France which recognises au pairs as a "*stagiaire aide familial étranger*" [*foreign trainee worker supporting families in terms of childcare*], a status aimed at promoting cultural exchange and where such persons receive a certain amount of pocket money, rather than a minimum salary).

Overview of Au Pairs

Au Pairs cannot easily be considered to be domestic workers or employees:

As an au pair you're part of a family, a temporary big sister or big bother taking care of littler ones and helping out with household chores. You receive pocket money for what you do and have room and board at no cost with your new family.
(https://www.aupairworld.com/en/au_pairs/au_pair_advantages)

To explain the unique status of Au Pairs I have provided some information on Au Pairs' roles. This has been taken from the descriptions provided by a registered and reputable au pair agency (see <http://www.skdublin.ie/au-pairs/information-for-families/>):

Role of Au Pairs

An Au Pair is a young person (usually aged between 18 and 30 years) coming from another European Union country to help a family with childcare and light housework while staying as a guest with the family. In addition, they can improve their language skills and learn about the culture and lifestyle of the country. They are treated as a member of the family and included in family activities, meals, cultural and social activities etc. Au Pairs receive weekly pocket money. In addition to child-minding an Au Pair also assists with light housework (tidying, vacuuming, preparing simple meals, laundry, etc.).

Hours and Payments: Standard rates of pocket money for genuine Au Pairs are as follows:-

- 25 hours plus 2 nights babysitting €110
- 30 hours plus 1 night babysitting €120
- 35 hours plus 1 night babysitting €140

Au Pairs should have Sundays free and one other day or two half days.

Accommodation

The Au Pair will require her own private bedroom, fully furnished with adequate heating etc.

The duties carried out by an Au Pair should be related to the family's children. The au pair can keep the house tidy but should not be treated as a cleaner.

It should be noted that genuine Au Pairs provided by reputable au pair agencies do not enroll as, nor expect to be seen as, domestic workers. The concept of genuine Au Pairs receiving wages and/or related allowances such as board and lodgings was never envisaged as part of au pair programmes and is not easily applicable to Au Pairs as traditionally understood.

Au Pairs and Board & Lodgings

The National Minimum Wage Act, 2000, includes a provision whereby board and lodgings provided by an employer to an employee may be taken into account in the calculation of the minimum wage. The terms 'board' or 'full board' (food/meals) and 'lodgings' (accommodation) are ***not defined in the Act***. This lack of definition raises a distinct problem for any calculation of a board and lodgings allowance for Au Pairs. The types of board and lodgings provided to employees in various employment sectors is unknown to me but presumably varies greatly. There is, for example, a huge distinction between basic meals provided in basic accommodation such as portacabins and the comprehensive family-centered range of services provided to an Au Pair by a host family.

I note that in respect of board and lodgings the monetary value previously permitted as a deduction was ***not market value of the board and lodging provided***. I submit that this approach should no longer be followed and that proper consideration should be given to the real value of board and lodgings.

It is necessary to understand that the situation of Au Pairs and host families presents some fundamental differences to any consideration and understanding of board and lodgings as they apply to this specific sector.

Firstly, the Low Pay Commission's information on board and lodgings (<http://www.lowpaycommission.ie/consultations/board-and-lodgings-note-revised.pdf>) states that "The *choice* to offer board and lodgings rests with an employer". This is clearly not the case with Au Pairs as host families do not exercise a 'choice' in providing meals and accommodation to Au Pairs – it is an integral part of the relationship. Without Au Pairs being inherently part of the host family there would be not Au Pair / Host Family arrangement at all. This demonstrates a conceptual difficulty and a difficulty (perhaps an outright incompatibility) when trying to place Au Pairs / Host Families within the concepts of 'board and lodging allowances'.

Furthermore, the Low Pay Commission refers to employees who are in receipt of board and/or lodgings "*as an element of their pay*" (<http://www.lowpaycommission.ie/consultations/board-and-lodgings-note-revised.pdf>). However, in respect of board and lodgings for Au Pairs it is not appropriate to refer to board and lodgings as being 'an element of pay' for two reasons:

1. Au Pairs do not receive 'pay' as they are not paid wages; the only payment they receive is pocket money, which is not intended to be equivalent to pay or wages.
2. The board and lodgings received by au pairs is not an 'element' of any payment made to them, it is a central and fundamental part of their status and the reason for their presence in Ireland – Au Pairs participate in au pair programmes precisely so that they can be hosted by a family and receive board, lodgings (and much more) as they become part of their host family for the duration of their stay in Ireland – the provision of meals and accommodation as part of the family experience is not an additional element, it is the primary provision of the host family; any payment received by au pairs (pocket money) is an element of the host family provision, not the other way round.

It is therefore vital to consider that any concept of 'board and lodgings' in the context of genuine Au Pairs means very substantial meals and accommodation but also much else besides. It is neither desirable nor practical to try to separate the element of board and lodgings from the overall package that a host family provides to an Au Pair or to consider such board and lodgings to be in any sense merely an 'element' of pay.

I submit in the first instance that provision of an allowance for board and lodgings for Au Pairs should not arise as Au Pairs should ideally not fall under National Minimum Wage regulations. However, if it is considered that an allowance for board and lodgings is appropriate for Au Pairs then I further submit that a separate allowance for Au Pairs should arise, to reflect the very real cost of hosting Au Pairs and to allocate full and proper value to the considerable accommodation facilities uniquely provided to Au Pairs and not comparable with any other employment sector.

What does “board and lodgings” mean in the context of au pairs?

Any consideration of the quality of “board and lodgings” made available to Au Pairs must acknowledge that it differs fundamentally from any basic concept of board and lodgings provided in the context of general paid employment.

It has to be stressed that board and lodgings provided to an Au Pair are not somehow additional or supplementary to the role of Au Pair because an Au Pair is staying as a guest with the family and is treated as a member of the family throughout their stay. They are included in family activities, meals, social activities etc.

My knowledge of board and lodgings provided in general employment contexts is limited but it is my understanding that the allowances provided for under the 2000 Act were purposely kept low and were not linked to the actual economic/market value of the board and lodging provided because the standards of food and accommodation provided were presumed to be very basic. In contrast, the quality and inherent value of accommodation, hospitality and domestic facilities available to Au Pairs living with host families is generally of a very high standard, befitting their total immersion in host family life. This differs entirely from a standard employee/employer relationship and shows why any concept of “board and lodgings” in an Au Pair / Host Family setting must be treated as a special category, which I would call an Au Pair Hosting, Board and Lodgings Allowance. Such an ***Au Pair Hosting, Board and Lodgings Allowance*** would recognize that the facilities made available to Au Pairs who live with host families are such that the Au Pairs are hosted entirely by families who provide them with all of their fundamental needs in respect of accommodation, meals, household utilities (and much else besides in terms of transport, social and cultural inclusion etc.).

Au Pair Board and Lodgings in Context of Host Families - Costs of Board and other Household Expenses

Au Pairs being hosted by Irish families receive more than basic ‘board’ (meals) as part of the au pair experience. They receive all of the benefits of living as part of a family, such as:

1. Use of domestic utilities, heating, electricity, communications (landline, broadband/wi-fi, TV services) etc.
2. Access to family health services, GP expenses, pharmacy expenses.
3. Provision of personal care/toiletry products/household cleaning as part of family.
4. Access to family car for local transport.

As such, any consideration of board and lodgings must include all normal household services provided to an Au Pair living with a host family. These services and facilities should be valued at the very least at normal market value. The experience of au pairs living with host families includes a lot more than what can be assessed monetarily, including the entire family-focused cultural and educational experience, but at the very least the real value of, and full scope of, the accommodation and services provided should be measured.

It is not difficult to obtain reasonable figures to quantify the basic value of board and associated services for Au Pairs. The Vincentian Partnership for Social Justice publishes guideline on Minimum Essential Standards of Living (MESL). Their 2016 MESL Update Report provides information on various categories of person (see: <http://www.budgeting.ie/download/pdf/2016-mesl-update-report.pdf>).

The MESL (Rural) for a 'single adult of working age, living alone' provides for a Weekly Expenditure Budget of €291.60, broken down into many categories, of which the following items are brought specifically to your attention:

1. Food €51.19,
2. Household Goods €15.52,
3. Household Services €11.09,
4. Communications €9.39,
5. Personal Care €7.15,
6. Health €5.98,
7. Household Energy €35.24.

This is a total of €135.56. It is submitted that this is the amount that a single adult living as an au pair with a host family directly saves as a result of the Hosting arrangement and that this amount of €135.56 should be used in calculating the ***Au Pair Hosting, Board and Lodgings Allowance***.

If another similar set of valuations would be useful, then the Insolvency Service of Ireland (ISI) prepares guidelines on a reasonable standard of living and reasonable living expenses. The ISI uses a model ("ISI model") which is a modified version of the consensual budget standards model originally developed in Ireland by the Vincentian Partnership for Social Justice. (See *The Insolvency Service of Ireland Reasonable Living Expenses Guide*: https://www.isi.gov.ie/en/ISI/RLEs_Background_Information_July_2015.pdf/Files/RLEs_Background_Information_July_2015.pdf). The ISI Reasonable Living Expenses for a single adult are set out at Appendix B of their Guide, of which the following items are brought specifically to your attention:

1. Food €250.98,

2. Household Goods €26.38,
3. Household Services €32.54,
4. Communications €41.21,
5. Personal Care €33.06,
6. Health €31.34,
7. Household Energy €60.37,
8. Household Heating €70.80.

These are monthly figures and adjusted to weekly figures are as follows:

1. Food €57.92,
2. Household Goods €6.09,
3. Household Services €7.51,
4. Communications €9.51,
5. Personal Care €7.63,
6. Health €7.23,
7. Household Energy €13.93,
8. Household Heating €16.34.

This comes to a total of **€126.15**.

Under the ISI model, reasonable living expenses are the expenses a person necessarily incurs in achieving a reasonable standard of living, this being one which meets a person's physical, psychological and social needs. The calculation of Reasonable Living Expenses (RLE) is an attempt to put a real monetary value on this standard of living. It is reasonable to use such a real value when evaluating an arrangement that provides an adult with all of their basic domestic needs, such as the family accommodation provided by a host family to an Au Pair.

It is submitted that the amount of **€126.15** could also be used in assessing the amount that a single adult living as an au pair with a host family directly saves as a result of the Hosting arrangement and that this amount should be used in calculating the 'board' element of the ***Au Pair Hosting, Board and Lodgings Allowance***.

➤ **A Note on Pocket Money:**

In the context of Au Pairs and perceived failures of host families to pay minimum wage there has been some focus on the pocket money paid to Au Pairs. This is generally in the region of €100 to €140 a week and some commentators have suggested that this is an inadequate amount of money.

It must be stressed that the pocket money paid to Au Pairs is designed to be disposable income. Au Pairs living with host families have all of their domestic and household needs provided for by the host family. Their pocket money is to cover social, cultural and educational costs. The Vincentian figures suggest a sum of **€70** is required weekly to cover the categories of Social Inclusion & Participation, Educational, Personal Care and Savings & Contingencies. These same figures are used in the calculation of a 'Living Wage' (a figure that is higher than the Minimum Wage; see http://www.livingwage.ie/download/pdf/living_wage_2016.pdf).

The ISI figures suggest a sum of €228 monthly is required to Social Inclusion & Participation, Educational, Personal Care and Savings & Contingencies. This monthly figure is equivalent to **€52 a week**.

A payment of €100 to €140 in pocket money is therefore very reasonable and should not be misrepresented as an inadequate payment or 'wage'. This amount of pocket money is far higher than the amount required for disposable income when minimum wage or living wage or minimum essential standards of living are calculated.

Only a failure to understand the unique and comprehensive provision made to Au Pairs by host families, which leaves their pocket money available for entirely discretionary spending, could allow any misunderstanding that Au Pairs are underpaid or poorly remunerated.

Housing Costs

As the cost of living figures set out above do not include housing costs these must be considered separately.

It must also be clarified that the provision of accommodation to Au Pairs is not in any way to be considered as equivalent to providing overnight accommodation to a home help or equivalent domestic worker. Genuine Au Pairs do not work overnight nor are they "on call" at night. The accommodation provided to them is entirely intended to provide them with a family home in which to stay as part of the overall au pair experience.

Regarding the value of accommodation to an employee I note that there is no reason that this value should not be the real market value. For example, under the Revenue Commissioners *Benefit-in-Kind* regulations (see <http://www.revenue.ie/en/tax/it/leaflets/benefit-in->

[kind/subsidised-accom.html](#)) when accommodation is provided to an employee the value of the taxable benefit to the employee is directly related to the annual value of its use. Under these rules the annual value is the annual rent which the employer might reasonably expect to obtain for the property if the property were rented on an arm's length basis.

I submit that there is no reason why accommodation provided to an Au Pair would not be evaluated at full market value. While the Revenue rules *Benefit-in-Kind* are not directly applicable or comparable to the situation of Au Pairs they do provide a useful comparator as to the principle regarding treating the provision of accommodation as being worth full market value where it is a clear benefit to an individual worker.

It is accepted that the Revenue rules do not recognize accommodation as a benefit if an employee is required by the terms of his or her employment to live in accommodation provided by the employer so that the employee can properly perform his or her duties (the 'better performance test'), but this type of situation does not apply to Au Pairs. This type of exception is met in practice where the employee is *"required to be on call outside normal hours, and the employee is in fact frequently called out, and the accommodation is provided so that the employee may have quick access to the place of employment"*. Examples of such employees include night care staff in residential or respite centres, employees in prisons, and caretakers living on the premises. None of these scenarios are comparable to Au Pairs as genuine au pairs are not "on call" outside of their normal hours and are not expected to carry out night work or to be on call or on standby.

In summary, the accommodation provided to Au Pairs should be treated as being of market value and should not be subject to any discount due to any misconception that the accommodation is provided for purposes of facilitating the duties of Au Pairs.

As the cost of living figures set out above do not include housing costs these must be considered separately. The obvious equivalent to being provided with a private bedroom with a host family is to rent a single room in a shared house in the private rental sector. Considering the average room rental cost Ireland, the applicable costs can be assumed, based on the following:

- Rent could be as little as €300 per month for a shared room (according to the Irish Council for International Students, figures updated January 2016, see - http://www.icosirl.ie/eng/student_information/cost_of_living.html)

- Costs of renting a single room in a shared house in Dublin are a minimum of €300 a month (see <http://www.rent.ie/rooms-to-rent/> - as of January 2017 only two rooms available anywhere in Dublin at €300, one at €325, all others €350 or higher)
- Costs of renting a single room in a shared house in Dublin are a minimum of €300 a month (see <http://www.daft.ie/dublin-city/rooms-to-share/> - as of January 2017 only two rooms available in Dublin City at €300, two at €320, all others €325 or higher)

Based on these figures the absolute minimum value of the accommodation provided to Au Pairs is €300 monthly or €70 weekly.

Conclusion

It should be recognized that genuine Au Pairs do not enroll as, nor want to be, domestic workers. Neither do host families participating in Au Pair Programmes intend to have an employee/employer relationship with the Au Pairs that they host. As such, trying to apply concepts of a minimum “wage” and allowances for “board and lodgings” is problematic and reflects the difficulties caused by Ireland’s failure to recognise the au pair programme in legislation, unlike other European countries.

It is, nevertheless, possible to arrive at a reasonable figure for Au Pair specific board and lodgings using the figures discussed previously.

As described above, the value of ‘lodgings’ should be set at the minimum value of €70 for room rental costs. Generally the cost of such accommodation is frequently quite a bit higher but even taking the minimum value of €70 the total real value of the living accommodation provided to Au Pairs can be estimated to be the sum of the ISI figures and this housing value and therefore the total real value of the ‘board and lodgings’ provided to Au Pairs, using ISI figures, can be estimated to be the sum of €70 and €126.15, i.e. a total of **€196.15 for *Au Pair Hosting, Board and Lodgings Allowance***.

If MESL / Living Wage figures are used instead then the total real value of the living accommodation provided to Au Pairs can be estimated to be the sum of €70 and €135.56, i.e. a total of **€205.56 for *Au Pair Hosting, Board and Lodgings Allowance***.

Taking an average of these figures would suggest that a very reasonable and evidence based value of a 'board and lodgings' type allowance for Au Pairs would be €200 a week and I submit that this figure should be adopted.

Submission made by:

10 January 2017