

## Briefing to advice agencies on the Minimum Earnings Threshold (MET) for EEA Nationals

On 1<sup>st</sup> March 2014 the Government introduced the Minimum Earnings Threshold (MET) as a way of assessing whether an EEA National benefit claimant is a 'worker' or has previously been a 'worker'. There has been much information on the Government's MET in the press and elsewhere. Not all of this has been accurate. The meaning of genuine and effective work has not been altered by this guidance. This briefing addresses this issue.

The factors which determine whether a claimant's work is genuine and effective were established in *Barry v London Borough of Southwark* [2008] EWCA Civ 1440. The Court of Appeal identified several features of an EEA National worker:

1. The terms 'worker' and 'activity as an employed person' have a Community meaning and may not be defined by reference to national laws.
2. The right of residence as a worker is not subject to any condition relating to the type of employment nor to the amount of income derived from it.
3. Such activities must have an economic value to the employer.
4. A worker is a person who pursues effective and genuine activities, to the exclusion of activities on such a small scale as to be regarded as marginal and ancillary.
5. The essential feature of an employment is that for a period of time a person performs a service under the direction of another and that person receives pay for that service.
6. The community concept of a worker must be interpreted broadly.

As such, the potential work which can be classed as genuine and effective is very broad. The only way in which work would not be genuine and effective is where work is marginal and ancillary.

An example of marginal and ancillary work is as follows:

An EEA national comes to the UK to live with a relative who has a small business. She helps her relative to do odd jobs for minimal pay. Her work is on a small scale and is ancillary to the relationship she has with her relative.

Therefore, work with economic value to an employer should be classed as genuine and effective even if the pay is small and/or hours are low or the job is for a short duration. Indeed in *Barry* the claimant worked for two weeks during the Wimbledon Championships. The court commented that if Mr Barry did not take up the employment, the employer would have employed another for the job; the fact there was a requirement for someone to fulfil the position meant that the work was subsequently genuine and effective.

We have seen an increase in cases where decision-makers are failing to give consideration to whether employment is genuine and effective but have only relied on the level of income a claimant receives. One case that we are pursuing at the First-Tier Tribunal involves a woman who works 10 hours a week on a regular basis and has been refused Housing Benefit on the grounds that her income comes below the MET and her work is not seen as genuine and effective. On the basis of the above, we are confident of the merits of this case.

For more information, or to make referrals, please contact NCLS on 01603 496623.