NASUWT
The Teachers' Union

NASUWT SUBMISSION

Independent Review of Employment Practices in the Modern Economy

NASUWT submission to the Review Panel
February 2017

The NASUWT's submission sets out the Union's views on the key issues identified by the Independent Review in the terms of reference for the Inquiry. The evidence is informed by the work of its representative committees and consultative structures, made up of practising teachers and school leaders working in the education system in England.

The NASUWT is the largest union representing teachers and headteachers in the UK.

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Executive summary

- The NASUWT is clear that there are significant concerns about the procurement of agency and self-employed workers in the education sector.
- These concerns are intensifying with the increased casualisation of the workforce and the growth of supply agencies and umbrella companies.
- Almost three quarters (73%) of supply teachers report that private supply agencies are now the only way to obtain work.
- Agencies and umbrella companies are making substantial profits in a largely unregulated schools sector whilst depressing the pay of teachers.
- The NASUWT is concerned that taxpayers' money is being siphoned off, with agencies and offshore umbrella companies engaged in profiteering, to the detriment of supply teachers, schools, children and young people.
- There is evidence that supply teachers are denied access to their employment rights such as those afforded under the Agency Workers Regulations (AWR) and other associated legislation.
- There are also significant concerns about the role played by umbrella companies and the way in which supply teachers are trapped into working for particular agencies that force them to join an umbrella company in order to get work. Where concerns are raised, the teacher may find that the work 'dries up'.
- The NASUWT has grave concerns that the employment of such practices, coupled with the impact of finders' fees, are restricting or even removing the right to find permanent employment for many agency workers, especially for women, black and minority ethnic (BME) and disabled workers who are disproportionately represented as agency workers.
- Stronger government regulation of the supply agency industry is required through initiatives such as a nationally enforceable set of industry standards.

GENERAL COMMENTS

1. The NASUWT welcomes the opportunity to respond to the Independent Review of Employment Practices in the Modern Economy as there appears to be a growing disparity in the balance of power in the relationship between parties involved and the opportunity for abuse of workers.

2. The NASUWT recognises that the Independent Review has highlighted a range of issues associated with the future world of work. This submission seeks to address these considerations.

3. The NASUWT is aware that there has been a significant increase in the number of people reporting that they are self-employed. According to the Office for National Statistics (ONS), this now accounts for approximately 15% of the workforce.[1]

4. Although most self-employed people work full-time; it is part-time self-employment that has been growing faster in recent years. Part-time self-employment grew by 88% between 2001 and 2015, compared to 25% for full-time people.[2]

5. Recent research by the McKinsey Global Institute has suggested that the true number of people working part-time in the 'gig economy' is much higher than the official employment statistics suggest.[3]

6. The Union acknowledges that there has been a lot of public interest regarding the 'gig economy' following the GMB case against UBER.[4] However, the NASUWT is concerned that the Government has failed to recognise and address the issue of workers' rights and the level of protection and support

[1] https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/articles/trendsinselfemploymentintheuk/2001to2015
[2] Ibid
[3] http://www.mckinsey.com/global-themes/employment-and-growth/independent-work-choice-necessity-and-the-gig-economy
[4] https://www.judiciary.gov.uk/wp-content/uploads/2016/10/aslam-and-farrar-v-uber-reasons-20161028.pdf

agency workers should be afforded irrespective of whether or not they work in the 'gig' economy.

7. In the education sector, the NASUWT is concerned about the growing trend towards the casualisation of work, precarious employment and the use of zero-hours contracts, and the negative impact of these practices upon teaching standards, teacher morale and the entitlement of children and young people to a high quality education. The evidence below sets out these concerns.

8. The NASUWT is clear that all those employed, irrespective of whether they are defined in law as 'worker' or 'employee', should be able to access the same basic rights and protections. The Union is therefore committed to an education system that is fair to all teachers regardless of employment status.

9. The Union believes that the Government must act in order to ensure that the rights and entitlements which employees view as standard are extended to all other categories of worker.

10. Supply teachers are committed and dedicated professionals who provide an invaluable resource for schools. As such, the NASUWT recognises that supply teachers make a vital contribution to securing high educational standards for all children and young people.

11. Teachers may undertake supply for a variety of reasons, but often because of a lack of availability of suitable permanent employment.

12. The existence of Personal Service Companies (PSCs) is a feature of the landscape in schools, in the form of supply agencies and umbrella companies.

13. The overwhelming majority of supply teachers (77%) obtain supply work via these agencies and umbrella companies.[5] According to the Union's annual

[5] https://www.nasuwt.org.uk/asset/BC1B72F0-486E-4E86-A9C85D5F30CE173E/

survey of supply teachers, almost three quarters (73%) reported that private supply agencies are now the only way to obtain work.[6]

14. The evidence suggests that in the increasingly fragmented context in which schools operate, where the role of local authorities has been diluted, the role previously employed by local authorities is now being taken up by privatised supply agencies operating for profit.

15. Through its work with supply teachers, the NASUWT has been able to establish that there is a plethora of agencies and umbrella companies operating within the system.

16. The Recruitment and Employment Confederation (REC) and the Association of Professional Staffing Companies (APSCo) list 64 members[7] and 38 members[8] respectively in their website directories.

17. It is important to note that some of the agencies identified in these lists can be subdivided into different regional offices across the country. Furthermore, the REC list only refers to those who have been through their auditing process and achieved REC Audited Education status.

18. In addition to this, the NASUWT is aware of many other employment agencies who are neither a member of the REC or APSCo, so it is difficult to be definitive on the number operating within education.

19. The Union is certain that the market in agency workers in education is big business. During the financial years 2012/13 and 2013/14, the total amount spent by schools on supply staff rose from £1.07 billion to £1.29 billion, an increase of more than £276 million.[9]

20. The NASUWT has serious concerns that the profit margins of supply agencies are increased by depressing the pay of teachers or by mis-selling the services

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[6] Ibid
[7] https://www.rec.uk.com/business-support/audited/audited-members-directory
[8] http://www.apsco.org/directory/category.aspx?DirectorySearchPageId=3&CategoryId=128&page_num=1
[9] http://schoolsweek.co.uk/school-supply-teacher-spending-rockets-by-27-per-cent-in-two-years/

of qualified teachers by hiring teachers to perform tasks which do not require their professional skills and abilities, such as supervisory roles, but charging schools for the provision of a qualified teacher.

21. In research carried out in 2016 by the NASUWT, 65% of supply teachers stated that they are not being paid commensurate with their level of experience. This has increased by 8% since 2014 and by 24% since 2012.[10] The majority of supply teachers, despite their qualified teacher status, report being paid at rates equivalent to unqualified staff.

22. The NASUWT is concerned that taxpayers' money is being siphoned off. Workers are getting less, schools are paying more, whilst agencies and offshore umbrella companies are engaged in profiteering.

23. For example, supply teachers report receiving up to £50 less a day when working through an agency compared to if they were directly employed by the school. At the same time, the agency employing the teacher is able to charge the school up to £100 more than the teacher receives.

24. The NASUWT is concerned that the consequence of this for workers is that they fall victim to the replacement of regular, secure full-time employment with increasingly precarious, low-paid, insecure and irregular work.

25. Almost a fifth (18%) of supply teachers reported that they have had to claim Jobseeker's Allowance since becoming a supply teacher and over one in ten (14%) reported that they have had to claim other state benefits.[11]

26. The NASUWT is clear from its research that the main benefits accrue to the agencies and umbrella companies themselves rather than to the workforce or the service provision, particularly when they are charging £10,000 in finders' fees and up to 30% in commission charges, which equated to £253 million for the year 2014/15.[12]

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[10] https://www.nasuwt.org.uk/asset/BC1B72F0-486E-4E86-A9C85D5F30CE173E/
[11] https://www.nasuwt.org.uk/asset/BC1B72F0-486E-4E86-A9C85D5F30CE173E/
[12] https://www.thesun.co.uk/news/1912066/recruitment-agencies-rake-in-millions-as-schools-spend-1-26bn-hiring-supply-teachers-to-cover-sick-staff/

27. The Union also believes that extortionate and inappropriate finders' fees in education have restricted or removed the right to work for many supply teachers. This has effectively reduced the opportunity to secure permanent employment, especially for women, BME and disabled workers who are disproportionately represented as agency workers.

28. Furthermore, the NASUWT believes that it should not go unnoticed that this is, in essence, taxpayers' money which could be far better spent on the education of children and young people.

The treatment of supply teachers and compliance with legislation

29. Many supply teachers report that they are treated as 'second-class citizens' who are not always able to access their employment rights.

30. For example, many supply teachers report that they are unable to access the same facilities which are available to employees. A fifth (20%) stated that they do not always have access to staffrooms where they are available, over two fifths (42%) stated that they do not always have access to food and drink facilities, and 9% said that they do not always have access to toilet/washroom facilities. Just under half (48%) reported that they do not always have access to car parking.[13]

31. The Agency Workers Regulations 2010 (AWR) should afford such employment rights to supply teachers as either day-one rights or rights after 12 weeks' employment.[14]

32. The Regulations give all supply teachers basic rights from day one when they are in school, including the right to access facilities used by other staff at the school and equal rights at work after 12 weeks.

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[13] https://www.nasuwt.org.uk/asset/BC1B72F0-486E-4E86-A9C85D5F30CE173E/
[14] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/32121/11-949-agency-workers-regulations-guidance.pdf

33. However, research carried out by the NASUWT showed that many agencies do not inform workers of their rights. Many supply teachers report that they are unaware of the provisions available to them, and when they became aware, recognised they had not been afforded them.

34. For example, almost half of supply teachers (48%) report that they are not made aware that after 12 weeks of working in the same workplace they are entitled to the same pay and conditions as permanent members of staff.[15]

35. Of even greater concern is the fact that the NASUWT has obtained evidence of the manipulation of the Regulations, particularly in relation to the 12-week qualifying period.

36. Supply teachers have reported that agencies and/or schools simply replace the supply teacher at 12 weeks in order to evade the duty imposed regarding equal pay.

37. Furthermore, the Union is aware of computer packages utilised by some agencies which 'clock' the number of weeks supply teachers have worked on an assignment so that they cannot be subject to equal pay after 12 weeks.[16]

38. Some supply agencies exploit the provisions in the Regulations which provide that if a worker has a permanent contract of employment with an agency, the right to equal pay may not apply, the so-called 'Swedish derogation'.

39. The NASUWT has investigated the role played by offshore companies as a ruse for employing supply teachers, whilst avoiding paying millions of pounds in tax and employer's National Insurance contributions.

40. These companies essentially straddle the relationship between schools and teachers, raking off money from the public purse and delivering very little added value to the system.

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[15] https://www.nasuwt.org.uk/asset/BC1B72F0-486E-4E86-A9C85D5F30CE173E/
[16] https://www.nasuwt.org.uk/asset/BC1B72F0-486E-4E86-A9C85D5F30CE173E/

41. Research conducted by the NASUWT found that three fifths of supply teachers (60%) reported that they have been asked to sign a contract or agreement with an umbrella/offshore company,[17] and indeed the majority of these are effectively required to do so.

42. The Union asserts that at the root of this problem is the lack of regulation governing these arrangements and the lack of monitoring and scrutiny.

43. This has encouraged the growth of umbrella companies across a range of different industries and sectors, including education, draining both the public and private purse in order to maximise profits whilst denying workers access to even basic employment rights.

44. The NASUWT's successful and well-attended supply teacher conferences, held twice yearly, have heard from a large number of supply teachers trapped into working for agencies that force them to join an umbrella company in order to get work.

45. A recurring theme at the NASUWT conferences has been reports from supply teachers who have stated that they are required by recruitment agencies to join umbrella companies for payment of their salaries in order to 'save tax on remuneration'. Teachers have also expressed their dismay at being asked to pay both employers' and employees' National Insurance (NI) contributions, in addition to the umbrella companies' margin.

46. In essence, the practice, as reported to the NASUWT, is that the supply teacher has to pay the agency and the umbrella company from their wages for the privilege of working for them, and if they disagree and request to be paid through Pay As You Earn (PAYE), they are not allowed to sign with that agency.

47. Furthermore, the NASUWT has received testimony that where supply teachers have raised concerns about their treatment, they have then found that they are subject to blacklisting practices by these agencies/companies. The process is

[17] Ibid

that there no longer appears to be any work for them. In essence, their experience is that the work just 'dries up'.

48. The Union is extremely worried about such practice and the way in which it effectively denies supply teachers and other agency workers access to work. When this occurs, there is no recourse or action that can be taken which significantly disadvantages agency workers in comparison to permanent employees.

49. However, ensuring fair practices by these agencies and umbrella companies, and seeking to close loopholes, should not be reliant upon individual teachers being prepared to challenge their practices.

50. In a context where supply teachers are already subject to intermittent and insecure work, being registered with these agencies is of critical concern as it could deny an individual the opportunity for work.

51. Some employment intermediaries are promoting products that encourage supply teachers to set up as a limited company. The NASUWT has serious concerns about such products and the implications for supply teachers in regards to their tax liabilities, specifically in setting up a new limited company where the supply teacher is the 'sole owner', director and employee.

52. The Union is concerned that changes by the Treasury from April 2016[18] have so far failed to improve practice in the sector. The NASUWT believes that the Government must assess the impact of such changes upon the working lives of supply teachers.

The future world of work – action to address the issues

53. The evidence demonstrates that the current balance of benefits between agency worker (i.e. supply teacher) and employer is skewed significantly in favour of the employer (i.e. the agency).

[18] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/510730/Volume_1_Clauses_1_to_81.pdf

54. The Union therefore believes that there needs to be stronger regulation by the Government of the policies and practices of supply agencies and umbrella companies, including stronger enforcement of the AWR and all other associated legislation.

55. The NASUWT also strongly advocates the development of a set of nationally enforceable standards for supply agencies which includes reference to the effective regulation and monitoring of the individuals involved in setting up employment agencies and umbrella companies.

56. Furthermore, the Union believes that the Government should undertake a review of the current practice of supply agencies and umbrella companies to identify those which are exploiting existing loopholes, with a view to closing them down.

57. To this end, the NASUWT has cautiously welcomed the Chancellor's specific reference to off-payroll working rules in the public sector, whereby the responsibility for operating them, and paying the correct tax, will fall to the body paying the worker's company.[19]

58. The NASUWT was disappointed when the Quality Mark,[20] a joint initiative launched between the REC and the Government, was axed back in 2013 as this could have been the first step to identifying agencies that had adopted good practice.

59. Whilst both the REC[21] and APSCo[22] have developed codes of conduct, the NASUWT believes these are not a substitute for legislation and statutory enforcement, since it is the case that such codes are not legally binding on members.

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[19] https://www.gov.uk/government/publications/employment-intermediaries-travel-expense-guidance/travel-and-subsistence-expenses-for-workers-engaged-through-employment-intermediaries-from-6-april-2016
[20] http://www.sec-ed.co.uk/news/new-standard-replaces-axed-quality-mark-for-school-recruitment/
[21] https://www.rec.uk.com/ data/assets/pdf_file/0007/315934/REC-Code-of-Practice.pdf
[22] http://www.apsco.org/media/download.aspx?MediaId=978

60. The NASUWT has been consistently concerned that employment by or through agencies is currently not pensionable for supply teachers under the Teachers' Pension Scheme (TPS). The NASUWT advocates that supply teachers should be able to access the TPS rather than basic and inferior auto-enrolment schemes.

61. The lack of access to occupational pension provision is preventing many supply teachers, and other agency workers, from making prudent financial decisions for their future. In doing so, there is increased risk of reliance on the welfare system in later life.

62. The right to work and the right to representation are also key concerns for the NASUWT. The right to trade union representation and the right to withdraw labour, free from victimisation, is a vital and fundamental principle and right that should apply to all workers, including agency workers.