

**Labour Market Enforcement Strategy 2024 to 2025:
call for evidence**

- 1.1 The NASUWT welcomes the opportunity to respond to the call for evidence from the Director of Labour Market Enforcement (DLME), to inform her strategy for 2024/25.
- 1.2 The NASUWT – The Teachers' Union – represents teachers and headteachers across the United Kingdom.

GENERAL COMMENTS

- 1.3 The NASUWT provides extensive casework assistance to members asserting their employment rights. The Union therefore has a detailed understanding of the work of the different enforcement bodies.
- 1.4 The NASUWT submission seeks to address a range of issues associated with the experiences of supply teachers working through supply agencies and umbrella companies.
- 1.5 Whilst the Union recognises the need to resolve disputes at the earliest stage, it cannot go unnoticed that there will always be the need for some disputes to require external intervention and enforcement, such as that provided by the employment tribunal system and other enforcement bodies, including the Employment Agency Standards (EAS) Inspectorate.
- 1.6 The NASUWT believes that access to justice for employees and workers is a fundamental and guiding principle of a civilised society. State enforcement

bodies provide recourse for those who have been wronged by their employer and permit some form of redress when legal rights and entitlements have been infringed upon.

- 1.7 It is right that action is taken by the Government to ensure that all parties engaged in the UK labour market take responsibility for ensuring high standards of employment rights and tax compliance, as well as suitable protection for all workers.
- 1.8 Changes in the UK labour market over recent years have had a significant impact upon pay, job security and conditions of employment, resulting in an increased disparity in the balance of power between employers and workers.
- 1.9 Whilst the Government values the resilience of the UK's dynamic and flexible workforce,¹ the well-documented move away from permanent employees to a more complex and flexible labour market has resulted in the increased use of recruitment agencies and umbrella companies, including those wishing to expose the fragile job security and unfair conditions of employment of agency workers, such as supply teachers.
- 1.10 Figures published by the Trades Union Congress (TUC) show that over three million people – one in ten of the UK workforce – now face uncertainty about their working hours and their rights and protections. Of these, 730,000 are agency workers.²
- 1.11 Analysis suggests there are approximately 1.4 million³ to 1.7 million⁴ individuals involved in agency or temporary work.⁵ However, it cannot go unnoticed that it is not easy to estimate the number of agency workers in the UK labour market, as no official figures are produced by the Office for National Statistics (ONS), and surveys rely on people knowing and

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1161120/230411_Umbrellas_condoc_HMT_template.pdf

² <https://www.tuc.org.uk/sites/default/files/the-gig-is-up.pdf>

³https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/902667/Tackling_disguised_remuneration_tax_avoidance_-_call_for_evidence.pdf

⁴https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1161120/230411_Umbrellas_condoc_HMT_template.pdf

⁵https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/902667/Tackling_disguised_remuneration_tax_avoidance_-_call_for_evidence.pdf

understanding exactly what their employment status is. The level of agency working currently reported could therefore be seen as just the tip of the iceberg.

- 1.12 Indeed, research by the McKinsey Global Institute suggests that the true number of people working part time in the 'gig economy' is much higher than the official employment statistics suggest.⁶
- 1.13 Furthermore, figures suggest that there were approximately 40,000 agencies operating across different sectors of the labour market in the UK in 2018, with a 200% increase reported in 2019.⁷
- 1.14 Coupled with this has been the rapid expansion of the umbrella company market. For example, external analysis and HMRC data show that the umbrella company market has grown substantially since 20 years ago.⁸
- 1.15 Individuals and businesses (including those hiring workers) may now choose different methods of engagement when sourcing or securing work. For example, agencies may prefer to engage workers through umbrella companies to outsource human resources and payroll, as well as employment rights.
- 1.16 In addition, the competitiveness of the market has resulted in a situation where many agencies are looking to reduce their margins and liabilities through the use of umbrella companies.⁹
- 1.17 As the recruitment sector has evolved, umbrella companies have become a legitimate part of the modern labour market; an increasing number of agency workers now find themselves engaged through umbrella companies.

⁶ <http://www.mckinsey.com/global-themes/employment-and-growth/independent-work-choice-necessity-and-the-gig-economy>

⁷ <https://www.recruitment-international.co.uk/blog/2018/05/recruitment-industry-edges-closerto-40000-agency-mark>; and <https://www.recruiter.co.uk/news/2020/01/200-increase-new-recruitment-agencies-2019>

⁸ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1037093/Umbrella_Company_CfE_Final.pdf

⁹ Ibid.

- 1.18 As a consequence, umbrella companies now proliferate in all areas of the temporary labour market. HMRC estimates suggest that there has been an increase in the number of individuals working through an umbrella company from 100,000 in the tax year 2007/08 to at least 500,000 in the tax year 2020/21.¹⁰
- 1.19 Further estimates suggest that the number of those working through an umbrella company has increased from between 300,000 to 400,000 in 2015 to over 625,000 in 2021.¹¹
- 1.20 Many of those working through an umbrella company will have little choice but to work through an umbrella company. Indeed, it has been argued that the proportion of agency workers using umbrella companies is approximately 50%,¹² a figure that is likely to increase in the future, given that many agencies increasingly look to dissuade workers from using their own pay-as-you-earn (PAYE) function in favour of umbrella companies which take on the responsibility for such costs and obligations.¹³
- 1.21 Reports suggest that umbrella companies are increasingly involved in the supply chains of lower-paid workers, including those who promote and enable tax avoidance schemes.¹⁴
- 1.22 As such, the increased use of umbrella companies and the associated increased complexity in the labour market presents a challenge that may be contributing to the widening tax gap between what is expected to be paid and what is paid.¹⁵
- 1.23 Given the growing complexity of taxation and employment and equality law, coupled with the significant changes in the UK labour market over recent years which have impacted upon pay, job security and conditions of

¹⁰ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1037093/Umbrella_Company_CfE_Final.pdf

¹¹ <https://www.litrg.org.uk/sites/default/files/files/LITRG-Labour-Market-Intermediaries-Report-2021.pdf>

¹² <https://www.recruitment-international.co.uk/blog/2018/05/recruitment-industry-edges-closeto-40000-agency-mark>; and <https://www.recruiter.co.uk/news/2020/01/200-increase-new-recruitment-agencies-2019>

¹³ <https://www.litrg.org.uk/sites/default/files/files/LITRG-Labour-Market-Intermediaries-Report-2021.pdf>

¹⁴ Ibid.

¹⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1037093/Umbrella_Company_CfE_Final.pdf

employment, it is essential that there is a strong legal and regulatory framework and a strong enforcement system that provides redress and is also fair, open, accessible and impartial.¹⁶

- 1.24 It is therefore also essential that there is a strong employment law framework and a strong enforcement system that provides redress that is fair, open, accessible and impartial.
- 1.25 The United Nations (UN) sustainable development goals (SDGs), which all UN member states, including the UK, have adopted, includes the goal to promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all (SDG8).¹⁷ This includes the target to protect labour rights and promote safe and secure working environments for all workers, including migrant workers and particularly women migrants, and those in precarious employment (Target 8.8). Therefore, it is vital that reforms to the enforcement of employment address this goal and Target 8.8 in particular.
- 1.26 Furthermore, the Government accepted in *Good Work – A response to the Taylor Review of Modern Working Practices* that all work should be fair, decent and underpinned by five principles: overall worker satisfaction; good pay; participation and progression; wellbeing, safety and security; and voice and autonomy.¹⁸
- 1.27 The Union believes that changes to the labour market must work for everyone, while ensuring that the interests of everyone in the labour market are properly protected and workers are able to access their rights effectively.¹⁹

¹⁶ <http://rtsa.ro/tras/index.php/tras/article/viewFile/27/23>; and https://www.riir.ulaval.ca/sites/riir.ulaval.ca/files/1968_23-4_15.pdf

¹⁷ <https://sustainabledevelopment.un.org/sdg8>

¹⁸ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/679767/180206_BEIS_Good_Work_Report_Accessible_A4_.pdf

¹⁹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/817359/single-enforcement-body-employment-rights-call_for_evidence.pdf

1.28 This call for evidence represents yet another opportunity for the DLME and the Government to take action to address the concerns the NASUWT has over the way in which recruitment agencies and umbrella companies operate and to ensure that workers are properly protected.

2 SPECIFIC COMMENTS

Improving the radar picture

- **Labour market non-compliance threats (measured by degree of non-compliant behaviour) are greatest in the following sectors: care, agriculture, hand car washes, construction, food processing, which should therefore be the focus of attention for the enforcement bodies.**
- 2.1 Whilst the NASUWT recognises that labour market non-compliance may be greater in specific sectors, such as those referenced above, and warrant focus, this does not mean that this should come at the expense of other sectors, such as education.
- 2.2 However, it cannot go unnoticed that labour market exploitation happens across all sectors of the economy, and, as such, *all* workers should be able to rely on robust state enforcement, as and when necessary.
- 2.3 Furthermore, it should be stressed that the sectors referenced above have been the focus of the DLME since 2017, which suggests that very little, if any, headway has been made in addressing labour market non-compliance in these sectors.
- 2.4 One of the sectors the TUC has identified as having the fastest growth in insecure work is the education sector, which has risen by 42% since 2011.²⁰ 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

²⁰ <https://www.tuc.org.uk/sites/default/files/the-gig-is-up.pdf>

standards, teacher morale and the entitlement of children and young people to a high-quality education.

- 2.5 Supply teachers are integral to the education system. Around 3% of teachers working in schools at any one time are supply teachers.²¹ Without supply teachers, many pupils would be denied the opportunity to be taught by qualified and dedicated teachers who ensure that schools can continue to provide the education to which children and young people are entitled.
- 2.6 As such, supply teachers make a vital contribution to securing high educational standards for all children and young people. However, the experiences of many supply teachers suggest that developments such as deregulation have had a significant detrimental impact upon how supply teachers are deployed, how they are paid, and on their working conditions, in comparison with teachers who have a contract of employment with a school.
- 2.7 Whilst the COVID-19 pandemic has highlighted the importance of supply teachers, it has also spotlighted the growing casualisation of work and the unenviable situation of supply teachers, who often have no choice but to obtain work via different supply agencies and umbrella companies, leaving them vulnerable to the vagaries of precarious, intermittent and insecure employment.
- 2.8 As such, the NASUWT is disappointed that the DLME has still not seen fit to pursue education as a high-risk sector, especially as supply teachers were specifically referenced in the *United Kingdom Labour Market Enforcement Strategy 2019/20*, published in July 2019.²²

‘Other sectors I anticipate requiring further enforcement attention in the coming year are care and supply teachers. Both sectors were raised during discussion with stakeholders in my Call for Evidence. The care sector has

²¹ Calculated as the total spent by academies on agency supply teachers against the total spent on teachers’ salaries as reported for August 2018.

²² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/819014/UK_Labour_Market_Enforcement_Strategy_2019_to_2020-full_report.pdf

received a substantial amount of attention since my last Strategy, particularly in relation to pay for sleep-in carers. There has been a significant increase in the volume of intelligence received directly from work-seekers in the supply teaching sector regarding issues ranging from non-payment of wages to serious contractual concerns.'

- **Some groups of workers (for example, women, younger people, migrants, those with protected characteristics) are at higher risk of experiencing labour market non-compliance than others.**

2.9 Given that there are significant barriers to teachers wishing to access flexible working, many teachers, particularly women, have little option but to undertake insecure, intermittent and precarious work as supply teachers through an agency. Many report that, despite the pay and career penalty, it is the only way to combine teaching work with a family life.²³

2.10 In addition, the evidence presented by the NASUWT throughout this call for evidence, specifically on the experiences of supply teachers as agency workers, demonstrates that the rise in insecure work is having a disproportionate impact upon groups who already suffer a labour market disadvantage, such as women and Black and minority ethnic (BME) workers.²⁴ The TUC estimates that BME workers are over a third more likely than white workers to be in temporary or zero-hours work.²⁵

2.11 This is compounded by the fact that the TUC estimates that agency workers, such as supply teachers, are suffering up to a 20% hourly pay penalty when compared to the pay of an 'average' employee.²⁶

2.12 The NASUWT's annual survey of supply teachers in England shows that the situation for supply teachers has been compounded by the cost-of-living crisis and levels of inflation the likes of which have not been seen for

²³ <https://www.nasuwt.org.uk/news/campaigns/being-a-teacher-and-a-parent-survey-2020.html> and <https://www.nasuwt.org.uk/static/uploaded/6fd07ce3-6400-4cb2-a8a87b736dc95b3b.pdf>

²⁴ <http://www.resolutionfoundation.org/app/uploads/2016/12/Secret-Agents.pdf>

²⁵ <https://www.tuc.org.uk/sites/default/files/the-gig-is-up.pdf>

²⁶ Ibid.

decades. Despite an increase in the level of payment received for daily assignments, for many supply teachers who are subject to the vagaries of intermittent and insecure employment, the cost-of-living crisis is ever more prescient.²⁷

2.13 The lack of financial support, including for periods of COVID-related self-isolation, has placed more supply teachers in a precarious financial situation where they have had to make tough decisions about their expenditure, including a significant increase in those supply teachers who are cutting back on their expenditure on food or who have increased their overdraft in order to make ends meet. Some supply teachers have been forced to claim Universal Credit and there are those who have had to rely on food banks.²⁸

2.14 Given that the overwhelming majority of supply teachers are female, there are concerns that these disparities in treatment are impacting disproportionately on women, as well as Black and disabled teachers, who are more likely to be employed as supply teachers.²⁹

- **Jobseekers are increasingly using non-traditional means to find work (for example, online or via apps, social media) placing them at greater risk of fraud and scams.**

2.15 The NASUWT is concerned about the increased use of non-traditional means of work-seeking and the potential impact this has on workers, such as supply teachers, including in relation to the employment relationship and the assertion of employment rights.

2.16 For example, some platforms claim that supply teachers will be directly employed by the school that has hired the worker, whereas others expect supply teachers to be classed as self-employed.

²⁷ <https://www.nasuwt.org.uk/advice/supply-teacher/annual-supply-teacher-survey/annual-supply-teacher-survey-england.html>

²⁸ Ibid.

²⁹ Ibid.

- 2.17 In addition, the Union is concerned about potential equalities issues regarding online platforms which may require a photo to be uploaded as part of the profile of the candidate, since this could result in discriminatory decisions by schools when selecting a supply teacher, thereby furthering the detriment suffered by some groups of workers.
- 2.18 Furthermore, a number of online platforms that the NASUWT has been sighted on employ a rating system for the teacher which schools can access and use. The Union is concerned about this, particularly around the criteria that might be used and who has access to it. References to subjective judgements that could negatively impact upon a supply teacher's ability to get work are unacceptable, especially if a supply teacher is unable to challenge these if they do not agree with them.
- 2.19 Coupled with this is the rise in the use of artificial intelligence (AI) and whether such technologies are being designed, developed, procured and implemented in ways that secure and protect the lawful rights and interests of teachers, school leaders and learners.
- 2.20 This includes their educational and human rights, as well as their rights in relation to privacy and data protection, equality, employment and decent working conditions.
- 2.21 The Union is concerned that some digital technologies may be used to monitor and judge the practice of teachers without any recourse. This is even more significant for supply teachers as agency workers who are in intermittent, insecure and precarious employment where high stakes, punitive purposes can have serious impacts on future employment.
- 2.22 As such, the NASUWT believes that the *DLME Strategy 2024/25* should give due consideration to the emergence of AI in the recruitment sector in order to ensure that workers are appropriately protected.

- **Ongoing labour shortages in some sectors are not translating into improved conditions for workers in those sectors.**

2.23 Despite issues around the recruitment and retention which the NASUWT has documented in its submission to the School Teachers' Review Body (STRB),³⁰ as well as an increase in the proportion of supply teachers reporting greater opportunities for work, including longer work in excess of a term,³¹ it remains the case that the overwhelming majority of supply teachers have not seen labour shortages translating into improved pay and conditions.

2.24 Indeed, the increased reliance on agency working, including through umbrella companies, has led to a reduction in the pay and conditions of service of supply teachers. Rates of pay of supply teachers have remained stagnant for the overwhelming majority of supply teachers.

2.25 For supply teachers, the impact of pay freezes and real-terms pay cuts, together with the lack of effective regulation of agencies, has resulted in even more acute cost-of-living pressures and the exodus of many supply teachers from the profession, including to non-professional occupations, such as retailing, where pay levels are rising.

2.26 The average daily pay rate for a classroom teacher employed by a school is £217.22. However, the majority of supply teachers report that they are paid between £100 and £149 per day. The majority of supply teachers have not seen their remuneration increase substantially since 2014.³²

2.27 The situation for supply teachers as agency workers in England is compounded by the fact that employment by or through agencies is currently not pensionable under the Teachers' Pension Scheme (TPS), leaving many

³⁰ <https://www.nasuwt.org.uk/static/a9cf8861-534b-417f-89566af61852e440/Evidence-Submission-to-the-STRB-33rd-Report-March-2023.pdf>

³¹ <https://www.nasuwt.org.uk/advice/supply-teacher/annual-supply-teacher-survey/annual-supply-teacher-survey-england.html>

³² <https://www.nasuwt.org.uk/static/a9cf8861-534b-417f-89566af61852e440/Evidence-Submission-to-the-STRB-33rd-Report-March-2023.pdf>

supply teachers no alternative other than to make less favourable pension plans, including to rely on inferior auto-enrolment pension arrangements. There is a strong argument that supply teachers, working alongside other employed teachers, should be afforded the right to access the TPS.

- 2.28 It is clear that the market for agency workers in education is big business. For example, more than 70% of secondary school headteachers increased their spending on agency supply teachers between 2018 and 2021.
- 2.29 The Crown Commercial Services (CCS) estimates that the average agency mark-up was 38%.³³ The CCS estimates that this equates to an agency receiving £56 on a charge rate of £200 to the school, with the supply teacher receiving just £101.81.
- 2.30 Estimates suggest that the amount spent by maintained schools on supply teachers for 2021/22 was in excess of £521 million.³⁴ Of this, approximately £415 million was spent on agency supply teaching staff, an increase of 49.7% on that spent the previous academic year.³⁵ Based on the commission figures quoted above, this represents in excess of £157 million of taxpayers' money being siphoned off into the pockets of supply agencies and/or umbrella companies.
- 2.31 The figure for academies for 2020/21 was in excess of £427 million. Of this, approximately £330 million was spent on agency supply teaching staff. Based on a commission of 38% as referenced above, this equates to in excess of £125 million of taxpayers' money which is not being retained within the education system.³⁶
- 2.32 The profit margins of supply agencies are increased by depressing the pay of teachers or by misselling the services of qualified teachers by hiring them out to perform tasks which do not require their professional skills and

³³ <https://www.crowncommercial.gov.uk/news/agency-mark-up-and-the-impact-on-temporary-worker-pay>

³⁴ <https://explore-education-statistics.service.gov.uk/data-tables/fast-track/2f369c9b-a045-44a7-7f8a08dac7ab723a>

³⁵ <https://explore-education-statistics.service.gov.uk/find-statistics/la-and-school-expenditure>

³⁶ Based on an analysis of income and expenditure figures provided by academies in England for 2020/21 found at: <https://schools-financial-benchmarking.service.gov.uk/Help/DataSources>

abilities, such as supervisory roles, but at the same time charging schools for the provision of a qualified teacher.

- 2.33 Taxpayers' money is being siphoned off to agencies. Supply teachers are getting less, schools are paying more, whilst agencies and umbrella companies profit.
- 2.34 For example, well in excess of three fifths of supply teachers (63%) indicated that the rates of pay received during the academic year 2021/22 were the same as those they were able to earn in the previous academic year, whereas just 14% reported that the rates of pay received were less than those they were able to earn in the previous academic year.³⁷
- 2.35 Furthermore, when asked if the agency/agencies where they undertook work during the academic year 2021/22 operated a ceiling in respect of their remuneration, just over a third of supply teachers (34%) reported that the agency/agencies did.³⁸
- 2.36 In addition, despite the crucial role played by supply teachers during the coronavirus pandemic, many reported that they were not provided by the agency with the key information to help them feel safe when undertaking assignments.
- 2.37 For example, over one in ten supply teachers (13%) stated that they were given the school's overall risk assessment by the agency, compared to just over two fifths of supply teachers (41%) who stated that they were given the information by the school. Thirty-seven per cent stated that they were not given the information, and almost one in ten (9%) stated that they were not sure.³⁹
- 2.38 In addition, over one in ten supply teachers (13%) stated that they were given the procedures and protective measures for staff to follow to reduce the risk

³⁷ <https://www.nasuw.org.uk/advice/supply-teacher/annual-supply-teacher-survey/annual-supply-teacher-survey-england.html>

³⁸ Ibid.

³⁹ Ibid.

of transmission of COVID-19 by the agency. This compares to 56% of supply teachers who stated that they were provided with the information by the school. Over a quarter of supply teachers (27%) stated that they were not provided with the information, and just under one in 20 (4%) stated that they were not sure.⁴⁰

2.39 Furthermore, just under one in ten supply teachers (8%) stated that they were given the details of the procedures and arrangements to ensure there was adequate time for supply teachers to be made aware of, and understand, the systems in place in the school, including in respect of COVID-19 by the agency. This compares to 45% of supply teachers who stated that they were provided with the information by the school. Just over a third of supply teachers (34%) stated that they were not provided with the information, and well over one in ten (13%) stated that they were not sure.⁴¹

2.40 Moreover, just 14% of supply teachers stated that they were provided with the details of any designated contact(s) for any questions, problems or emergencies (COVID-specific or otherwise) by the agency. This compares to well in excess of two fifths of supply teachers (47%) who stated that they were provided with the information by the school. Twenty-eight per cent of supply teachers stated that they were not provided with the information, and just over one in ten (11%) stated that they were not sure.⁴²

2.41 What's more, well over half of supply teachers (57%) reported that they were required to self-isolate during the academic year 2021/22. Of those, over three fifths (62%) reported that their employer did not make them aware of whether they were eligible for Statutory Sick Pay (SSP), and 17% of supply teachers reported that they did not know.⁴³

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Ibid.

⁴³ Ibid.

2.42 In addition, only one in 20 supply teachers (5%) reported that they were eligible for a Test and Trace Support Payment and just over half (52%) reported that they did not know.⁴⁴

2.43 The evidence suggests that in the increasingly fragmented context in which schools operate, the role previously undertaken by local authorities is now being carried out by privatised supply agencies and umbrella companies who are exploiting the recruitment challenges in schools for profit.

2.44 Given this, the Union contends that the overwhelming majority of supply teachers employed through agencies and/or umbrella companies have not seen improved pay and conditions as a consequence of labour shortages.

Improving focus and effectiveness

- **Workers and employers are sufficiently aware of employment rights and know where to go for help.**

2.45 The evidence suggests that workers, such as supply teachers, are not adequately informed and aware of their employment rights and where to go for help.

2.46 Indeed, workers' awareness of the various enforcement bodies is extremely low. For example, just 6% of private sector employees said they would approach an enforcement body in the event their rights were violated.⁴⁵

2.47 In addition, the NASUWT's research shows that almost three quarters (73%) of supply teachers reported that the agency through which they obtain the majority of their work does not fully disclose all its fees and charges.⁴⁶

⁴⁴ Ibid.

⁴⁵ <https://www.resolutionfoundation.org/app/uploads/2023/04/Enforce-for-good.pdf>

⁴⁶ <https://www.nasuwt.org.uk/advice/supply-teacher/annual-supply-teacher-survey/annual-supply-teacher-survey-england.html>

- 2.48 Some supply teachers are signing contracts that are so long and opaque (sometimes 27 pages long) that they do not necessarily understand what they are signing, including the fact that they are employed via an umbrella company.
- 2.49 Schools have also expressed concerns over the recruitment procedures operated by some agencies regarding the vetting and interview of supply teachers.⁴⁷
- 2.50 These are just a few examples of breaches of the Conduct of Employment Businesses Regulations (2003), which set out quite clearly what an agency worker should expect to receive and what can or cannot be asked of workers by an agency.⁴⁸
- 2.51 Research carried out by the NASUWT showed that many agencies do not inform workers of their rights. Many supply teachers reported that they were unaware of the provisions available to them, and when they became aware, recognised that they had not been afforded them.
- 2.52 For example, just over half (52%) of supply teachers reported that they were not made aware that after 12 weeks of working in the same workplace, they were entitled to the same pay and conditions as permanent members of staff.⁴⁹
- 2.53 Of even greater concern is the fact that the NASUWT has obtained evidence of the manipulation of the Regulations. For example, 15% of supply teachers reported that work had been cancelled on specific longer term assignments at, or approaching, the 12 weeks' qualification period for the Agency Workers Regulations (AWR).
- 2.54 Despite the suggestion that agency workers have a choice of whether or not they opt in, the NASUWT believes that the reality is that they have very little choice. If they do not sign up, then they will not get work.

⁴⁷ https://www.niesr.ac.uk/sites/default/files/publications/NIESR_agency_working_report_final.pdf

⁴⁸ http://www.legislation.gov.uk/ukxi/2003/3319/pdfs/ukxi_20033319_en.pdf

⁴⁹ <https://www.nasuwt.org.uk/uploads/assets/uploaded/fbd07752-41cb-400b-b80b6c6505ea351c.pdf>

- 2.55 In fact, many agencies try to push supply teachers towards umbrella companies and dissuade them from using the agency's PAYE function. This state of affairs means that in order to obtain work and get paid, supply teachers have to use an umbrella company even if they do not want to.
- 2.56 Despite guidance from the EAS which suggests that agencies cannot force people into using an umbrella company, by not offering any other option, supply teachers are effectively forced into such arrangements if they want to engage and work with the supply agency.⁵⁰
- 2.57 It has been suggested that using an umbrella company is the best way to maximise revenue and minimise risk. Agencies have a preferred supplier list and will decide on which umbrella company to use based not on what is best for the agency worker, but on the best margins for the employment agency.⁵¹
- 2.58 This is ever more prescient, given the fact that many workers are unaware of their employment rights and are unsure how to report unfair practices, particularly as there is currently no specific regulatory framework for umbrella companies in the same way as there is for employment businesses and agencies.⁵²
- 2.58.1 Whilst the EAS can intervene in regards to issues of compliance with agencies that use umbrella companies, and HMRC can intervene if there are compliance issues relating to tax or PAYE and the National Minimum Wage (NMW), the majority of employment law is dealt via employment tribunals (ETs) which have developed to become the UK's main employment court, covering a wide-reaching and significant jurisdiction that includes a range of key employment issues.

⁵⁰ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/936515/eas-brief-guide-for-agencies.pdf

⁵¹ Ibid.

⁵² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1037093/Umbrella_Company_CfE_Final.pdf

2.59 Whilst organisations such as trade unions are available to assist and offer invaluable advice, guidance and support, the NASUWT believes that measures should be introduced to promote and support collective bargaining and the right of trade unions to access workplaces and represent individuals and groups of workers when enforcing their rights, particularly if working through an agency and/or umbrella company.

2.60 Trade unions have a vital role to play in ensuring that workers are better informed and empowered in respect of their employment rights. The right to representation is a key concern for the NASUWT when dealing with supply teachers as agency workers.

2.61 Evidence suggests that the involvement of trade unions is crucial in negotiating improved terms and conditions and putting in place mechanisms to remedy breaches of these terms and conditions.

2.62 However, it should be noted that not everyone is a member of a trade union, and, as such, there is a pressing need for the DLME to ensure that there is greater public and sectoral awareness of employment status, employment rights and the relevant regulatory bodies involved in the enforcement of these.

- **Workers have confidence in the three enforcement bodies that their cases are being dealt with proactively.**

2.63 Over a number of years, the NASUWT has developed a good working relationship with colleagues at the EAS. This has included attendance and presentation at a number of NASUWT events in order to educate supply teachers about a number of issues relating to working through a recruitment agency, including the importance of the Conduct of Employment Businesses Regulations (2003), the Key Information Document (KID) and the role of umbrella companies.

- 2.64 This has proved beneficial and alerted a number of supply teachers to the role of the EAS and how to pursue a case.
- 2.65 However, despite such positive interactions, the evidence provided throughout this call for evidence suggests that there are a number of workers who do have the confidence that their cases are being dealt with proactively, and that the current balance of benefits between workers (i.e. supply teachers) and the employer suggests it is skewed significantly in favour of the employer (i.e. the end client/agency/umbrella company).
- 2.66 In part, this is a consequence of the fact that the chances of being investigated for noncompliant employers is too low⁵³ and the woefully inadequate levels of funding and resources available to regulatory and enforcement bodies which fall under the remit of the DLME to deliver their remits.
- 2.67 The Union believes that it is right and proper that the appropriate distribution of resources is allocated so that effective labour market enforcement can take place.
- 2.68 It should be noted that, compared to European countries, UK enforcement agencies are under-resourced and underfunded. For example, in France, there are nearly 19 inspectors for every 100,000 people, whereas in the UK there is just one inspector per 100,000 workers.
- 2.69 Furthermore, the International Labour Organization (ILO), Article 10, Labour Inspection Convention No. 81, recommends adequate resourcing for labour market inspectorates.⁵⁴
- 2.70 Despite successive calls for evidence, it cannot go unnoticed that the Government is still failing many workers. For many employers, including agencies and umbrella companies, the threat of detection and having a

⁵³ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705495/labour-market-enforcement-strategy-2018-2019-executive-summary.pdf

⁵⁴ https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C081

sanction applied represents a good risk.⁵⁵ For example, estimates suggest that an employer could expect a visit every 320 years from a NMW Inspectorate, or every 39 years by the EAS.⁵⁶

2.71 Despite recent funding increases in the EAS, up to £1.525 million for the year 2020/21,⁵⁷ this still represents approximately 29 staff covering around 40,000 agencies operating in the UK.

2.72 Whilst the NASUWT welcomed the improved levels of funding and additional resources to regulatory and enforcement bodies, there is still more that needs to be done to ensure workers have confidence that their cases are being tackled proactively.

2.73 With such limited budget and resources available, the Union is concerned that the level of non-compliance currently reported is just the tip of the iceberg. This is particularly prescient considering the fact that education had the second highest number of infringements between 1 April 2019 and 31 March 2020.⁵⁸ This is compounded by the lack of due diligence which exists for those seeking to enter the market and establish their own agency.

- **Compliance and enforcement interventions by the three bodies are helping to ensure a level playing field for business.**

2.74 As referenced above, and throughout this call for evidence, the Union believes that the current balance of benefits between workers (i.e. supply teachers) and the employer is skewed significantly in favour of the employer (i.e. the end client/agency/umbrella company).

2.75 For example, the NASUWT is concerned about the growth and prevalence of umbrella companies in education. The lack of robust data on the number of umbrella companies means that any estimates are likely to be inaccurate,

⁵⁵ https://www.mdx.ac.uk/_data/assets/pdf_file/0017/440531/Final-Unpaid-Britain-report.pdf?bustCache=35242825

⁵⁶ Ibid.

⁵⁷ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1040316/E02666987_UK_LMES_2020-21_Bookmarked.pdf

⁵⁸ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1000945/eas-annual-report-2019-2020.pdf

but reports indicate that one of the three biggest areas for umbrella companies is education.

- 2.76 Research conducted by the NASUWT found that almost half of supply teachers (49%) reported that they have been asked to sign a contract or agreement with an umbrella/offshore company when working through a supply agency.⁵⁹
- 2.77 The lack of regulation of umbrella companies has long been identified as an issue that needs to be rectified. For example, the 2017 *Taylor Review of Modern Working Practices* recommended that the DLME should consider whether the remit of EAS should be extended to cover policing umbrella companies and other intermediaries in the supply chain.⁶⁰
- 2.78 Whilst the Government has committed to expand state enforcement to include umbrella companies through its *Good Work Plan*,⁶¹ to date, the closest it has got is to reaffirm its commitment to do so in its response to the 2019 call for evidence on the creation of the Single Enforcement Body (SEB).⁶²
- 2.79 The failure to act has left a void in which agencies may be putting profits over the welfare of its workers through the use of umbrella companies,⁶³ a situation which the Loan Charge All-Party Parliamentary Group inquiry into how contracting should work describes as: *'out of control, all too often exploiting contractors (even without them realising it).'*⁶⁴
- 2.80 Indeed, whilst acknowledging the concerns over the role played by umbrella companies in the labour market, including in relation to employment rights and issues of tax non-compliance, the Government has failed to address the

⁵⁹ <https://www.nasuwt.org.uk/uploads/assets/uploaded/cbf2bdf5-8e39-484b-926b1becb8fc586c.pdf>

⁶⁰ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/627671/good-work-taylor-review-modern-working-practices-rg.pdf

⁶¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705503/labour-market-enforcement-strategy-2018-2019-full-report.pdf

⁶² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/991751/single-enforcement-body-call-for-evidence-govt-response.pdf

⁶³ <https://www.litrq.org.uk/sites/default/files/files/LITRG-Labour-Market-Intermediaries-Report-2021.pdf>

⁶⁴ <http://www.loanchargeappg.co.uk/wp-content/uploads/2021/04/How-Contracting-Should-Work-Inquiry-Report-April-2021-min.pdf>

situation and presided over a state of affairs which has worsened, given the increased complexity of the modern labour market.

- 2.81 Given this, the NASUWT cautiously welcomes the proposals outline in the Government's recent call for evidence in respect to umbrella companies, including, but not limited to, the objective of delivering improved outcomes for workers through enhanced regulation of the umbrella company market by the EAS.⁶⁵
- 2.82 The Union believes that the EAS is the most appropriate mechanism/body for this, given that the EAS already regulates the recruitment sector where umbrella companies overwhelmingly operate.
- 2.83 The EAS would be able to use its existing knowledge and relationships to effective use, which could prove invaluable, particularly when it comes to enforcement.
- 2.84 The Union believes that the EAS should use its full suite of enforcement powers to both proactively and reactively tackle non-compliant umbrella companies.
- 2.85 However, the Union is disappointed that the EAS has not used its existing powers already to tackle non-compliant umbrella companies, such as those contained within *Regulation 5* of the Conduct of Employment Businesses Regulations (2003), to the effect that an agency '*may not make your work-finding services conditional upon the work-seeker using other goods or services provided by you or someone else*'.⁶⁶ This is when it appears that it is common practice for agency workers to be offered assignments that are conditional upon them signing up with an umbrella company.
- 2.86 The Union is clear that any recommendations must ensure that there is a level playing field, and that employers who break the law can expect significant repercussions for their actions, whilst at the same time provide

⁶⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1161120/230411_Umbrellas_condoc_HMT_template.pdf

⁶⁶ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/936515/eas-brief-guide-for-agencies.pdf

workers with the comfort and knowledge that the system works in a fair and just manner.

- **Current enforcement penalties (for example, financial, reputational) deter more serious labour market exploitation.**

2.87 As previously stated above, the NASWUT is clear that enforcement penalties must ensure that there is a level playing field, and that employers who break the law can expect significant repercussions for their actions, whilst at the same time providing workers and the wider public with confidence in the system.

2.88 Unfortunately, the Union believes that the current enforcement penalties are failing to do this, and at times appear as if they are not fit for purpose. For example, as referenced above, it cannot be the case that for many employers, including agencies and umbrella companies, the threat of detection and having a sanction applied represents a good risk.⁶⁷ For example, estimates suggest that an employer could expect a visit every 320 years by a NMW Inspectorate, or every 39 years by the EAS.⁶⁸

2.89 Furthermore, the previous DLME, Professor Sir David Metcalfe, noted that an employer in the UK was likely to be inspected by one of its three enforcement bodies on average only once every 500 years.⁶⁹

2.90 Sir David Metcalfe then went on to note that, *'If you . . . have not got the resources . . . then you need heavier penalties.'*⁷⁰

2.91 Given this, the NASUWT maintains that the Conduct of Employment Agencies and Businesses Regulations 2003 should be strengthened to ensure that specific provisions relating to umbrella companies are incorporated so that the EAS can enter the premise of umbrella companies,

⁶⁷ https://www.mdx.ac.uk/_data/assets/pdf_file/0017/440531/Final-Unpaid-Britain-report.pdf?bustCache=35242825

⁶⁸ Ibid.

⁶⁹ <https://www.thompsons.law/media/3201/enforcement-of-employment-recommendations-thompsons-solicitors-response.pdf>

⁷⁰ <https://www.ft.com/content/50afb91e-ea4a-11e7-bd17-521324c81e23>

seek labour market enforcement undertakings, and prosecute umbrella companies, in the same way as they apply to employment businesses/agencies.

- 2.92 In addition, the NASUWT maintains that this should include the right for an agency worker, such as a supply teacher, to decide whether or not they want to be employed through an umbrella company, and a requirement for mandatory transparency so that all fees and costs are fully disclosed, including any associated deductions.
- 2.93 Furthermore, this should include a requirement for agreed rates of pay to include an uplift to cover any fees charged by the umbrella company, including the employer's National Insurance Contributions (NICs) and other related costs.
- 2.94 This should be accompanied by a statutory standards framework which strengthens existing regulations, such as those that make it unlawful for an agency to offer a position that is conditional on using a specified umbrella company, and those that stop workers being pushed or encouraged to opt out of the Conduct of Employment Agencies and Employment Businesses Regulations 2003.⁷¹
- 2.95 Furthermore, any such framework should make it unlawful for agencies to receive financial incentives or 'kickbacks' from umbrella companies, such as those received via introductions.
- 2.96 The Union also believes in the additional powers that permit the EAS to impose civil sanctions (e.g. fines) on umbrella companies.
- 2.97 In addition, the NASUWT maintains that there should be an avenue which provides for trade unions to bring a complaint on behalf of workers.

⁷¹ <http://www.ioanchargeappg.co.uk/wp-content/uploads/2021/04/How-Contracting-Should-Work-Inquiry-Report-April-2021-min.pdf>

- 2.98 However, as stated before, the extension of the remit of the EAS must be accompanied with improved levels of funding and additional resources to enable the EAS to deliver any extended remit.
- 2.99 In addition, the NASUWT reiterates previous calls for serious consideration to be given to a licensing scheme which monitors and reviews compliance of employment businesses and umbrella companies operating in education.⁷²
- 2.100 Employment businesses/agencies and umbrella companies operating in the state-funded education sector would be an ideal area to extend licensing schemes, particularly given the growing concern over the way they operate and the levels of fees they charge, which is, in essence, money being diverted away from the public purse and the education of children and young people.
- 2.101 Licensing would be the most effective way to tackle non-compliance in education when there is evidence of repeated breaches of employment rights, as it requires the licence holder to demonstrate compliance before they are legally permitted to operate in the sector. They are also subject to continuing checks.
- 2.102 In order to secure public confidence, any licensing scheme should be backed up by an independent regulator that has the ability to hold employers to account and apply appropriate sanctions for those who do not comply with the provisions of any such scheme.
- 2.103 The NASUWT believes that this should be comprised of relevant stakeholders, including trade unions, in order to ensure that there is a requisite level of veracity about the scheme, as there is currently very little to dissuade an agency if they want to push workers into arrangements with unscrupulous or non-compliant umbrella companies.

⁷² <https://www.nasuwt.org.uk/static/f4b934af-eea4-405b-8ab101fc1a77e994/Consultation-Response-HMRC-Tougher-Consequences-for-Promoters-of-Tax-Avoidance.pdf>

- 2.104 As such, it may be worth giving further consideration as to whether the Gangmasters and Labour Abuse Authority (GLAA), which operates a licensing scheme regulating businesses which provide workers to certain sectors of the economy, is best placed to operate this, particularly given the complexities associated with issues of tax non-compliance.
- 2.105 Furthermore, the Union believes that the naming and shaming of agencies and umbrella companies could act as an additional lever for compliance. It seems appropriate that employers who commit serious breaches of employment law should be named, as an effective deterrent.
- 2.106 Consistent application of naming and shaming must have the desired effect of incentivising non-compliant employers to act promptly or face further escalation through additional sanctions, including greater compensation for workers affected.
- 2.107 Furthermore, the NASUWT is concerned that many employment businesses/agencies and/or end clients do not undertake due diligence on the entities that make up the labour supply chain, as the lack of visibility and absence of due diligence enables non-compliant umbrella companies to operate.
- 2.108 Given this, the Union welcomes moves to consider mandating due diligence, where an employment business/agency and/or end client are required to undertake due diligence, as this could represent a positive step towards removing non-complaint umbrella companies from the labour supply chain.⁷³
- 2.109 The NASUWT maintains that any such due diligence *must* be operated through a statutory requirement in order to avoid a situation where some employment businesses/agencies or end clients do not undertake due diligence.

⁷³https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1161120/230411_Umbrellas_condoc_HMT_template.pdf

- 2.110 In addition, any such process must include appropriate financial penalties for both the employment business/agency and the end client (it should not be the case that it is *either/or*).
- 2.111 As such, this would reflect existing practice that operates in employment tribunals, where *all* parties involved are held to be responsible (joint and several liability), as this would provide workers with other avenues to pursue when seeking to enforce their rights, whilst ensuring that due diligence is maintained, which in turn could incentivise more permanent and secure employment.⁷⁴
- 2.112 Furthermore, the Union advocates that the establishment of a due diligence process, and any associated good practice, must be developed in conjunction with key stakeholders, including trade unions, as it would be unacceptable for any such process to involve checking whether an umbrella company is accredited with a trade/voluntary body.
- 2.113 In addition, the NASUWT maintains that any due diligence process should extend to detailing the obligations on employment rights in the labour supply chain.
- 2.114 As referenced above, the credibility of any due diligence process would be enhanced by the naming and shaming of agencies and umbrella companies, as employers who do not comply with any such statutory process should be named in order to serve as an effective deterrent.
- 2.115 In addition, public procurement rules should be strengthened to ensure that public sector bodies are prohibited from using those employment agencies and umbrella companies which fail to adhere to minimum standards.
- 2.116 The House of Lords Economic Affairs Finance Bill Sub-Committee reinforced this notion by recommending that the Government: *'ensure that no government or public sector body contracts with an intermediary operating a*

⁷⁴ <https://www.tuc.org.uk/sites/default/files/2021-07/Umbrella.pdf>

*disguised remuneration scheme, and to publicise this requirement along with the protocols that public bodies are expected to follow.*⁷⁵

2.117 In the case of schools and colleges, as public bodies, they have a great deal of purchasing power and, as a consequence, leverage over their suppliers. This provides them with the opportunity to bring about change in the behaviour of those employed in the supply chain. Suppliers wishing to enter a contract with such public bodies should be expected to evidence a robust approach to both employment and tax law obligations.

2.118 For example, in Norway, public authorities are obliged to advance contract clauses on wages and decent working conditions in relation to the procurement of construction, facility management and cleaning services.⁷⁶

2.119 Public authorities in Norway are also required to follow up with suppliers on the performance of such clauses, such as requiring the supplier to make a self-declaration.

- **The enforcement bodies have a difficult job prioritising their resources but, on balance are addressing the right issues.**

2.120 Whilst acknowledging that the three enforcement bodies (the EAS, NMW and GLAA) have a difficult job prioritising their resources, the Union believes that the evidence presented throughout this submission demonstrates that enforcement bodies are still not addressing the issue of non-compliance that the NASUWT and other trade unions have raised every year since the DLME Strategy began.

⁷⁵ <https://committees.parliament.uk/publications/4097/documents/40546/default/>

⁷⁶ <https://www.hrprocurementlab.org/wp-content/uploads/2016/06/Public-Procurement-and-Human-Rights-A-Survey-of-Twenty-Jurisdictions-Final.pdf>

Better joined up thinking

- **Coordinated enforcement actions by the enforcement bodies are helping to achieve a more compliant labour market.**

2.121 Whilst the three enforcement bodies work closely together and share intelligence in order to produce a more effective and coherent response on both a national and regional level, as well as by sector, the evidence included in the Union's submission suggests that this has not necessarily resulted in a more compliant labour market.

2.122 Furthermore, it cannot go unnoticed that there needs to be a firewall between the work of the DLME enforcement bodies and those involved in the enforcement of immigration, as workers with concerns over their immigration status may refuse to report abuse or exploitation out of a real or perceived fear that reporting could put their jobs at risk.

2.123 Indeed, the Government's own review in 2021 acknowledged that data sharing for immigration enforcement can be a contributing factor to victims not reporting crime, and that exploiters and perpetrators '*often use the victim's immigration status to exert fear or control*'.⁷⁷

2.124 For example, evidence from Freedom of Information (FOI) requests showed that all labour inspectorates in the UK had provided information on migrant workers to immigration authorities for enforcement purposes at least once between 2016 and 2019, and all but one had conducted simultaneous operations with Immigration Enforcement.⁷⁸

⁷⁷ <https://trustforlondon.org.uk/research/preventing-and-addressing-abuse-and-exploitation-a-guide-for-police-and-labour-inspectors-working-with-migrants/>

⁷⁸ https://tfl.ams3.cdn.digitaloceanspaces.com/media/documents/Preventing_and_addressing_abuse_and_exploitation_-_FLEX_and_LAWRS_Feb_2022.pdf

- **Cross-government working has been effective in tackling labour exploitation in high-risk sectors (for example, care, hand car washes, agriculture, construction).**

2.125 As stated above, whilst the three enforcement bodies work closely together and share intelligence amongst themselves in order to produce a more effective and coherent response on both a national and regional level, as well as by sector, the evidence included in the Union's submission suggests that this has not necessarily been effective in tackling exploitation and non-compliance in the labour market.

Improving engagement and support

- **Failure to provide detailed, timely, physical, and accessible payslips can leave workers vulnerable to exploitation.**

2.126 The NASUWT is concerned that the failure of unscrupulous recruitment agencies and/or umbrella companies to provide a detailed, physical payslip in a timely fashion is leaving some supply teachers vulnerable to exploitation.

2.127 The lack of transparency means that those using such schemes (i.e. supply teachers) are unaware exactly what they are involved in, as there is confusion and misinformation about the pay rates and the way in which the pay is comprised (e.g. as NMW, discretionary bonuses, or loans).

2.128 Workers experience a number of problems when working through an umbrella company, including a lack of transparency. This includes transparency around contractual terms and conditions, as well as transparency around rates of pay.⁷⁹

⁷⁹ Ibid.

- 2.129 Estimates suggest that two million workers are not receiving their legal entitlement to holiday pay, missing out on an estimated £3.1 billion per year.⁸⁰
- 2.130 The NASUWT believes that agency workers, such as supply teachers, are a category of workers who are particularly at risk from receiving no holiday pay and/or sick pay. They are also a group who face more difficulty in enforcing their rights due to a lack of voice in the workplace, coupled with a lack of job security.
- 2.131 Furthermore, 60% of those workers who reported receiving a payslip stated that they did not understand their payslip either due to a lack of clarity, not understanding the make-up of their pay, or variances in the pay received week to week.⁸¹
- 2.132 The rate advertised by an agency often does not reflect the fact that the worker will be processed through an umbrella company, and, as such, should receive an uplift in their rate of pay to ensure that they are no worse off than if they were paid by the agency directly with a non-uplifted rate of pay.
- 2.133 Disappointingly, there is the possibility that some agencies may purposefully deceive workers by advertising at one rate without being clear that the amount received by the worker will be another rate, due to the amount of money which will be taken by the umbrella company.⁸²
- 2.134 Indeed, many workers have reported that they have received lower rates that did not match the original salary offer from the employment business/agency or the end client.⁸³
- 2.135 As such, in its recent response to His Majesty's Treasury (HMT), His Majesty's Revenue and Customs (HMRC) and the Department for Business

⁸⁰ <https://www.tuc.org.uk/news/2-million-workers-not-getting-legal-holiday-entitlement-warns-tuc>

⁸¹ Ibid.

⁸² <https://www.litr.org.uk/sites/default/files/files/LITRG-Labour-Market-Intermediaries-Report-2021.pdf>

⁸³ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1161119/M4027_Call_for_Evidence_SoR_UCs_0103.pdf

and Trade consultation on tackling non-compliance in the umbrella labour market, the Union cautiously welcomed the proposal to introduce and regulate for minimum legislative provisions for an umbrella company to comply, such as the handling of pay and holiday pay and the use of additional services.⁸⁴

2.136 In addition, the Union argued that there should be a minimum standard regarding transparency of payslips, including any statutory deductions applied and an explanation as to how this has been deducted (e.g. the Apprenticeship Levy), as well as greater clarity over the rates advertised and the 'margin' charged by an umbrella company.

2.137 In consequence, the NASUWT agrees that it would seem appropriate to ensure that the minimum legislative provisions for an umbrella company to comply with include the duty to pass on this information to an employment business and/or end client, such as the details provided in a KID.

2.138 The Union therefore advocates that the Government should engage further with key stakeholders in order to ensure that the minimum legislative provisions for an umbrella company to comply are fit for purpose and give workers and the wider public confidence in the system.

2.139 In addition, the Union believes that an employment business/agency and/or end client should be prohibited from using an umbrella company that fails to provide such detailed information as part of any due diligence process.

2.140 The NASUWT cannot see why the proposals referenced above are not introduced into those enforcement bodies directly under the control of the DLME.

2.141 Indeed, the state has a fundamental role in protecting individuals, particularly the most vulnerable, from umbrella companies who use exploitative and

⁸⁴ Ibid.

unscrupulous employment practices, including non-payment, payroll skimming and the non-payment of holiday pay.⁸⁵

- **Key Information Documents (KIDs) are providing those workers entitled to receive them all the information they need in relation to their employment.**

2.142 The introduction of a KID from 6 April 2020 sought to address issues of transparency by making it a requirement of agencies to provide agency workers, such as supply teachers, with key information prior to signing up for an assignment, including in relation to how they were paid, and if an intermediary or umbrella company is involved.⁸⁶

2.143 The legislation introduced in respect of the KID is prescriptive, even down to the length of the document, which must be no longer than two A4 pages and easy to understand. Provided that the KID is completed correctly, an agency worker, such as a supply teacher, should be in a position to better understand and track the situation in respect to their pay and the amount paid by the agency to the umbrella company, and the net sum the worker receives.

2.144 However, it appears that there is still a lack of transparency over the deduction, fees and contractor pay/payments, with some agencies ignoring the legal requirement to provide all workers with a KID.⁸⁷ This is a particular problem when the only source of work is via recruitment agencies, which can often be the case for lower paid workers.

2.145 Despite it being a legal requirement since April 2020, only 34% of supply teachers who obtained work through a new supply agency reported that they

⁸⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1037093/Umbrella_Company_CfE_Final.pdf

⁸⁶ <https://www.gov.uk/government/publications/providing-a-key-information-document-for-agency-workers-guidance-for-employment-businesses>

⁸⁷ <http://www.loanchargeappg.co.uk/wp-content/uploads/2021/04/How-Contracting-Should-Work-Inquiry-Report-April-2021-min.pdf>

had been provided with a KID detailing how they would be paid and associated deductions, as well as other key details.⁸⁸

2.146 In addition, the NASUWT is concerned about the extent to which supply teachers, as agency workers, are provided with a KID by their respective agencies at the appropriate time.

2.147 It is also unclear as to whether a KID is being given out multiple times in the event of multiple potential pay routes, so as to allow workers to compare and contrast accordingly.

2.148 Accompanying this is the fact that the KID is only a requirement for new agency workers signing up with an agency from April 2020, so existing agency workers, such as supply teachers, may not be provided with one if they were already working through their existing agency prior to this date. As such, the introduction of the KID is not a complete solution.

2.149 The KID is supposed to be one of the first things that an agency provides to a worker in order for them to make an informed choice. Whilst the Government has not tested with workers whether this has helped them better understand their situation,⁸⁹ the evidence presented above suggests that this is not the case.

2.150 Many workers are unaware of their employment rights and are unsure how to report unfair practices.

2.151 Because of this, the NASUWT argued that the KID needs to be looked at in order to better understand why this is not working effectively, including examining how the examples provided by the EAS can be improved.

⁸⁸ <https://www.nasuwt.org.uk/static/e183d19a-bbd0-425e-ae2a7c910e7dc2c4/Supply-Teachers-Annual-Survey-2022-England.pdf>

⁸⁹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1037093/Umbrella_Company_CfE_Final.pdf

- **Lack of contractual clarity around employment status can put people at greater risk of exploitation.**

2.152 The NASUWT believes that lack of contractual clarity around employment status puts workers at greater risk of labour market exploitation, with some unscrupulous employers utilising this uncertainty to falsely categorise workers in order to deprive them of their employment rights.

2.153 This has been compounded by the move away from permanent employees to a more complex and flexible labour market which has resulted in the increased use of recruitment agencies and umbrella companies, including those wishing to expose the fragile job security and unfair conditions of employment of agency workers, such as supply teachers.

2.154 Furthermore, the case against UBER brought by the GMB showed that there is a compelling case for greater clarity in employment status as companies misclassify workers as self-employed so as to avoid paying them holiday pay and the NMW.⁹⁰

2.155 The establishment of the employment status of an individual is fundamental to determining their eligibility for certain statutory rights. Currently, within the UK, there are considered to be three main employment statuses: employee, worker and self-employed.⁹¹

2.156 The Union is concerned that the current system is therefore too open to manipulation by unscrupulous employers, specifically in regards to the use of agency workers and zero-hours contracts, when it would be more appropriate to appoint permanent staff.

2.157 In such situations, there is a concern that individuals are unsure of their rights and lack the confidence to assert them, especially where the balance of power is slanted in favour of the employer.

⁹⁰ <http://researchbriefings.files.parliament.uk/documents/LLN-2018-0026/LLN-2018-0026.pdf>

⁹¹ <http://researchbriefings.files.parliament.uk/documents/CBP-8045/CBP-8045.pdf>

- 2.158 This is a view confirmed by the Low Incomes Tax Reform Group, who argue that the nature of the rules and the complexity involved results in many individuals often being unaware of their employment status.⁹²
- 2.159 The NASUWT believes that many businesses are using the complexity around employment status as a means to deny individuals their core rights, either through sham contracts or by designing them in such a way as to make it difficult for individuals to understand and enforce their rights.
- 2.160 This is particularly true for atypical working arrangements (e.g. supply teachers as agency workers) where the Union believes it can be challenging for individuals to determine ‘continuous employment’, which means that they may not be able to be sure that they qualify for the rights they wish to assert.
- 2.161 Furthermore, the ability of the employer to restrict work opportunities for atypical workers (i.e. agency workers or those on zero-hours contracts) who challenge the employer means that individuals are unable to assert their rights for fear of retribution and loss of earnings. This is in addition to the insecurity of income that atypical working brings.
- 2.162 It was right that the *Taylor Review of Modern Working Practices* conducted by Matthew Taylor investigated and made recommendations about employment status, including that the burden of proof should be reversed so that it falls on the employer to prove that someone is not entitled to employment rights.⁹³ The *Taylor Review* went so far as to state: ‘*Ultimately, if it looks and feels like employment, it should have the status and protection of employment.*’⁹⁴
- 2.163 Indeed, the *Taylor Review* recommended that clearer tests for employment status should be developed by the Government to replace the minimalistic

⁹² <https://www.litrq.org.uk/sites/default/files/files/170517-LITRG-response-Independent-review-employment-practices-modern-economy-FINAL.pdf>

⁹³ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/627671/good-work-taylor-review-modern-working-practices-rg.pdf

⁹⁴ Ibid.

approach to legislation.⁹⁵ This would provide clarity and greater certainty to individuals.

2.164 For workers using an umbrella company, it has been suggested that they may be able to access a broader suite of employment rights associated with ‘employee’ status, as opposed to ‘worker’ status, in respect of employment law, although the value of such rights is questionable (e.g. protections around unfair dismissal and redundancy)⁹⁶ to those who are in intermittent, insecure and precarious employment, such as supply teachers as agency workers.

2.165 Furthermore, given the itinerant nature of the work undertaken by individuals, it is often the worker who leaves the umbrella company rather than the umbrella company terminating employment.

2.166 Sometimes, however, an umbrella company will consider it a resignation and remove a worker from their books after a set period of time if they have not heard from the worker. In fact, HMRC guidance advises that there will be an automatic cessation of the employment record should the employer (e.g. an umbrella company) stop sending payroll information over a period of time, unless the irregular payment indicator has been set up.⁹⁷

2.167 It is hard to envisage a situation where a worker would be let go by an umbrella company and could seek a claim for unfair dismissal, or a situation where they would be made redundant.

2.168 Indeed, it is more likely that the hirer or end client would stop the assignment so that the worker would no longer have an employment relationship with them.

2.169 Given the above, the additional employment rights associated with ‘employee’ status are seen as ‘theoretical rights’,⁹⁸ which individuals are

⁹⁵ Ibid.

⁹⁶ <https://www.litrg.org.uk/sites/default/files/files/LITRG-Labour-Market-Intermediaries-Report-2021.pdf>

⁹⁷ Ibid.

⁹⁸ Ibid.

unable to access due to the eligibility criteria (e.g. two years' continuous service).

2.170 Given the complexities around employment status, it can be difficult for workers to understand which rights attach to which employment status.

2.171 The NASUWT believes that the current definitions used in respect of employment status are far from clear and promote a system which is weighted in favour of the employer and open to manipulation and abuse by unscrupulous employers.

2.172 Given the evidence presented above, the Union is clear that all those employed, irrespective of their employment status, should be able to access the same basic rights, entitlements and protections as those currently accessed by employees. There should therefore be a single 'worker' status to determine access to all statutory employment rights.

2.173 In doing so, this will provide the transparency which individuals desire regarding their employment status, as they will all benefit from the same level of statutory protections.

2.174 A single coherent definition of 'worker', which is understood by both worker and employer, will overcome the confusing, and often conflicting, definitions which have created inconsistencies and uncertainties.

- **Migrant workers coming to the UK on short-term visas are less likely to be aware of their employment rights or to seek remedies in cases of labour violations.**

2.175 The NASUWT believes that there are situations where migrant workers coming to the UK on short-term visas are less likely to be aware of their employment rights, as well as the avenues of recourse in cases of labour market violations.

2.176 For example, many workers will fear losing their jobs if they raise complaints, particularly if they are seasonal workers who are in ‘debt bondage’ to an employer, or they are working on a student visa and are threatened with deportation.

2.177 As such, the Union believes that the DLME should give further consideration as to how best to address such situations, including the involvement of key stakeholders, such as trade unions.

3. ADDITIONAL COMMENTS

3.1 The NASUWT appreciates that any changes, such as those put forward in this call for evidence, will have a cost implication. However, given the current situation and the state of non-compliance in the labour market, the Union believes it is not a question of whether the DLME/Government can afford to make them, but rather whether they can afford *not* to make them.

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