

NASUWT EVIDENCE TO THE HOUSE OF LORDS SELECT COMMITTEE ON PERSONAL SERVICES COMPANIES FEBRUARY 2014

Supply teachers have a vital role in raising and maintaining high educational standards in schools. Campaigning to secure professional entitlements for supply teachers is a key priority of the NASUWT, together with securing decent pay and working conditions for all supply teachers.

1. The NASUWT's submission sets out the Union's views on the key issues identified by the Committee. This evidence draws on the experiences and views of the Union's serving teachers and school leaders.
2. The NASUWT is the largest teachers' union in the UK, with over 280,000 serving teacher and school leader members.

GENERAL COMMENTS

3. The NASUWT is the largest union representing teachers and headteachers. The NASUWT has many thousands of supply teachers in membership.
4. Supply teachers provide an essential service to schools and yet the experience of the NASUWT is that they are a group of staff who are subject to exploitation.
5. Teachers undertake supply for a variety of reasons:
 - to provide them with employment flexibility;
 - as a result of being made redundant;
 - lack of availability of permanent jobs.
6. As teacher unemployment has increased, more and more teachers are being forced into supply work. Funding cuts to schools in real terms means that many schools are unwilling to take on new staff due to financial uncertainty and instead are making greater use of supply teachers.
7. The existence of Personal Service Companies (PSCs) is a feature of the landscape in schools, in the form of supply agencies and umbrella companies.
8. The overwhelming majority of supply teachers obtain supply work via these agencies and umbrella companies. According to research for the NASUWT in 2012, private supply agencies are now the main provider of supply teachers.

9. There is a plethora of agencies and umbrella companies operating within the system (at least 200), the NASUWT has been able to determine through its work with supply teachers.
10. Often the umbrella companies are registered offshore, especially in Jersey and Guernsey, for tax advantage purposes.
11. The evidence suggests that in an increasingly fragmented workforce 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.
12. These agencies are big business. In the financial year 2009-10, schools spent £293 million on supply teachers in maintained secondary schools in England and Wales. Many agencies are multi-sector, making analysis of profits difficult.
13. One example is Teaching Personnel, a dedicated supply agency which calls itself '*the UK's largest education recruitment agency*'. It has reported profits of £7.5 million from sales of £49.9 million, with an annual growth in profit of 27.9%. Profit margins are increased by depressing the pay of teachers or by marketing teachers to perform tasks which do not require their professional skills and abilities, such as supervisory roles.
14. In research carried out in 2012 by the NASUWT, 42% of supply teachers reported not being paid commensurate with their experience level. This is in marked contrast, for example, with agencies supplying nurses or doctors, where these staff are paid at premium rates and the hospitals who engage them are charged high rates.
15. The NASUWT is concerned that taxpayers' money is being siphoned off. Workers are getting less, schools are paying more, whilst offshore umbrella companies are engaged in profiteering.

SPECIFIC COMMENTS

The Role of Umbrella Companies

16. The NASUWT has assembled evidence from hundreds of supply teachers on the use of offshore companies as a ruse for employing supply teachers, whilst avoiding paying millions of pounds in tax and employer's National Insurance contributions. The Union's investigations so far have already uncovered a murky reality.
17. 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.
18. The Committee will be aware of the BBC investigation which discovered that tens of thousands of supply teachers working in the UK are paid by just one company, Sark-based International Subcontracting Solutions Ltd (ISS) (BBC Radio '5 live Investigates', 4 November 2012). ISS is a payroll company, sometimes known as an 'umbrella' company. ISS pays the salaries and expenses of workers who find jobs through supply agencies in the UK. The arrangement means that supply teachers are the employees of ISS but because ISS is based offshore it does not pay employer's National Insurance contributions and neither do the supply agencies that find the jobs for teachers paid by ISS. This could add up to many millions of pounds in unpaid tax.

19. At the root of this problem is the lack of regulation governing these arrangements and the lack of monitoring and scrutiny. These companies thrive in the current context of deregulation favoured by the Coalition Government and the emphasis it gives to reducing tax burdens on big business.
20. This has encouraged the growth of offshore umbrella companies and allowed tax-dodging practices to flourish. Tax Research UK has described the growth of umbrella companies as *'the next big UK tax scandal'*.
21. It is the workers these companies employ that fall victim to unscrupulous practice by these agencies and companies.

Beneficiaries

22. 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.
23. Schools derive what they may perceive as benefits from agency engagement, which are:
 - no long-term responsibility for, or financial commitment to, the staff;
 - no responsibility for providing appropriate support and training.
24. Furthermore, these companies pay the teachers as little as they can get away with. On average, around one third of what is charged to schools is taken by the supply agency. This means that the profit margins are considerable.
25. Supply teachers undertake supply work for a range of reasons but a significant proportion only do so because they are unable to find other work. Obtaining work via a supply agency is often the only way supply teachers can access supply work, given the market dominance of these companies.
26. A significant minority of supply teachers are not paid according to their levels of experience and many have been asked to carry out roles that do not accord with their skills and experiences of teachers.
27. In a 2012 survey for the NASUWT, over a quarter of supply teachers had to claim Jobseekers' Allowance (JSA) since starting teaching and more than one in ten have claimed other state benefits.

Worker Awareness

28. According to research for the NASUWT, many supply teachers report being unable to access their employment rights.
29. Teachers employed via the agencies and umbrella companies, despite a national framework of pay and conditions for teachers, continue to be paid substantially less than their teacher colleagues with substantive posts in schools.
30. The arrangements with supply agencies often mitigate against teachers being able to pay into the Teachers' Pension Scheme.
31. The Agency Workers Regulations 2010 should afford employment rights to supply teachers.

32. However, research carried out by the NASUWT showed that many agencies do not inform workers of their rights. Many supply teachers were unaware of the provisions and when they became aware recognised they had not been afforded the appropriate provisions, particularly when on longer-term placements.
33. The NASUWT published and distributed advice for supply teachers on the Regulations to seek to counter this.
34. 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.
35. The NASUWT broadly welcomed the implementation of the Agency Worker Regulations. However, the NASUWT has identified manipulation by agencies of the Regulations, particularly in relation to the 12-week qualifying period which applies before agency workers are entitled to equal treatment at work.
36. Some agencies seek to exploit loopholes in the legislative framework in order to evade the duty imposed regarding equal pay for supply teachers.
37. 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. This 'Swedish derogation', as it is called, is an area where the prospect of legal challenge is being explored seriously.
38. The NASUWT has sought to challenge legally agencies using these provisions and has secured some successes in out-of-court action and settlements.
39. 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.
40. Where teachers have raised concerns about their treatment, they have stated that they are then subject to blacklisting practices by these agencies/companies.
41. In a context where teachers' access to supply work is reliant on being registered with these agencies, this is a critical concern as it could deny an individual the opportunity for any employment.

Action to Address the Problems

42. The NASUWT believes that the following measures could address these issues:
 - a review of the current practices to identify the loopholes which are being exploited, and closing them;
 - stronger enforcement of the Agency Workers Directive;
 - more effective Regulation and monitoring of the individuals involved in setting up these agencies and companies.
43. Under the last Government, a Quality Mark was launched as a joint initiative between the Government and the Recruitment and Employment Confederation in an attempt to identify agencies which adopted good practice. However, this was axed by the Coalition Government in 2013.

44. The Quality Mark was meant to:

- recognise private sector supply agencies and local authorities who were able to demonstrate that they met standards of good practice in managing and providing supply teachers for schools;
- enable schools and temporary teachers to feel confident about the quality of the agencies and local authorities with whom they are dealing;
- raise the standard and status of supply teaching; and
- recognise the contributions made by supply agencies in supporting schools.

45. Few schools know anything about the agencies they use to access supply teachers or about the nature or quality of support they provide to teachers.

46. The NASUWT maintains that education is a public service delivering entitlement to children and young people and therefore should be subject to national conditions governing how staff are employed and how public money is spent.

Expenses and National Insurance

47. Umbrella companies trade on the current confusion that exists about claiming of expenses.

48. The NASUWT is aware of the concerns raised by supply teacher members about being required by recruitment agencies to join umbrella companies for payment of their salaries in order to 'save tax' on remuneration.

49. NASUWT members have also expressed their dismay at being asked to pay both Employer's and Employee's National Insurance (NI) contributions in addition to the umbrella companies' margin.

50. The liability to account to HMRC for both tax-deducted and NI contribution should rest with the umbrella company. However, if PAYE has been applied wrongly, and further tax should have been deducted from the wages paid, the NASUWT is concerned that HMRC will look to the supply teacher to recover any unpaid tax.

51. The NASUWT has received numerous reports from supply teachers about practice by umbrella companies to deduct the employer's tax and NI contributions from the pay of the teacher.

52. There is considerable confusion in the way some of these companies present salary information to the teachers concerned.

53. On expenses, the Union has received reports of companies advising individuals to overstate their expenses. The NASUWT warns teachers not to engage in these practices as any liability for making a false claim on expenses is the responsibility of the supply teacher.

54. However, recent written advice from HMRC asserts that where '*any particular individual arrangement is not compliant with tax, National Insurance or National Minimum Wage legislation (for example, because expenses were not genuinely incurred) the resulting liability for the underpaid tax and National Insurance rests with the employer, not the worker*'. The NASUWT is not only extremely cautious about this but is also dubious and believes that there needs to be clarity in the system.

Tax Avoidance

55. The practice of supply teachers setting up companies to avoid taxation is not something the NASUWT recognises as happening.
56. It is often the case that these teachers are being exploited by schools and agencies, as the workforce conditions are subject to casualisation in order to drive down employment costs.
57. This has led to the plethora of privatised profiteering and tax avoidance/evasion practices in the system.
58. The NASUWT is concerned that schools are seeking to have quality teachers on the cheap. There is a moral argument which would suggest that the school or agency/umbrella company should meet the costs where financial penalties arise. Supply teachers themselves have little or no control over the terms on which they are employed or paid.

Employment Agency Regulations, Managed Service Company legislation and the Agency Workers Regulations

59. While far from perfect, the existing regulatory framework is better than nothing.
60. The Agency Workers Regulations 2010 were meant to afford employment rights to agency workers, including supply teachers paid by agencies.
61. 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 for supply teachers after 12 weeks.
62. The NASUWT broadly welcomed the implementation of the Agency Worker Regulations.
63. It should be noted that some of this legislation derives from EU Regulations. The NASUWT is concerned that the Coalition Government is seeking to further minimise the impact of EU legislation by removing so-called burdens on business which could exacerbate these unacceptable practices.
64. The NASUWT is also concerned that in recent years the Government has adopted a fairly minimalist approach to the promotion and enforcement of the legislation. There has been little public information around these provisions and if individuals are not members of trade unions, they are unlikely to know about their statutory rights and entitlements.



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