



## Independent Review of Employment Practices in the Modern Economy: Response from the National Union of Teachers (NUT)

---

The rapidly changing nature of the world of work is having an impact in teaching as well as elsewhere. Our membership includes supply teachers who obtain their work via agencies, supply teachers who obtain employment directly with schools, teachers working on zero-hours contracts (e.g. as home tutors), teachers and educational advisers registered as self-employed and teachers in other precarious forms of employment.

The NUT fully supports the arguments on insecure working made compellingly by the TUC in its report *Living on the Edge*<sup>1</sup> (December 2016) and elsewhere, and therefore does not seek to repeat them in this submission.

The principal focus of this NUT contribution to the Independent Review is to draw attention to the current system for providing **supply teachers** i.e. those working as temporary and short notice/short term replacements for absent teachers. Specifically, this paper will focus on the employment rights and working opportunities for **agency supply teachers**, who make up the overwhelming majority of supply teachers in schools and academies. It will also explore the financial impact of agency supply teacher provision on schools and academies.

The status and rights of agency supply teachers have long been a concern for the NUT. Teachers employed directly by schools or local authorities are subject to statutory terms of employment; and the majority of academy trusts employ teachers according to the STPCD, even though they are not statutorily obliged to do so. However, these terms are denied to agency teachers because agencies choose to apply inferior employment arrangements rather than apply terms equivalent to the statutory provisions for directly employed teachers. The result is a two tier system in which the overwhelming majority of supply teachers are paid at rates which are well below the appropriate fraction of the full time salary they would expect to receive if they were STPCD employed. *The NUT is of the firm view that where there are statutory terms of employment, as there are for teachers, employers should not use a different form of employment arrangement thereby denying teachers those terms.*

Supply teachers play a crucial role in the functioning of schools. They provide qualified teaching for students in the absence of permanent teachers, often in unfamiliar surroundings and sometimes in challenging circumstances. Whether they are employed on a short term or longer term basis, they ensure the continuation of students' education in a way which other arrangements for covering absence such as cover supervisors cannot. However, not only do supply teachers have no control over availability of work (or indeed how much they will be paid, as rates are market-driven and subject to wide variation) but they are also vulnerable to having their employment terminated without notice.

Recent developments in the teacher supply market mean that growing numbers of working teachers risk missing out on basic protections in the workplace. This has led to a two- or even three-tier teaching workforce where those teachers in secure forms of employment benefit from a fuller range of employment rights and work-related benefits. Those teachers who offer greater flexibility to the education sector are generally in more precarious forms of work. It is the teachers who are most in need of protection - those working when they can via agencies, and with no guarantee of work - who lose out.

---

<sup>1</sup> <https://www.tuc.org.uk/sites/default/files/Living On The Edge 2016.pdf>

## **Employment Status**

The NUT believes that there should be a statutory presumption that all workers qualify for the full range of employment rights, unless the employer can demonstrate that the individual is genuinely self-employed with control over when and how they work. There should be a single definition of 'worker' for all statutory employment rights that should cover all economically dependent workers.

Employment agencies have come to dominate the market for supply teacher provision over the past 20 years, so that few supply teachers now gain their employment directly from schools. In the past two years, we have also witnessed an increase in the promotion of online platforms to recruit teachers. It is the view of the NUT that these online platforms are effectively operating as employment businesses / agencies and should be regulated accordingly. As with employment agencies, the key feature of this new type of employment is a change in the relationship between employers and those supplying work, which is often characterised by a shift in risk away from the employer and onto the employee.

Also over the past few years, many supply teachers have been pressurised by agencies to register as "employees" of umbrella companies, or establish personal service companies and declare themselves to be purportedly "self-employed". Overall, we are witnessing an expansion of the so-called 'gig economy' into the education sector.

The NUT is concerned that the growth in arrangements for this type of insecure work is contributing to a serious imbalance of power in the workplace. The employer reaps the benefits of flexibility, the agency, platform provider and umbrella company all make a profit from the arrangement, and all the risks and associated insecurities are transferred to the teacher. Businesses offering platform arrangements for the supply of teachers are giving inappropriate assurances to schools and to teachers that the arrangements are lawful. We have heard of businesses pressuring supply teachers to operate as personal service companies, stating that they are 'HMRC approved'. The teachers are persuaded, some say 'forced,' to register themselves as self-employed and are given assurances that they fall outside the ordinary definitions of employer and that the simple tax arrangements are fool-proof. Teachers who are persuaded to register as self-employed incur fees and risk an unexpected tax bill.

The NUT believes that there should be a statutory presumption that individuals qualify for rights, unless the employer can demonstrate that they are genuinely self-employed. This presumption should, by the nature of their work, apply to those teachers working in supply teacher roles.

The NUT also believes that an alternative system should be set up which provides day to day and long term supply teachers with direct employment by schools without the mediation of agencies. We address this point further below.

## **Pay**

The overwhelming majority of supply teachers are employed on agency contracts which drive down pay in order to maximise agency margins. An NUT survey of its supply teacher members conducted in 2016<sup>2</sup> revealed that less than 7 per cent of respondents stated that they were paid in line with teachers' statutory national rates. Most were offered pay rates which failed to come close to this level, with some 15 % of supply teachers receiving less than *half* the daily salary of a newly qualified teacher. Agency supply teachers thus

---

<sup>2</sup> <https://www.teachers.org.uk/sites/default/files2014/nut-supply-teacher-survey-report-2016.pdf>

(understandably) feel they are being treated as second-class teachers. The NUT believes that all supply teachers should be paid at rates which are consistent with the national pay arrangements and reflect their qualifications and experience.

Many agency teachers are losing out on equal pay at work. Agency teachers often do not receive the going rate for the job which is paid to directly employed permanent staff, even though they have worked for the same employer for many years. The use of the so-called 'Swedish derogation' or pay between assignments contracts is common in teaching. Individuals employed on such contracts are not entitled to equal pay even where they have been on an assignment for more than 12 weeks.

The NUT believes that the so-called Swedish derogation should be removed from the Agency Worker Regulations to ensure that all agency workers qualify for equal treatment. This would also ensure that employers cannot use agency workers to undercut the pay and conditions of other workers.

### **Pensions**

Employment by or through supply agencies is not pensionable under the Teachers' Pension Scheme (TPS), partly because supply agencies are not currently permitted to participate in the TPS - an issue the NUT continues to pursue with the DfE. All other teachers in state funded and independent schools are eligible to join the TPS. This anomalous position does nothing to diminish agency teachers' sense of unjust treatment. Although supply teachers who meet the minimum earnings requirement are covered by the 'workplace pension', agencies typically restrict themselves to the minimum statutory contribution. Moreover, teachers working for different agencies on short term assignments in particular may find their enrolment in a workplace pension is postponed for up to three months owing to concerns that their income will be insufficient to meet the earnings threshold for auto-enrolment. They may also end up with several workplace pension 'pots' depending on their working patterns and the number of agencies they use. The NUT believes that as teachers working in State funded schools as State funded employees, supply teachers should have the right to membership of the Teachers' Pension Scheme even when engaged via employment agencies.

### **Equality**

Supply teachers are working in precarious work. Our experience is that supply teachers are also subjected to discrimination and harassment by hirers and agencies. We have supported women supply teachers who have had unlawful deductions made from their statutory maternity pay and gay supply teachers who have been subjected to unlawful homophobic harassment at work. Supply teachers are particularly susceptible to discrimination and harassment in the workplace and are further disadvantaged by not having access to robust and effective complaints procedures. Further, they are less likely to make a complaint for fear of not securing any further work.

The NUT would like to see supply teacher agencies subject to the same duties as public authorities to ensure that equality for disabled, Black and Asian, LGBT+ and women supply teachers is enhanced, that discrimination is eliminated and that good relations between employees and agency teachers are fostered.

### **Weaknesses in AWR**

The Agency Worker Regulations (AWR) 2010 do not always protect agency teachers from sharp practice. After 12 weeks in the same role and with the same hirer, agency staff should get the same basic pay and conditions as directly-employed staff. However, some agencies

and schools try to avoid the legislation - in particular by dispensing with the teacher before the 12 week period is up. Often, the same teacher is then re-engaged with the 'clock' having returned to Week 1. There are also reports that some agencies simply do not inform supply teachers of their rights under AWR.

### **Other employment rights**

Generally, agency supply teachers have only limited access to other employment rights such as sick pay and maternity pay, as the nature of supply work makes it difficult to meet the qualification thresholds. The NUT believes that all workers, including employees, agency workers, casual workers, and freelancers, should be entitled to the same floor of statutory employment rights, including:

- The right to a written statement of pay and conditions and a pay slip
- Family friendly rights, including rights to time off for antenatal appointments, maternity and paternity leave and the right to request flexible working; and
- Job security rights, such as the right to paid notice periods, protection from unfair dismissal and redundancy pay.

Further, in relation to supply teachers in particular, we believe that agencies should be required to:

- Provide free professional development and training on matters such as safeguarding and on curricular/subject/key stage issues;
- Pay supply teachers at their normal pay rate when attending professional development and training, whether provided by the agency or the hiring school; and
- Provide a confidential and impartial complaints procedure about poor or unequal treatment by hiring schools or agency staff.

### **Cost to schools**

In 2015-16 over £750m was spent on supply cover in local authority schools alone, of which over £500m was accounted for by supply agencies.<sup>3</sup> Spending on supply agencies by academies and free schools amounted to an equally worrying £440m in 2014-15.<sup>4</sup> A recent NUT survey of school leaders suggested that agencies take on average £50 or more, and sometimes as much as £100 per day, as commission on top of the teacher's pay.<sup>5</sup> Every time a supply teacher is engaged this way, taxpayers' money is funneled into the pockets of private agencies. The NUT fundamentally opposes the way in which supply agencies drain public money which should be spent on children's education.

Transfer or 'finders' fees are another unacceptable cost burden facing schools which want to employ a supply teacher who has made a positive impression. Agencies charge fees often running into several thousands of pounds to schools wishing to take on a supply teacher as a permanent employee. At a time of massive pressure on school budgets, such sums are beyond the reach of many schools, which are thus forced to lose good teachers. Given the current teacher recruitment and retention crisis this system appears to be wilfully perverse.

<sup>3</sup> *LA and school expenditure, 2015-16*. Available at <https://www.gov.uk/government/statistics/la-and-school-expenditure-2015-to-2016-financial-year>

<sup>4</sup> *Income and expenditure in academies in England, 2014-15*. (Most recent available figures).

See [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/541051/SFR27\\_2016\\_Main\\_Text.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/541051/SFR27_2016_Main_Text.pdf)

<sup>5</sup> <https://www.teachers.org.uk/members-reps/supply-teachers>

The NUT's view is that an alternative, register-based system should be established which would make a live database of supply teachers available to schools. Such a scheme would:

- remove the need for intermediaries;
- provide better pay and employment rights for teachers;
- be more efficient to administer; and yet
- cost schools no more and possibly cost them less.

Such an approach should start from the position that all teachers should be employed according to statutory provisions, thus ending the injustice of the two-tier approach which has operated for too long to the detriment of agency supply teachers. Teachers' pay and conditions arrangements are enshrined in statute – it is therefore completely unacceptable for employers to seek to employ teachers on any other basis.

An example of this model already exists in Northern Ireland. The Northern Ireland Substitute Teacher Register (NISTR) is an on-line web based facility which provides a real-time booking system and a regional centralised database for all supply teachers in Northern Ireland. It allows local schools to access the database at short notice in order to book supply teaching cover for teacher absences. The NUT believes that it is time to reshape the organisation and administration of supply teacher provision in England and Wales, and that a register scheme should be the model chosen for this purpose.

**National Union of Teachers**  
**May 2017**

