

**Her Majesty's Treasury, Her Majesty's Revenue and Customs,
and the Department for Business, Energy and Industrial Strategy
call for evidence:
Umbrella company market
22 February 2022**

- 1.1 The NASUWT welcomes the opportunity to respond to Her Majesty's Treasury (HM Treasury), Her Majesty's Revenue and Customs (HMRC) and the Department for Business, Energy and Industrial Strategy (BEIS) call for evidence on the role of umbrella companies in the labour market.
- 1.2 The NASUWT – The Teachers' Union – represents teachers and headteachers across the United Kingdom.

GENERAL COMMENTS

- 1.3 The Union recognises that the questions in the consultation are significant and wide ranging and cover a number of areas associated with the role played by umbrella companies in the labour market.
- 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 The NASUWT welcomes the Government's commitment to address the growth of labour market intermediaries like umbrella companies and the role they play in facilitating the engagement of temporary workers, such as

supply teachers, including in relation to employment rights and issues of taxation.

1.6 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, and suitable protection for all workers.¹

1.7 This includes tackling those who use umbrella companies that promote and enable tax avoidance, which deprives the Chancellor of the Exchequer of funds for public services, including schools, and has a detrimental financial impact on dedicated workers such as supply teachers.

2. SPECIFIC COMMENTS

The Role of Umbrella Companies in the Labour Market

2.1 The evidence suggests that the legislation has failed to bring about the changes intended. Flexible working is still inaccessible to many workers due to a range of factors, including employer discretion over whether a request is accepted or rejected, employment status, or simply a lack of awareness of flexible working in the workplace.

2.2 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.

2.3 Whilst the Government values the dynamic nature of the UK's workforce,² the well-documented move away from permanent employees to a more complex and flexible labour market has resulted in the increased use of umbrella companies, including those wishing to expose the fragile job security and unfair conditions of employment of agency workers.

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1037093/Umbrella_Company_CfE_Final.pdf

² Ibid.

- 2.4 External analysis and HMRC data show that the umbrella company market has grown substantially since 20 years ago.³
- 2.5 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.
- 2.6 Workers may opt to use an umbrella company to maintain a continuous payroll link from one assignment to the next, as the umbrella company acts as a single employer through which a worker can channel all their pay and tax.
- 2.7 It has also been suggested that workers 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)⁴ to those who are in intermittent, insecure and precarious employment, such as supply teachers as agency workers.
- 2.8 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.
- 2.9 However, sometimes 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.⁵

³ Ibid.

⁴ <https://www.litrq.org.uk/sites/default/files/files/LITRG-Labour-Market-Intermediaries-Report-2021.pdf>

⁵ Ibid.

- 2.10 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.
- 2.11 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.
- 2.12 Given the above, the additional employment rights associated with ‘employee’ status are therefore seen as ‘theoretical rights’,⁶ which individuals are unable to access due to the eligibility criteria (e.g. two years’ continuous service).
- 2.13 It is also worth noting that agency workers do not have to work through an umbrella company in order to access a range of employment rights, although this is often not told to them because the agencies want to push the benefits of working through an umbrella company.
- 2.14 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.⁷
- 2.15 As the recruitment sector has evolved, this has resulted in a situation where umbrella companies are now seen as a legitimate part of the modern labour market; an increasing number of agency workers now find themselves engaged through umbrella companies.
- 2.16 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 2020/21.⁸

⁶ Ibid.

⁷ Ibid.

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

- 2.17 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 2021.⁹
- 2.18 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.¹⁰ It is therefore vital that the call for evidence recognises and understands this so that appropriate strategies can be developed that target those who operate such practices and exploit agency workers such as supply teachers.
- 2.19 Analysis suggests there are approximately 1.4 million individuals involved in agency work.¹¹ 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 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, along with the promotion and proliferation of tax avoidance schemes operating across the sector.
- 2.20 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 2019.¹²
- 2.21 Of the 1.4 million agency workers referenced above, it has been argued that the proportion of agency workers using umbrella companies is approximately 50%,¹³ 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.¹⁴

⁹ <https://www.litrg.org.uk/sites/default/files/files/LITRG-Labour-Market-Intermediaries-Report-2021.pdf>

¹⁰ Ibid.

¹¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/902667/Tackling_disguised_remuneration_tax_avoidance_-_call_for_evidence.pdf

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

¹³ Ibid.

¹⁴ <https://www.litrg.org.uk/sites/default/files/files/LITRG-Labour-Market-Intermediaries-Report-2021.pdf>

- 2.22 Whilst the evidence above demonstrates the emergence and significance of umbrella companies in an increasing complex labour market, it should be noted that there appear to be no real statistics on the number of umbrella companies in the UK.
- 2.23 This situation is compounded by the fact that umbrella companies are difficult to measure, given that they do not have their own category of type of business and can register with HMRC under a number of different categories.
- 2.24 One estimate suggests that there were 200 umbrella companies operating in the UK back in 2015. In 2020, the Freelancer & Contractor Services Association (FCSA) suggested that the number of umbrella companies operating in the UK was between 400 and 500.
- 2.25 This is further complicated by the fact that there is no statutory definition of what umbrella companies are, as they are not currently defined in legislation.¹⁵
- 2.26 Instead, a wide variety of definitions exist around different arrangements and activities. For example, sometimes the umbrella company will be the legal employer of the agency worker, whereas other times the umbrella company will provide payroll services for the recruitment agency without becoming the legal employer.¹⁶
- 2.27 The NASUWT maintains that the issue of defining precisely what an umbrella company is impacts on the appropriate mechanism for the regulation and enforcement of umbrella companies.
- 2.28 Furthermore, different definitions for umbrella companies are used by different government departments. For example, the Employment Agency Standards (EAS) Inspectorate defines an umbrella company as: *'A payroll company, which might charge or deduct a fee from a work-seeker's*

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

¹⁶<https://www.tuc.org.uk/sites/default/files/2021-07/Umbrella.pdf>

*payment that has been passed to them by an employment business to process the work-seekers' wages earned through the agency. In some cases, the work seeker will become an employee of the umbrella company.*¹⁷

2.29 However, the definition of an umbrella company used by HMRC is: *'A UK limited company which acts as an employer to a number of individuals, meeting PAYE and other requirements, where operating legitimately. It signs contracts to provide the individual's labour to engagers, either directly or through another intermediary such as a recruitment agency.'*¹⁸

2.30 The lack of consensus on the definition of an umbrella company further demonstrates the need for greater clarity and transparency about the role, if any, that umbrella companies play in an increasingly complex labour market.

2.31 This call for evidence represents yet another opportunity for the Government to take action to address the concerns the NASUWT has over the way in which umbrella companies operate, to ensure that workers are protected and that issues of tax non-compliance are addressed.¹⁹

Employment Rights Issues in the Umbrella Company Market and the Experience of Supply Teachers

2.32 One of the sectors the Trades Union Congress (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 standards, teacher morale and the entitlement of children and young people to a high-quality education.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1037093/Umbrella_Company_CfE_Final.pdf

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

- 2.33 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.
- 2.34 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.
- 2.35 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.
- 2.36 Despite the crucial role supply teachers have played during the coronavirus pandemic, many have reported that they have not been furloughed by their agency, or that they have been furloughed at just 80% of the National Minimum Wage (NMW) if working through an umbrella company.
- 2.37 Such a situation emerges when umbrella companies use discretionary bonus payments to pay workers. This results in a proportion of each worker's wage comprising of the NMW, with the balance being received as a discretionary bonus. Umbrella companies utilise such practice to protect themselves against situations where either the agency or client are on a payment.

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

- 2.38 This had a detrimental impact on a number of supply teachers because discretionary payments could not be considered for the calculation of furlough at 80% of salary for the rules applied for payments under the Coronavirus Job Retention Scheme (CJRS).
- 2.39 Despite the situation being clarified at a later date by HMRC, many supply teachers suffered a financial detriment at a time when there was little or no work available for them.
- 2.40 This has exposed the disparity between the pay of supply teachers and others, as well as placed supply teachers in a precarious financial situation, where they have had to make tough decisions about their expenditure, or rely on the increased use of credit or the generosity of family and friends 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.
- 2.41 In the past, schools engaged supply teachers directly or accessed them from local authority supply pools. Private supply agencies and umbrella companies existed at the margins, but not to the extent they do now. The existence of Personal Service Companies (PSCs) is a feature of the educational landscape in schools.
- 2.42 The National Institute of Economic and Social Research (NIESR) publication, *Use of Agency Workers in the Public Sector*, estimates that the number of employment agencies in education has doubled to 500.²²
- 2.43 The NASUWT's annual survey of supply teachers shows that the overwhelming majority of supply teachers (88%) reported that private supply agencies were the only way they could obtain work. Since 2014, the use of supply agencies by supply teachers has risen by 25%.²³

²² https://www.niesr.ac.uk/sites/default/files/publications/NIESR_agency_working_report_final.pdf.

²³ <https://www.nasuwt.org.uk/uploads/assets/uploaded/cbf2bdf5-8e39-484b-926b1becb8fc586c.pdf>

- 2.44 This is consistent with the NIESR's report of the Audit Commission's finding that the proportion of supply teachers that were supplied through agencies rose from 43% to 54% between 2003 and 2010.²⁴
- 2.45 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.
- 2.46 Furthermore, the amount spent by maintained schools on supply teachers for 2018/19 was in excess of £550 million.²⁵ Of this, in excess of three quarters (77%) was spent sourcing supply teachers from employment agencies and umbrella companies. This represents in excess of £425 million.
- 2.47 Schools are charged up to a 40% commission fee, which goes direct to the agency. This equates to over £170 million for local authority maintained schools and over £34.5 million for academies.
- 2.48 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 abilities, such as supervisory roles, but at the same time charging schools for the provision of a qualified teacher.
- 2.49 Taxpayers' money is being siphoned off to agencies. Supply teachers are getting less, schools are paying more, whilst agencies and umbrella companies profit.
- 2.50 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

²⁴ https://www.niesr.ac.uk/sites/default/files/publications/NIESR_agency_working_report_final.pdf.

²⁵ <https://www.gov.uk/government/statistics/la-and-school-expenditure-2018-to-2019-financial-year>

²⁶ <https://www.tuc.org.uk/sites/default/files/the-gig-is-up.pdf>

- 2.51 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. Indeed, the majority of supply teachers have not seen their remuneration increase substantially since 2014.²⁷
- 2.52 The disparity between the pay of supply teachers and other teachers, and the precarious financial situation supply teachers have found themselves in, has been further exposed during the COVID-19 pandemic, where many supply teachers have been cut adrift and forced to make tough decisions about their expenditure, or rely on the increased use of credit or the generosity of family and friends 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.
- 2.53 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.
- 2.54 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.²⁸
- 2.55 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, especially when clauses may include waiving their rights to equal pay in order to gain regular supply work, or the fact that they are employed via an umbrella company.
- 2.56 These are just a few examples of breaches of the Conduct of Employment Businesses Regulations (2003), which set out quite clearly what an agency

²⁷ <https://www.nasuwt.org.uk/uploads/assets/uploaded/cbf2bdf5-8e39-484b-926b1becb8fc586c.pdf>

²⁸ Ibid.

worker should expect to receive and what can or cannot be asked of workers by an agency.²⁹

- 2.57 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.
- 2.58 For example, just over half (52%) of supply teachers report that they are not made aware that after 12 weeks of working in the same workplace, they are entitled to the same pay and conditions as permanent members of staff.³⁰
- 2.59 Of even greater concern is the fact that the NASUWT has obtained evidence of the manipulation of the Regulations. For example, a fifth (20%) 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).
- 2.60 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.
- 2.61 In fact, many agencies try to push supply teachers towards umbrella companies and dissuade them from using the agency's PAYE. 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.
- 2.62 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.³¹

²⁹ http://www.legislation.gov.uk/ukxi/2003/3319/pdfs/ukxi_20033319_en.pdf

³⁰ <https://www.nasuwt.org.uk/uploads/assets/uploaded/fbd07752-41cb-400b-b80b6c6505ea351c.pdf>

³¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/936515/eas-brief-guide-for-agencies.pdf

- 2.63 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.³²
- 2.64 Umbrella companies are an additional revenue stream for employment agencies as they are able to demand upfront payments for referring an agency worker to an umbrella company. There is even some evidence that employment agencies are setting up their own umbrella companies to increase their margins through savings on payroll costs, a practice known as ‘white labelling’.³³
- 2.65 This is compounded by the fact that clients (e.g. schools and colleges as the end user) appear fairly indifferent to the type of contract that agency workers are on, and agency workers have very little recourse to redress, or access to a formalised complaints procedure other than an Employment Tribunal (ET) or Acas’s mediation services.
- 2.66 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, but reports indicate that one of the three biggest areas for umbrella companies is education.
- 2.67 Research conducted by the NASUWT found that almost half of supply teachers (42%) reported that they have been asked to sign a contract or agreement with an umbrella/offshore company when working through a supply agency.³⁴
- 2.68 The NASUWT engages with thousands of supply teachers and has received information that where supply teachers have raised concerns about their treatment, they have then found that they are subject to

³² Ibid.

³³ <https://www.tuc.org.uk/research-analysis/reports/umbrella-companies-why-agencies-and-employers-should-be-banned-using-them>

³⁴ <https://www.nasuwt.org.uk/uploads/assets/uploaded/cbf2bdf5-8e39-484b-926b1becb8fc586c.pdf>

blacklisting practices by these agencies/companies. The process is that they are led to believe that there is no longer any work for them. In essence, their experience is that the work just 'dries up'.

- 2.69 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.
- 2.70 In a context where supply teachers are already subject to intermittent and insecure work, being registered with these agencies is of critical concern, as otherwise it could deny an individual the opportunity for work.
- 2.71 Some employment intermediaries are promoting products that encourage supply teachers to set up as a limited company. The NASUWT has serious concerns about such products and the implications for supply teachers in regard to their tax liabilities, specifically in setting up a new limited company where the supply teacher is the 'sole owner', director and employee.
- 2.72 Furthermore, many teachers report that they would prefer to have the option to receive PAYE rather than have their money processed through an umbrella company. However, agencies rarely provide teachers with a choice or alternative, and often exploit the precarious nature of supply teaching so that teachers feel they have no option but to sign up.
- 2.73 The arrangements basically involve a supply teacher being paid through an umbrella company they have been told to sign up to, a minimal amount of taxable income, and being topped up with a purportedly non-taxable element, such as a loan.
- 2.74 Umbrella companies who promote and enable disguised remuneration (DR) schemes often fail to make it clear to those using such schemes (i.e. supply teachers) exactly what they are involved in, as there is misinformation and a lack of transparency about the pay rates and the way in which the pay is comprised (as NMW, discretionary bonuses, or loans).

- 2.75 The Union asserts that at the root of this problem is a lack of clarity and transparency, as well a lack of monitoring and scrutiny. This has encouraged the growth of employment businesses and umbrella companies that deny workers access to even basic employment rights.
- 2.76 Indeed, many umbrella companies involved in DR arrangements do not even attempt to conceal what they are doing when referring to an element of a worker's pay as an advance or loan.
- 2.77 The introduction of a Key Information Document (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.³⁵
- 2.78 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.
- 2.79 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.³⁶ 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.
- 2.80 Despite it being a legal requirement since April 2020, only 19% of supply teachers who obtained work through a new supply agency reported that

³⁵ <https://www.gov.uk/government/publications/providing-a-key-information-document-for-agency-workers-guidance-for-employment-businesses>

³⁶ <http://www.ioanchargeappg.co.uk/wp-content/uploads/2021/04/How-Contracting-Should-Work-Inquiry-Report-April-2021-min.pdf>

they had been provided with a KID detailing how they would be paid and associated deductions, as well as other key details.³⁷

- 2.81 Furthermore, of those supply teachers who were provided with a KID, just over one fifth (21%) stated that the KID detailed whether they would be paid/employed through an umbrella company.
- 2.82 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.
- 2.83 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.
- 2.84 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.
- 2.85 It should also be noted that the Government provides no real information for agency workers on its own website and does not explain or even acknowledge the presence of umbrella companies in supply chains,³⁸ meaning that many supply teachers have no central government hub which can be accessed to support and assist them beyond what the agency/umbrella company provides them with.
- 2.86 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

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

³⁸ <https://www.gov.uk/agency-workers-your-rights>

better understand their situation,³⁹ the evidence presented above suggests that this is not the case.

- 2.87 The information provided demonstrates that the current balance of benefits between workers (i.e. supply teacher) and the employer is skewed significantly in favour of the employer (i.e. the agency/umbrella company).
- 2.88 The NASUWT believes that the use and involvement of umbrella companies in the labour market makes the lives of workers unnecessarily complicated, as it fragments the employment relationship further by creating a tripartite arrangement involving the work-seeker, the agency and the client or hirer (end user).
- 2.89 Workers experience a number of problems when working through an umbrella company, including a lack of transparency.⁴⁰ This includes transparency around contractual terms and conditions, as well as transparency around rates of pay.⁴¹
- 2.90 Often the rate advertised by an agency 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.
- 2.91 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.⁴²
- 2.92 As such, many workers are unaware of their employment rights and are unsure how to report unfair practices, particularly given that there is

³⁹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1037093/Umbrella_Company_CfE_Final.pdf

⁴⁰ *Ibid.*

⁴¹ <https://www.tuc.org.uk/sites/default/files/2021-07/Umbrella.pdf>

⁴² <https://www.litrg.org.uk/sites/default/files/files/LITRG-Labour-Market-Intermediaries-Report-2021.pdf>

currently no specific regulatory framework for umbrella companies in the same way as there is for employment businesses and agencies.⁴³

2.93 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 NMW, the majority of employment law is dealt via employment tribunals 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.

2.94 Despite this, HMRC does not have a good track record of policing umbrella companies. Instead, HMRC often targets workers too readily, particularly over issues of non-compliance in relation to tax.⁴⁴

2.95 The state has a fundamental role in protecting individuals, particularly the most vulnerable, from umbrella companies who use exploitative and unscrupulous employment practices, including non-payment, payroll skimming and the non-payment of holiday pay.⁴⁵

2.96 As such, it is essential that there is a strong employment law framework and a strong enforcement system that provides redress that is fair, open, accessible and impartial.⁴⁶

2.97 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 Director of Labour Market Enforcement (DLME) should consider whether the remit of EAS should be extended to cover policing umbrella companies and other intermediaries in the supply chain.⁴⁷

⁴³https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1037093/Umbrella_Company_CfE_Final.pdf

⁴⁴ <https://www.litrg.org.uk/sites/default/files/files/LITRG-Labour-Market-Intermediaries-Report-2021.pdf>

⁴⁵https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1037093/Umbrella_Company_CfE_Final.pdf

⁴⁶ <http://rtsa.ro/tras/index.php/tras/article/viewFile/27/23>
https://www.riir.ulaval.ca/sites/riir.ulaval.ca/files/1968_23-4_15.pdf

⁴⁷ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/627671/good-work-taylor-review-modern-working-practices-rg.pdf

- 2.98 Whilst the Government has committed to expand state enforcement to include umbrella companies through its *Good Work Plan*,⁴⁸ to date the closest it has got is to reaffirm its commitment to do so in its response to the 2019 consultation on the creation of the Single Enforcement Body (SEB).⁴⁹
- 2.99 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,⁵⁰ 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).'*⁵¹
- 2.100 Future regulations must address the power imbalance that pervades the flexible labour market, ensuring that workers are better protected and have greater certainty over who employs them, how they are paid and the rights to which they are entitled.

Tax Non-Compliance in the Umbrella Company Market

- 2.101 The increased use of umbrella companies and the associated increased complexity in the labour market presents a challenge which may be contributing to the widening tax gap between what is expected to be paid and what is paid.⁵²
- 2.102 There are concerns that umbrella companies are used by some individuals and organisations to promote, market and facilitate tax avoidance schemes, often to the detriment of the worker.
- 2.103 The NASUWT therefore welcomes the Government's commitment to tackle those who promote and enable tax avoidance, which deprives the

⁴⁸ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705503/labour-market-enforcement-strategy-2018-2019-full-report.pdf

⁴⁹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/991751/single-enforcement-body-consultation-govt-response.pdf

⁵⁰ <https://www.litrq.org.uk/sites/default/files/files/LITRG-Labour-Market-Intermediaries-Report-2021.pdf>

⁵¹ <http://www.loanchargeappg.co.uk/wp-content/uploads/2021/04/How-Contracting-Should-Work-Inquiry-Report-April-2021-min.pdf>

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

Exchequer of funds for public services, including schools, and has a detrimental financial impact on dedicated workers such as supply teachers.

2.104 It is right that action is taken by the Government, including providing and promoting advice and support to taxpayers to ensure that everybody pays the taxes they owe and contributes towards the public-funded services from which they benefit.

2.105 This follows the Independent Loan Charge Review, chaired by Sir Amyas Morse, into the use of DR schemes, which highlighted the fact that the usage of DR schemes continues to be extensive in the 2019-20 tax year.⁵³

2.106 The Review also recognised that it was only possible for such schemes to proliferate due to the creation of a huge swathe of potential scheme users in the UK's flexible labour market.⁵⁴

2.107 Indeed, the Government now recognises that there are a greater number of DR schemes operating through umbrella companies involving agency workers (e.g. supply teachers) due to the ease by which umbrella companies can be established and subsequently liquidated.⁵⁵

2.108 Associated with this is an increased imbalance of power between the employers and workers where the primary engager, agencies and umbrella companies dictate the terms of employment and transfer the risks onto those using such schemes.

2.109 As such, the NASUWT believes that those who promote and enable tax avoidance and DR arrangements exploit the economics of supply chains and the rise of intermittent, precarious and insecure work in the temporary labour market.

⁵³https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/854387/Independent_Loan_Charge_Review_-_final_report.pdf

⁵⁴https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/854490/20191219_Government_response.pdf#:~:text=1.1%20In%20September%202019%2C%20the%20Government%20commissioned%20Sir%20tax%20liabilities%20have%20addressed%20any%20legitimate%20concerns%20raised .

⁵⁵https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1037093/Umbrella_Company_CfE_Final.pdf

- 2.110 Despite HMRC devoting significant time and resource to tackling promoters and enablers of tax avoidance schemes,⁵⁶ including the introduction of a loan charge in 2016,⁵⁷ such schemes still exist, and the market has expanded over time, driven in part by the rise in individuals providing services through umbrella companies.
- 2.111 In fact, data produced by HMRC suggests that there has been a shift in the tax avoidance market in recent years. For example, HMRC's own figures suggest that in 2018-19, DR schemes made up 98% of all tax avoidance (as opposed to 60% in 2013-14).⁵⁸
- 2.112 Furthermore, recent research undertaken by HMRC shows that approximately 30,000 individuals and 2,000 employers were involved in DR arrangements in 2018-19.⁵⁹ This compares to 22,000 individuals and 6,000 employers during 2013-14.
- 2.113 Given the evidence provided above, it is disappointing to note that HMRC does not have a good track record of policing umbrella companies or providing appropriate support and assistance to those who are unknowingly being paid via DR schemes operated by unscrupulous agencies/umbrella companies for their own gains.⁶⁰
- 2.114 Agency workers often have very little choice over whether or not they are enrolled into a DR scheme, and this is unlikely to be affected by HMRC in its approach to supporting taxpayers in identifying and steering clear of tax avoidance.⁶¹
- 2.115 Despite the steps taken by HMRC, including measures introduced to strengthen anti-avoidance regimes in respect of tax such as the disclosure

⁵⁶https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/973478/Clamping_do_wn_on_promoters_of_tax_avoidance_-_consultation.pdf

⁵⁷ <https://www.gov.uk/government/publications/hmrc-issue-briefing-disguised-remuneration-charge-on-loans/issue-briefing-disguised-remuneration-on-loans>

⁵⁸ <https://www.gov.uk/government/publications/use-of-marketed-tax-avoidance-schemes-in-the-uk/use-of-marketed-tax-avoidance-schemes-in-the-uk>

⁵⁹ <https://www.litrg.org.uk/sites/default/files/files/LITRG-Labour-Market-Intermediaries-Report-2021.pdf>

⁶⁰ Ibid.

⁶¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/973478/Clamping_do_wn_on_promoters_of_tax_avoidance_-_consultation.pdf

of tax avoidance schemes (DOTAS) and promoters of tax avoidance schemes (POTAS), it is still the case that DR schemes and other such enterprises have continued and are still promoted.

2.116 Despite the threat of hefty fines and other actions by HMRC to force promoters of tax avoidance schemes out of the market, there are still ‘a number of promoters – the so-called “hard-core” – that remain in business, despite HMRC knowing who these promoters are.’⁶²

2.117 In fact, the All-Party Parliamentary Loan Charge and Taxpayer Fairness Group noted that not one promoter of DR schemes has been prosecuted.⁶³

2.118 It should be noted that HMRC had an opportunity to address the issues regarding the role played by umbrella companies when a drafting error in the Off-Payroll Section of the Finance Act 2020 implied that umbrella companies may become redundant after the April 2021 private sector IR35 rollout.⁶⁴

2.119 However, HMRC rapidly clarified the situation by stating that it was not the intention of the legislation to cut umbrella companies out of supply chains, thereby suggesting that the poor reputational view of umbrella companies was not shared by HMRC.⁶⁵

Next steps

2.120 The evidence presented throughout this call for evidence suggests that there is a pressing need for urgent action by the Government to address the umbrella company market.

2.121 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

⁶² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/972080/Call_for_evidence_tackling_disguised_remuneration_tax_avoidance_-_summary_of_responses.pdf

⁶³ <https://www.tuc.org.uk/sites/default/files/2021-07/Umbrella.pdf>

⁶⁴ <https://www.litrq.org.uk/sites/default/files/files/LITRG-Labour-Market-Intermediaries-Report-2021.pdf>

⁶⁵ Ibid.

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

2.122 Despite successive consultations and calls for evidence, it cannot go unnoticed that the Government is still failing many workers. For many employers, including umbrella companies, the threat of detection and having a sanction applied represents a good risk.⁶⁶ For example, estimates suggest that an employer could expect a visit every 320 years from a NMW Inspector, or every 39 years by the EAS.⁶⁷

2.123 It is therefore right that the Government acts on previous recommendations to remove situations where employers can take advantage of the insecurity and vulnerability of some workers,⁶⁸ including prioritising enforcement and strengthening the sanctions available to state enforcement bodies such as the EAS and HMRC.⁶⁹

2.124 The NASUWT is clear that any recommendations must ensure that employers who break the law can expect significant repercussions for their actions, yet at the same time provide workers with the comfort and knowledge that the system works in a fair and just manner.

2.125 To this effect, the Union believes that HMRC must design a strategy that effectively deals with situations where workers are entered into DR schemes unknowingly by umbrella companies. Currently, the system is based on the false premise that it is the individual taxpayer that is seeking out opportunities for their own tax avoidance and individual gain.

2.126 Indeed, those umbrella companies who promote and operate schemes that are deemed to be forms of tax avoidance should be exclusively liable for any tax avoided.

⁶⁶ https://www.mdx.ac.uk/_data/assets/pdf_file/0017/440531/Final-Unpaid-Britain-report.pdf?bustCache=35242825

⁶⁷ Ibid.

⁶⁸ <https://www.gov.uk/government/publications/good-work-plan>

⁶⁹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/817359/single-enforcement-body-employment-rights-consultation.pdf

- 2.127 It is worth noting that the enforcement measures proposed by HMRC should not have a detrimental impact on the worker and result in a situation where they are living in fear of intimidation from the employer and the prospect of losing their job.
- 2.128 Improved state enforcement should provide for a level playing field where businesses operating legitimately are not undercut by unscrupulous employers, as well as providing confidence in the system to workers and the wider general public.
- 2.129 To this effect, the Union welcomes the move to have the remit of the EAS extended to cover umbrella companies so that a minimum set of standards is enforced, such as those employed to regulate employment businesses and employment agencies.
- 2.130 The Conduct of Employment Agencies and Businesses Regulations 2003 should be strengthened to ensure that specific provisions relating to umbrella companies are incorporated. This should include the right for an agency worker 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.
- 2.131 In addition, 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.
- 2.132 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 Business Regulations 2003.⁷⁰

2.133 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.

2.134 It is important that this must be accompanied with improved levels of funding and additional resources to enable the EAS to deliver its extended remit. The NASUWT therefore welcomes the improved levels of funding and additional resources to regulatory and enforcement bodies which fall under the remit of the DLME, such as the EAS, as the regulatory and enforcement body for supply teachers as agency workers.⁷¹

2.135 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, especially given concerns that the chances of being investigated for non-compliant employers is too low.⁷²

2.136 It cannot go unnoticed 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.

2.137 Furthermore, the International Labour Organization (ILO), Article 10, Labour Inspection Convention No. 81, recommends adequate resourcing for labour market inspectorates.⁷³

2.138 Without an increase in budget and resources, the Union is concerned that the level of non-compliance currently reported is just the tip of the iceberg. This is particularly prescient when considering the fact that education is one of the top three sectors identified by the EAS for regulatory breaches,

⁷⁰ <http://www.loanchargeappg.co.uk/wp-content/uploads/2021/04/How-Contracting-Should-Work-Inquiry-Report-April-2021-min.pdf>

⁷¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705503/labour-market-enforcement-strategy-2018-2019-full-report.pdf

⁷² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705495/labour-market-enforcement-strategy-2018-2019-executive-summary.pdf

⁷³ https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C081

with the Inspectorate reporting a tenfold increase of these in 2015-16 compared to the previous year.⁷⁴ This is compounded by the lack of due diligence which exists for those seeking to enter the market and establish their own agency and/or umbrella company.

2.139 In its response to the DLME's call for evidence to the UK Labour Market Enforcement Strategy 2019-20, the NASUWT reiterated the desire for the DLME to seriously consider a licensing scheme which monitors and reviews compliance of employment businesses and umbrella companies operating in education.

2.140 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.

2.141 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.

2.142 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.

2.143 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.

2.144 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

⁷⁴ Ibid.

sectors of the economy, is best placed to operate this, particularly given the complexities associated with issues of tax non-compliance.

2.145 Irrespective, the NASUWT is clear that employers who break the law should expect there to be significant consequences for their actions, yet at the same time provide workers with the comfort and knowledge that the system works in a fair and just manner.

2.146 Currently, there is very little to dissuade an agency if they want to push workers into arrangements with unscrupulous umbrella companies. The NASUWT believes this is an oversight that the Government should look to remedy in order to address issues involving matters of tax avoidance and employment rights in the temporary labour market.

2.147 The NASUWT believes that the significant levels of non-compliance referenced above can now only be met with appropriate deterrents that protect and, where appropriate, recompense the worker.

2.148 As stated previously, the Conduct of Employment Agencies and Businesses Regulations 2003 already prescribe details on what should be included when an agency worker signs up with an employment agency, yet the NASUWT is aware of examples of non-compliance from supply teachers in respect of this.

2.149 It is therefore critical to have greater clarity in respect of what constitutes non-compliance and the amount of times an employer can be non-compliant before a sanction is issued. The NASUWT believes that any tolerances should be minimal or none-existent. Repeated offences from the same employer should be robustly tackled with the imposition of even more punitive sanctions.

2.150 Compliance should also ensure that a worker's understanding is enhanced so that they are empowered to challenge those employers shown to be non-compliant. This is critical if the purpose is to empower agency workers

and end the unscrupulous practice of some employment agencies and umbrella companies.

- 2.151 The NASUWT believes that compliance cannot be seen as a substitute for legislation and statutory enforcement. The Union advocates that compliance must go hand in hand with greater regulation and enforcement by the Government, including substantial fines and penalties and proper compensation for the agency worker.
- 2.152 The NASUWT therefore believes that compliance with the law would be encouraged if the range of remedies granted to relevant government departments was widened.
- 2.153 The NASUWT believes that the consultation should consider remedies to ensure that the employer is ordered to reimburse the worker as soon as possible in order to avoid situations where workers are frustrated by the difficulty of enforcing awards against employers.
- 2.154 The enforcement process could be simplified if greater onus was placed upon the Government to enforce awards. Currently, the system relies too much on individuals pursuing a claim against an employer.
- 2.155 The NASUWT believes that the naming and shaming of agencies and umbrella companies could act as an additional lever for compliance, but only if it gives the appropriate level of resource so that it is effective and provides real-time information on those unscrupulous employers who have failed to comply.
- 2.156 It seems appropriate that employers who commit serious breaches of employment law should be named in order to ensure that it acts as an effective deterrent.
- 2.157 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.

- 2.158 The Union is concerned that this fails to appreciate the reality on the ground for those workers who are victims to non-tax-compliant schemes, and the fact that a significant period of time may elapse when they continue to be paid via such schemes before the umbrella company appears on any such list.
- 2.159 Moreover, the publication of such a list is predicated on the fact that workers in intermittent, insecure and precarious work are actively utilising the list and able to make fully informed choices. As stated previously, a significant number of workers are unaware that they are paid through non-tax-compliant schemes, so the publication of a list will be of little assistance, particularly as the worker may not see the relevance of this to them.
- 2.160 It should be noted that the publication of such information also requires a level of understanding which those workers in the temporary labour market may not have. For example, a number of workers in intermittent, insecure and precarious employment may have English as a second language, and/or issues with literacy, which could impact on their ability to access and fully understand the information published.
- 2.161 Consideration should also be given to local councils having the power to regulate or close down organisations in the supply chain which have been found to have breached employment standards, although such a move must not see affected workers being out of pocket. This should provide a level playing field in which organisations operating transparently and legitimately in respect of their supply chains are not undercut by unscrupulous organisations.
- 2.162 In addition, public procurement rules should be strengthened to ensure public sector bodies are prohibited from using those employment agencies and umbrella companies which fail to adhere to minimum standards.
- 2.163 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 disguised remuneration scheme, and to publicise this requirement along with the protocols that public bodies are expected to follow.*⁷⁵

2.164 Furthermore, consideration should be given to extending the law around joint and several liability, specifically during the procurement process, so that end-user organisations have an onus placed upon them to ensure that the practices of suppliers can be appropriately evidenced, including in respect of the operation of umbrella companies.

2.165 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.

2.166 Extending joint and several liability would provide workers with other avenues to pursue when seeking to enforce their rights, whilst at the same time ensure that due diligence is carried out, which in turn could incentivise more permanent and secure employment.⁷⁶

2.167 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.⁷⁷ 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.

2.168 Given the growing complexity of taxation and employment and equality law, coupled with the significant changes in the UK labour market over recent

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

⁷⁶ <https://www.tuc.org.uk/sites/default/files/2021-07/Umbrella.pdf>

⁷⁷ <https://www.hrprocurementlab.org/wp-content/uploads/2016/06/Public-Procurement-and-Human-Rights-A-Survey-of-Twenty-Jurisdictions-Final.pdf>

years which have impacted upon pay, job security and conditions of 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.⁷⁸

2.169 The Union agrees 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 that workers can enforce their rights effectively.⁷⁹

2.170 The NASUWT believes that the COVID-19 pandemic has exposed and shone a spotlight on the unscrupulous practices of some agencies and umbrella companies, which should be addressed as a matter of urgency.

2.171 If the Government fails to adopt some if not all of the steps referenced above, then the Union agrees that there is a cogent argument for the outright ban of the use of umbrella companies in the labour market, as proposed by the TUC⁸⁰ and further tabled in an amendment to the Finance Bill put forward by a cross-party group of MPs.⁸¹

2.172 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: worker satisfaction; good pay; participation and progress; wellbeing safety and security; and voice and autonomy.⁸²

2.173 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 in regards to the role played by umbrella companies in the labour market, the Union believes it is not a question of whether the

⁷⁸ <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

⁷⁹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/817359/single-enforcement-body-employment-rights-consultation.pdf

⁸⁰ <https://www.tuc.org.uk/sites/default/files/2021-07/Umbrella.pdf>

⁸¹ Ibid.

⁸² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/679767/180206_BEIS_Good_Work_Report_Accessible_A4_.pdf

Government can afford to make them, but rather whether they can afford *not* to make them.

3. ADDITIONAL COMMENTS

- 3.1 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.
- 3.2 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.
- 3.3 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.

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