

**Making Work Pay: Strengthening Statutory Sick Pay –  
Consultation on the percentage rate for those earning below the  
current rate of Statutory Sick Pay**

**1. GENERAL COMMENTS**

1. NASUWT welcomes the opportunity to respond to the Department for Work and Pensions (DWP) consultation on strengthening Statutory Sick Pay (SSP) as part of the Government's plan to *Make Work Pay*.<sup>1</sup>
2. NASUWT – The Teachers' Union – represents teachers and headteachers across the United Kingdom.
3. NASUWT recognises that the questions in the consultation are significant and wide-ranging and warrant further discussion. The Union submission seeks to address these questions and issues associated with the experiences of supply teachers as agency workers engaged through employment agencies and umbrella companies.
4. It is right and proper that working people deserve a secure and supportive working environment that provides a baseline of security and predictability, including clear details of when they are unable to work.
5. Not acting would allow poor working conditions and economic insecurity, where workers are forced to struggle through work when they are too unwell to do so – a situation that is unacceptable and needs to change. No one should be forced to choose between health and financial hardship.

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<sup>1</sup> <https://www.gov.uk/government/collections/make-work-pay>

6. As such, NASUWT welcomes the Government's commitment to ensure that SSP is strengthened for those who need it, thereby enabling workers to take time off work when they need it.<sup>2</sup>
7. The Union is supportive of the proposals contained in the Employment Rights Bill that will remove 'waiting days' for SSP and end the requirement for a worker to earn more than the Lower Earnings Limit (LEL) to qualify for SSP.<sup>3</sup>
8. It is estimated that this will impact on 1 to 1.3 million workers who currently earn below the LEL of £123 per week and are not eligible for SSP,<sup>4</sup> many of which are already at a disadvantage, including women, disabled and young workers. Many of these are also in low-paid and insecure work and often have to budget on a week-to-week basis.<sup>5</sup>
9. However, based on the estimate that there are 33.31 million people aged 16 or over in the UK,<sup>6</sup> the proposals address no more than 4% of the workforce and fail to address the wider systemic issues with the current system of SSP.
10. Whilst some workers are fortunate enough to work for an employer who pays them full contractual pay when they are sick (occupational sick pay), approximately 28% are reliant on SSP, and around one in ten report getting nothing at all.<sup>7</sup>
11. Estimates suggest that approximately eight million low-paid workers are reliant on SSP when they are off sick,<sup>8</sup> but the current level of payment (£116.75 per week) is too low and only accounts for approximately 17% of the average weekly earnings.
12. The weekly rate of SSP has been calculated at the equivalent of 8½ - 9 hours work at the real living wage rate. However, the Minimum Income Standard

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<sup>2</sup> <https://www.gov.uk/government/consultations/making-work-pay-strengthening-statutory-sick-pay/making-work-pay-strengthening-statutory-sick-pay>

<sup>3</sup> <https://publications.parliament.uk/pa/bills/cbill/59-01/0011/240011.pdf>

<sup>4</sup> [https://assets.publishing.service.gov.uk/media/6715f848386bf0964853d848/Impact\\_assessment\\_improve\\_access\\_statutory\\_sick\\_pay\\_removing\\_lower\\_earnings\\_limit\\_removing\\_waiting\\_period.pdf](https://assets.publishing.service.gov.uk/media/6715f848386bf0964853d848/Impact_assessment_improve_access_statutory_sick_pay_removing_lower_earnings_limit_removing_waiting_period.pdf)

<sup>5</sup> [https://www.lancaster.ac.uk/media/lancaster-university/content-assets/documents/lums/work-foundation/WFTimeoff-Redesigningleavepoliciesupportlongerhealthierworkinglives\(003\).pdf](https://www.lancaster.ac.uk/media/lancaster-university/content-assets/documents/lums/work-foundation/WFTimeoff-Redesigningleavepoliciesupportlongerhealthierworkinglives(003).pdf)

<sup>6</sup> <https://researchbriefings.files.parliament.uk/documents/CBP-9366/CBP-9366.pdf>

<sup>7</sup> <https://www.tuc.org.uk/blogs/solving-problem-sick-pay>

<sup>8</sup> *Ibid.*

(MIS), which is broadly equivalent to the poverty line, for 2023 ranged from £420-£627 depending on circumstances.<sup>9</sup>

13. As full-time workers in the UK work 36.6 hours per week on average<sup>10</sup> and earn £689 doing so,<sup>11</sup> it is clear that SSP falls significantly below these levels and therefore cannot be seen as fit for purpose, particularly if the intention is to ensure that: *'no one is forced to choose between their health and financial hardship.'*<sup>12</sup>
14. Indeed, the current value of SSP is even low in comparison to when it was introduced, having halved from approximately 35% of the average weekly wage in the 1970s.<sup>13</sup>
15. Furthermore, analysis by the Organisation for Economic Co-operation and Development (OECD) noted that at the start of the Covid-19 pandemic, the rate of SPP paid in the UK was the lowest of any OECD country.<sup>14</sup>
16. It should be noted that the Government's own impact assessment accompanying this consultation acknowledges that the rate at which SSP is paid is comparatively low by international standards and is one of the most meagre sick pay regimes in Europe.<sup>15</sup>
17. Given this, it is no surprise that the low rate of SSP forces people to work while unwell in order to make ends meet, which risks compounding existing health conditions for some of the most acutely vulnerable groups.

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<sup>9</sup> <https://committees.parliament.uk/publications/44089/documents/218484/default/>

<sup>10</sup> <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/timeseries/ybuy/lms>

<sup>11</sup> <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/bulletins/averageweeklyearningsingreatbritain/september2024>

<sup>12</sup> <https://www.gov.uk/government/consultations/making-work-pay-strengthening-statutory-sick-pay/making-work-pay-strengthening-statutory-sick-pay>

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> [https://assets.publishing.service.gov.uk/media/6715f848386bf0964853d848/Impact\\_assessment\\_improve\\_access\\_statutory\\_sick\\_pay\\_removing\\_lower\\_earnings\\_limit\\_removing\\_waiting\\_period.pdf](https://assets.publishing.service.gov.uk/media/6715f848386bf0964853d848/Impact_assessment_improve_access_statutory_sick_pay_removing_lower_earnings_limit_removing_waiting_period.pdf)

18. Research by the Institute for Public Policy Research (IPPR) found that 30% of employees worked whilst experiencing physical or mental sickness because they could not afford to take sick leave.<sup>16</sup>
19. This situation is compounded by the class divide that exists in respect to accessing decent levels of sick pay, with 80% of those considered 'high earners' receiving full pay, compared to just a third of those that are considered 'low earners' reporting receiving full pay when off sick.<sup>17</sup>
20. This is supported by data from the Office for National Statistics (ONS) which shows that employees with higher than average earnings have, on average, two days more paid annual leave per year.<sup>18</sup>
21. Furthermore, evidence suggests that employees who feel supported are more likely to remain in their roles for longer, thereby reducing business spending on recruiting and upskilling members of staff.<sup>19</sup>
22. Access to SSP should prevent a situation where those with lower incomes and insecure work find themselves having to risk their health, as well as the health of others, by having less time away from the workplace when they are ill.
23. Indeed, it is estimated that an average of 43.6 productive days are lost due to presenteeism per employee per year,<sup>20</sup> due to the fact that workers do not feel able to take time off under the current SSP regime.
24. SSP is supposed to provide a minimum payment to an eligible worker for periods when they are unable to work due to illness, up to a maximum of 28 weeks per period of illness, but it is clear from the evidence provided that it is failing huge swathes of the workforce.

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<sup>16</sup> [https://assets.publishing.service.gov.uk/media/6715f848386bf0964853d848/Impact\\_assessment\\_improve\\_access\\_statutory\\_sick\\_pay\\_removing\\_lower\\_earnings\\_limit\\_removing\\_waiting\\_period.pdf](https://assets.publishing.service.gov.uk/media/6715f848386bf0964853d848/Impact_assessment_improve_access_statutory_sick_pay_removing_lower_earnings_limit_removing_waiting_period.pdf)

<sup>17</sup> Ibid.

<sup>18</sup> [https://www.lancaster.ac.uk/media/lancaster-university/content-assets/documents/lums/work-foundation/WFTimeoff-Redesigningleavepoliciesupportlongerhealthierworkinglives\(003\).pdf](https://www.lancaster.ac.uk/media/lancaster-university/content-assets/documents/lums/work-foundation/WFTimeoff-Redesigningleavepoliciesupportlongerhealthierworkinglives(003).pdf)

<sup>19</sup> Ibid.

<sup>20</sup> <https://www.gov.uk/government/consultations/making-work-pay-strengthening-statutory-sick-pay/making-work-pay-strengthening-statutory-sick-pay>

## **The experiences of supply teachers as agency workers**

25. One of the sectors the TUC has identified as having the fastest growth in insecure work is the education sector, which has risen by 42% since 2011.<sup>21</sup> 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.
26. Supply teachers are integral to the education system. Around 3% of teachers working in schools at any one time are supply teachers.<sup>22</sup> Without them, many pupils would be denied the opportunity to be taught by qualified and dedicated teachers who ensure that schools can continue to provide educational provision – a fact that was brought into sharp focus when schools were dealing with the Covid-19 pandemic.
27. Despite this, the experiences of many supply teachers suggest that developments such as deregulation and the ever-increasing reliance by schools on employment agencies and/or umbrella companies has had a detrimental impact upon the deployment of supply teachers and their pay and working conditions, particularly when considered alongside teachers with a permanent contract of employment.
28. There has been a substantial increase in agency teachers working in schools in recent years. In the past, schools engaged supply teachers directly or accessed them from local authority supply pools. Private supply agencies existed at the margins, but not to the extent they do now.
29. The well-documented move away from permanent employees to a more complex and flexible labour market has resulted in the increased use of recruitment agencies and umbrella companies, including those wishing to expose the fragile job security and unfair conditions of employment of agency workers, such as supply teachers.

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<sup>21</sup> <https://www.tuc.org.uk/sites/default/files/the-gig-is-up.pdf>

<sup>22</sup> Calculated as the total spent by academies on agency supply teachers against the total spent on teachers' salaries as reported for August 2018.

30. The overwhelming majority of teachers working on permanent contracts in publicly funded schools in England and Wales have their entitlements to sickness absence leave and sickness absence pay set out in the Burgundy Book, which is a national agreement incorporated into teachers' contracts of employment.<sup>23</sup>
31. The provisions set out in the Burgundy Book allow eligible employees to receive up to 100 working days of paid leave for sickness absence, followed by 100 working days on half-pay after four years of aggregated service (equivalent to 25 days at full pay and 25 days at half-pay per year of continuous service).<sup>24</sup>
32. However, for supply teachers, specifically those working for an employment and or umbrella company, the situation is not as straightforward, with many reporting that the agency and/or umbrella company does not make them aware of issues in regards to SSP.
33. For example, during the academic year 2021/22, well over half of supply teachers (57%) reported that they were required to self-isolate during the academic year 2021/22. Of those, over three-fifths (62%) reported that their employer did not make them aware of whether they were eligible for SSP, and 17% of supply teachers reported that they did not know.<sup>25</sup>
34. This is particularly prescient when you consider that there was a resurgence of Covid-19 in schools, particularly the Omicron variant – staff absences increased and there was a tightening of restrictions, such as the wearing of facemasks.
35. An eligible supply teacher could have received £96.35 per week SSP for up to 28 weeks, depending on whether they had targeted three months' continuous employment with their employer, but the evidence suggests that this was not

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<sup>23</sup> <https://www.nasuwat.org.uk/advice/conditions-of-service/school-teacher-conditions-of-service-england-wales.html>

<sup>24</sup> Ibid.

<sup>25</sup> <https://www.nasuwat.org.uk/static/e183d19a-bbd0-425e-ae2a7c910e7dc2c4/Supply-Teachers-Annual-Survey-2022-England.pdf>

the case, as during the 2021/22 academic year, just under half of supply teachers (46%) stated that they had experienced financial hardship as a supply teacher.<sup>26</sup>

36. Agencies and/or umbrella companies should provide details of the sick pay entitlement in a written statement of employment particulars which is provided from day one.

37. In addition, agency workers such as supply teachers must be given a Key Information Document (KID) containing the key terms and conditions that govern assignments, on or before the engagement start date, including the provisions in relation to sickness absence and sick pay. This is in addition to the right to a written statement of employment particulars.<sup>27</sup>

38. 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.<sup>28</sup> This is a particular problem when the only source of work is via recruitment agencies, which can often be the case for low-paid workers.

39. It cannot go unnoticed that social security legislation uses a broader definition of 'employee' for the purposes of SSP, which means that supply teachers as agency workers may receive SSP if they meet the eligibility criteria and the agency and/or umbrella company is liable to pay National Insurance Contributions (NICs) for the supply teacher.

40. However, this is clearly not the case, with many agencies not advising or supporting supply teachers when they are ill and unable to work; many being

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<sup>26</sup> Ibid.

<sup>27</sup> <https://www.gov.uk/guidance/key-information-document-guidance-for-agency-workers-paid-through-umbrella-companies>

<sup>28</sup> <http://www.loanchargeappg.co.uk/wp-content/uploads/2021/04/How-Contracting-Should-Work-Inquiry-Report-April-2021-min.pdf>

particularly vulnerable to insecure and intermittent employment and the associated financial precariousness this brings.

41. For many supply teachers who are subject to the vagaries of intermittent and insecure employment, this situation has been compounded by the cost-of-living crisis.

42. The precarious nature of agency work means that many workers risk insufficient hours, income insecurity, and the inability to assert their rights without the fear of negative impacts in the future (i.e. being denied access to work).

43. As a consequence, it is not surprising that agency workers face a 'constrained choice' with no job alternatives, limited access to part-time working that fits their caring responsibilities, or little or no additional financial support.<sup>29</sup>

44. Given the evidence presented above, NASUWT maintains that the Government should have been far more bold and ambitious in its proposals in order to address a system that is fundamentally flawed and not working for a significant number of workers, including supply teachers as agency workers.

## 2. SPECIFIC COMMENTS

- **Thinking about employees earning below the current weekly rate of Statutory Sick Pay (£116.75 per week), what percentage of their average weekly earnings should they receive through the Statutory Sick Pay system?**

45. Given that a stated aim of the proposals is to ensure that working people have a secure working environment with adequate financial support in place when

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<sup>29</sup>[https://assets.publishing.service.gov.uk/media/67124fc99cd657734653d7d9/Impact\\_assessment\\_zhcs\\_right\\_to\\_guaranteed\\_hours.pdf](https://assets.publishing.service.gov.uk/media/67124fc99cd657734653d7d9/Impact_assessment_zhcs_right_to_guaranteed_hours.pdf)

they are unwell, NASUWT considers that workers should receive 100% of their average weekly wage.

46. The Union does not accept that a lower figure is necessary in order to act as an incentive to get workers to return to work,<sup>30</sup> as this ignores evidence suggesting that an appropriate level of sick pay reduces overall sickness absence.<sup>31</sup>

47. In addition, it fails to acknowledge that the derisory level of SSP, which is currently 72% below even the lowest MIS figure quoted above, already acts as an incentive by encouraging presenteeism amongst those who cannot afford such a drop in income.

48. Furthermore, NASUWT is concerned that the Employment Rights Bill proposes a replacement rate for SSP for *all* workers rather than just those who earn less than the rate of SSP.<sup>32</sup>

49. As such, this creates a situation where some workers who would currently receive full SSP may instead receive only a percentage of their earnings, which could result in them receiving less and therefore losing out under the proposals in this consultation.

50. It is important to note that this is likely to impact on those who are currently earning just above the LEL, which, according to the *Equality Analysis for Statutory Sick Pay Reform Measures in the Employment Rights Bill*,<sup>33</sup> could disproportionately impact on women (74%).

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<sup>30</sup> <https://www.gov.uk/government/consultations/making-work-pay-strengthening-statutory-sick-pay/making-work-pay-strengthening-statutory-sick-pay>

<sup>31</sup> [https://assets.publishing.service.gov.uk/media/6715f848386bf0964853d848/Impact\\_assessment\\_improve\\_access\\_statutory\\_sick\\_pay\\_removing\\_lower\\_earnings\\_limit\\_removing\\_waiting\\_period.pdf](https://assets.publishing.service.gov.uk/media/6715f848386bf0964853d848/Impact_assessment_improve_access_statutory_sick_pay_removing_lower_earnings_limit_removing_waiting_period.pdf)

<sup>32</sup> <https://publications.parliament.uk/pa/bills/cbill/59-01/0011/240011.pdf>

<sup>33</sup> [www.gov.uk/government/consultations/making-work-pay-strengthening-statutory-sick-pay/equality-analysis-for-statutory-sick-pay-reform-measures-in-the-employment-rights-bill](http://www.gov.uk/government/consultations/making-work-pay-strengthening-statutory-sick-pay/equality-analysis-for-statutory-sick-pay-reform-measures-in-the-employment-rights-bill)

51. The plan to *Make Work Pay*<sup>34</sup> committed to introduce a replacement rate for those earning below the rate of SSP, not for *all* low earners. As such, there is a concern that this could have a significant impact on those who are off work for an extended period, as they would be in receipt of a reduced SSP payment for longer. In doing so, this could promote presenteeism as they would be forced to return to work sooner despite still being unfit for work.

52. Whilst NASUWT believes that workers should receive 100% of their average wage, at the very least, the proposals put forward by the Government must start from the premise that no workers are left worse off than they are under the current system.

- **Why do you think the percentage rate of earnings should be set to this level?**

53. If the stated aim of the proposals is to deliver a *'fair earnings replacement'*<sup>35</sup> that provides workers with financial security and addresses presenteeism, whilst improving productivity for businesses, then workers should receive 100% of their average weekly wage.

54. It cannot go unnoticed that the workers impacted are low paid with very little, if any, savings and are therefore at risk of falling into hardship when their normal wages are reduced.

55. The workers affected are very unlikely to have significant savings and risk very quickly falling into hardship when their normal wages are reduced. NASUWT can see no evidence to support the argument that receiving 100% of the average weekly wage would result in workers taking off more time than necessary.

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<sup>34</sup> <https://www.gov.uk/government/collections/make-work-pay>

<sup>35</sup> <https://www.gov.uk/government/consultations/making-work-pay-strengthening-statutory-sick-pay/making-work-pay-strengthening-statutory-sick-pay>

56. The Union notes that there are a significant number of employers, including schools, where workers are entitled to 100% of their wages for periods off sick, yet there is no evidence to suggest that these employers have difficulty in getting workers back to work.

57. Furthermore, the impact assessment that accompanies this consultation suggests that a higher replacement rate has little impact on the cost of SSP – with estimates showing a rise of just £15 per worker if in receipt of 80% of their average weekly earnings.<sup>36</sup>

### **3. ADDITIONAL COMMENTS**

#### **Independent review of SSP**

58. NASUWT believes that the evidence presented in this consultation demonstrates that the current system for administering SSP is no longer fit for purpose and is failing great swathes of workers, including those who are often in insecure, intermittent and precarious work – the very ones that need more protection, not less.

59. As such, the Union believes that a review of SSP is long overdue for an independent review that looks at the fairness, flexibility and suitability of SSP, including giving consideration to how SSP can support a phased return to work, as well as a rebate system to help smaller employers.

#### **Effective enforcement**

60. Any changes made as a result of this consultation must be supported with an effective and fit-for-purpose enforcement mechanism that acts as a deterrent for unscrupulous employers whilst not penalising the worker.

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<sup>36</sup>[https://assets.publishing.service.gov.uk/media/6715f848386bf0964853d848/Impact\\_assessment\\_improve\\_access\\_statutory\\_sick\\_pay\\_removing\\_lower\\_earnings\\_limit\\_removing\\_waiting\\_period.pdf](https://assets.publishing.service.gov.uk/media/6715f848386bf0964853d848/Impact_assessment_improve_access_statutory_sick_pay_removing_lower_earnings_limit_removing_waiting_period.pdf)

61. It should be noted that chances of employers being investigated for non-compliance is too low<sup>37</sup> – a situation that is compounded by the woefully inadequate levels of funding and resources available to regulatory and enforcement bodies.
62. It should be noted that, compared to European countries, UK enforcement agencies are under-resourced and underfunded. For example, in France, there are nearly 19 inspectors for every 100,000 people, whereas in the UK there is just one inspector per 100,000 workers.
63. Furthermore, the International Labour Organization (ILO), Article 10, Labour Inspection Convention No. 81, recommends adequate resourcing for labour market inspectorates.<sup>38</sup>
64. As such, NASUWT welcomes the intent of the Government to address this through the creation of the Fair Work Agency<sup>39</sup> and looks forward to engaging with the Government, other trade unions and key stakeholders on this.

### **Amending public procurement**

65. Public procurement rules should be strengthened to ensure that public sector bodies are prohibited from using those employment agencies and umbrella companies which fail to adhere to minimum standards, including in respect to the provision and payment of SSP.
66. 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.

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<sup>37</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/705495/labour-market-enforcement-strategy-2018-2019-executive-summary.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705495/labour-market-enforcement-strategy-2018-2019-executive-summary.pdf)

<sup>38</sup> [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C081](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C081)

<sup>39</sup> [https://assets.publishing.service.gov.uk/media/6707a5eb92bb81fcdbe7b62b/next\\_steps\\_to\\_make\\_work\\_pay.pdf](https://assets.publishing.service.gov.uk/media/6707a5eb92bb81fcdbe7b62b/next_steps_to_make_work_pay.pdf)

67. 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.<sup>40</sup>

### **The vital role of trade unions**

68. 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 NASUWT when dealing with supply teachers as agency workers.

69. NASUWT believes that measures should be introduced to promote and support collective bargaining/collective agreements and the right of trade unions to access workplaces and represent agency workers, such as supply teachers.

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

71. The Union therefore welcomes provisions in the Employment Rights Bill to address this and looks forward to engaging on this with the Government.

### **Single employment status of ‘worker’**

72. The establishment of the employment status of an individual is fundamental to determining their eligibility for certain statutory rights. Currently, within the UK, there are considered to be three main employment statuses: employee, worker and self-employed.<sup>41</sup>

73. The Union is concerned that the current system is therefore too open to manipulation by unscrupulous employers, including in regards to the provision of SSP.

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<sup>40</sup> <https://www.hrprocurementlab.org/wp-content/uploads/2016/06/Public-Procurement-and-Human-Rights-A-Survey-of-Twenty-Jurisdictions-Final.pdf>

<sup>41</sup> <http://researchbriefings.files.parliament.uk/documents/CBP-8045/CBP-8045.pdf>

74. In such situations, there is a concern that individuals are unsure of their rights and lack the confidence to assert them, especially where the balance of power is slanted in favour of the employer.
75. This is a view confirmed by the Low Incomes Tax Reform Group, who argue that the nature of the rules and the complexity involved results in many individuals often being unaware of their employment status.<sup>42</sup>
76. NASUWT believes that many businesses are using the complexity around employment status as a means to deny individuals their core rights, either through sham contracts or by designing them in such a way as to make it difficult for individuals to understand and enforce their rights.
77. This is particularly true for atypical working arrangements (e.g. supply teachers as agency workers) where the Union believes it can be challenging for individuals to determine 'continuous employment', which means that they may not be sure that they qualify for the rights they wish to assert, including in regards to SSP.
78. Furthermore, the ability of the employer to restrict work opportunities for atypical workers (i.e. agency workers or those on zero-hours contracts) who challenge the employer means that individuals are unable to assert their rights for fear of retribution and loss of earnings. This is in addition to the insecurity of income that atypical working brings.
79. It was right that the *Taylor Review of Modern Working Practices*, conducted by Matthew Taylor, investigated and made recommendations about employment status, including that the burden of proof should be reversed so that it falls on the employer to prove that someone is not entitled to employment rights.<sup>43</sup> The *Taylor Review* went so far as to state: '*Ultimately, if it looks and feels like employment, it should have the status and protection of employment.*'<sup>44</sup>

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<sup>42</sup> <https://www.litrq.org.uk/sites/default/files/files/170517-LITRG-response-Independent-review-employment-practices-modern-economy-FINAL.pdf>

<sup>43</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/627671/good-work-taylor-review-modern-working-practices-rg.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/627671/good-work-taylor-review-modern-working-practices-rg.pdf)

<sup>44</sup> Ibid.

80. Indeed, the *Taylor Review* recommended that clearer tests for employment status should be developed by the Government to replace the minimalistic approach to legislation.<sup>45</sup> This would provide clarity and greater certainty to individuals.
81. NASUWT believes that the current definitions used in respect of employment status are far from clear and promote a system which is weighted in favour of the employer and open to manipulation and abuse by unscrupulous employers.
82. As such, the Union advocates that all those employed, irrespective of their employment status, should be able to access the same basic rights, entitlements and protections as those currently accessed by employees. There should therefore be a single 'worker' status to determine access to all statutory employment rights.
83. In doing so, this will provide the transparency which individuals desire regarding their employment status, as they will all benefit from the same level of statutory protections, including access to SSP.
84. A single coherent definition of 'worker', which is understood by both worker and employer, will overcome the confusing, and often conflicting, definitions which have created inconsistencies and uncertainties.
85. As such, the Government's plan to consolidate various employment contracts into a 'single status' is to be welcomed and should remain a key pillar of its plans for reform.

### **A fair pay agreement for supply teachers**

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<sup>45</sup> Ibid.

86. It cannot go unnoticed that supply teachers were specifically referenced in the *United Kingdom Labour Market Enforcement Strategy 2019/20*, published in July 2019.<sup>46</sup>

*‘Other sectors I anticipate requiring further enforcement attention in the coming year are care and supply teachers. Both sectors were raised during discussion with stakeholders in my Call for Evidence. The care sector has received a substantial amount of attention since my last Strategy, particularly in relation to pay for sleep-in carers. There has been a significant increase in the volume of intelligence received directly from work-seekers in the supply teaching sector regarding issues ranging from non-payment of wages to serious contractual concerns.’*

87. As such, and given the detailed evidence provided throughout this consultation, NASUWT believes that the Government should give serious consideration to something akin to the Adult Social Care Negotiating Body which will look to establish a fair pay agreement for adult social care as proposed in the Employment Rights Bill.<sup>47</sup>
88. The Union maintains that this should consider and address the detrimental impact of deregulation upon the pay and working conditions of supply teachers in comparison with teachers who have a permanent contract of employment with a school, and seek to ensure that supply teachers are entitled to national pay scales and decent levels of sick pay, including those undertaking work through an employment agency.
89. In addition, NASUWT believes that full restoration of the organisation and administration of supply pools must now be established on a regional, or even an all-England, basis as a matter of the utmost urgency.

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<sup>46</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/819014/UK\\_Labour\\_Market\\_Enforcement\\_Strategy\\_2019\\_to\\_2020-full\\_report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/819014/UK_Labour_Market_Enforcement_Strategy_2019_to_2020-full_report.pdf)

<sup>47</sup> <https://publications.parliament.uk/pa/bills/cbill/59-01/0011/240011.pdf>

90. It is right that action is taken by the Government to upgrade workers' rights to ensure that they are fit for modern life and the UK's modern economy, irrespective of any additional burdens on businesses.
91. NASUWT appreciates that any changes, such as those put forward in this consultation, will have a cost implication. However, given the current situation and the ambition to address the state of the UK labour market, the Union believes it is a question of whether the Government can afford *not* to make these changes, including for supply teachers as agency workers.
92. It is evident that the changes proposed in the flagship Employment Rights Bill<sup>48</sup> represent a once-in-a-generation opportunity to strengthen the working conditions for the lowest paid and most vulnerable in the labour market. The Government should not, therefore, shy away from its vision to make work pay for *all* those in the UK.

Dr Patrick Roach

**General Secretary**

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<sup>48</sup> <https://publications.parliament.uk/pa/bills/cbill/59-01/0011/240011.pdf>