

**Department for Business, Energy and Industrial
Strategy (BEIS) and the Ministry of Justice
consultation on enforcement of employment rights
recommendations**

The NASUWT's submission sets out the Union's views on the key issues identified by the Department for Business, Energy and Industrial Strategy (BEIS) and Ministry of Justice consultation on enforcement of employment rights recommendations.

The NASUWT represents teachers and headteachers.

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Executive summary

- The NASUWT is clear that there are significant concerns about the current way in which employment rights are enforced, particularly given the disparity in power between employer and worker.
- These concerns are intensifying with the increased casualisation of the workforce and the growth of supply agencies and umbrella companies.
- There is evidence of widespread non-compliance, with many supply teachers being denied access to their employment rights such as those afforded under the Conduct of Employment Agencies and Businesses Regulations, the Agency Workers Regulations (AWR) and other associated legislation.
- The NASUWT is aware that when supply teachers have raised concerns about their treatment and seek to enforce their employment rights, they are led to believe there is no longer any work for them. In essence, their experience is that the work just 'dries up'.
- The Union is extremely worried about such practice and the way in which it effectively denies supply teachers both access to their employment rights and access to work. This significantly disadvantages supply teachers as agency workers in comparison to permanent employees.
- The NASUWT believes that there must be greater state enforcement so that employers who break the law suffer significant consequences for their actions.
- The NASUWT believes that agency workers, such as supply teachers, are a category of workers who are particularly at risk from receiving no holiday pay and/or sick pay.
- The extension of the remit of HMRC to cover the enforcement of holiday and sick pay has the potential to benefit workers provided that the appropriate level of resource is ascribed.
- Stronger Government regulation and enforcement could be achieved through the introduction of a licensing scheme that is self-funding.
- The NASUWT believes that the enforcement process could be further simplified if greater onus was placed upon Government and the employment tribunal service to enforce awards. Currently the system relies too much on individuals pursuing a claim against an employer.

- The Government should also consider instructing HMRC to pay any holiday pay and sick pay owed to the worker whilst pursuing employers who do not pay.
- Public procurement rules should be amended to ensure public sector bodies are prohibited from using employers which fail to adhere to minimum standards.
- The NASUWT believes that a naming-and-shaming scheme targeting employers who do not pay employment tribunal awards could be of benefit. However, this must be given the appropriate level of resource and be fit for purpose, including prompt further escalation coupled with uplifts in compensation for workers.
- The Government should also consider additional levers, such as the information held on a company at Companies House, as the data held is open to both the public and any potential investors looking to invest in a specific business.
- Increased financial penalties applied where an employer has deliberately set out to ignore the law should be considered only if there is a commitment to give practical effort to such a mechanism. Otherwise, such a proposal would constitute tokenism or window-dressing.
- The right to representation and a voice in the workplace is a vital and fundamental principle and right that should apply to all workers.

1. GENERAL COMMENTS

- 1.1 The NASUWT welcomes the opportunity to respond to the Department for Business, Energy and Industrial Strategy (BEIS) and the Ministry of Justice consultation on enforcement of employment rights recommendations as part of the Government's response to the *Taylor Review of Modern Working Practices*.
- 1.2 The recommendations in the consultation are significant and wide-ranging and cover a number of significant areas associated with the labour market, non-compliance and enforcement. The NASUWT submission seeks to address these issues.
- 1.3 There have been significant changes in the UK labour market over recent years which have impacted upon pay, job security and conditions of employment.
- 1.4 For example, there has been an increase in the number of people reporting that they are self-employed. According to the Office for National Statistics (ONS), this now accounts for approximately 15% of the workforce.¹
- 1.5 Between February to April 2007 and February to April 2017, self-employment rose by one million (26%) compared to just 7% for employees over the same period.²
- 1.6 Although most self-employed people work full time, it is part-time self-employment that has been growing faster in recent years. Part-time self-employment grew by 88% between 2001 and 2015, compared to 25% for full-time people.³

¹ <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/articles/trendsinselfemploymentintheuk/2001to2015>

² <http://researchbriefings.files.parliament.uk/documents/CBP-8045/CBP-8045.pdf>

³ Ibid.

- 1.7 Recent research by the McKinsey Global Institute has suggested that the true number of people working part time in the ‘gig economy’ is much higher than the official employment statistics suggest.⁴
- 1.8 Figures published by the Trade Union Congress (TUC) show that over three million people – one in ten of the UK workforce – now face uncertainty about their working hours and their rights and protections. Of these, 730,000 are agency workers.⁵
- 1.9 The Labour Force Survey (LFS) puts the estimate at 865,000 agency workers in the UK today, made up of those in temporary and permanent agency work, as well as those classed as self-employed but paid by an agency, and those who undertake agency work as a second job.⁶
- 1.10 The Union acknowledges that there has been a lot of public interest regarding the gig economy following the GMB case against UBER,⁷ and the more recent case involving drivers working for Addison Lee.⁸ However, the NASUWT is concerned that the Government has failed to recognise and address the issue of workers’ rights and the level of protection and support agency workers should be afforded irrespective of whether or not they work in the gig economy.
- 1.11 The Union also notes that the rise in insecure work is having a disproportionate impact upon vulnerable groups who already suffer a labour market disadvantage, such as women, black and minority ethnic (BME) workers.⁹ The TUC estimates that BME workers are over a third more likely than white workers to be in temporary or zero-hours work.¹⁰
- 1.12 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

⁴ <http://www.mckinsey.com/global-themes/employment-and-growth/independent-work-choice-necessity-and-the-gig-economy>

⁵ <https://www.tuc.org.uk/sites/default/files/the-gig-is-up.pdf>

⁶ <http://www.resolutionfoundation.org/app/uploads/2016/12/Secret-Agents.pdf>

⁷ <https://www.judiciary.gov.uk/wp-content/uploads/2016/10/aslam-and-farrar-v-uber-reasons-20161028.pdf>

⁸ <https://www.leighday.co.uk/News/News-2017/September-2017/Victory-for-AddisonLee-drivers-as-Tribunal-finds>

⁹ <http://www.resolutionfoundation.org/app/uploads/2016/12/Secret-Agents.pdf>

¹⁰ <https://www.tuc.org.uk/sites/default/files/the-gig-is-up.pdf>

2011.¹¹ 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.

1.13 The NASUWT maintains that everyone should be seen as an employee, with all the associated rights and entitlements this brings, unless it can be proved otherwise.

1.14 The Union is, therefore, committed to an education system that is fair to all teachers regardless of employment status.

1.15 The Union believes that the Government must act in order to ensure that the rights and entitlements are extended to all other categories of worker.

The treatment of supply teachers and issues around compliance

1.16 Many supply teachers report that they are treated as ‘second-class citizens’ who are not always able to access and enforce their employment rights.

1.17 The NASUWT’s research shows that almost four fifths (78%) of supply teachers reported that the agency through which they undertake the majority of their work does not fully disclose all fees and charges they make for the services they provide. Eight per cent indicated that they had been asked to sign an exclusivity clause with the agency in order to obtain work.¹²

1.18 Other concerns around non-compliance, of which the NASUWT is aware, includes supply teachers being told they will only receive £140 for a day’s work when the contract they have with the agency stipulates £160 a day.

¹¹ Ibid.

¹² <https://www.nasuwt.org.uk/uploads/assets/uploaded/e7d27137-a3cb-4db8-ae6d1c34024d344a.pdf>

- 1.19 These are just a few examples of breaches of the Conduct of Employment Agencies and Businesses Regulations (2003),¹³ which set out quite clearly what an agency worker should expect to receive and what can or cannot be asked of them by an agency.
- 1.20 In addition to this, many supply teachers report that they are unable to access the same facilities which are available to employees. Almost a fifth (19%) stated that they do not always have access to staffrooms where they are available, over two fifths (42%) stated that they do not always have access to food and drink facilities, and over one in ten (12%) said that they do not always have access to toilet/washroom facilities. Over a third (37%) reported that they do not always have access to car parking.¹⁴
- 1.21 The Agency Workers Regulations 2010 (AWR) were intended to afford such employment rights to supply teachers as either day-one rights or rights after 12 weeks' employment.¹⁵
- 1.22 The Regulations give all supply teachers basic rights from day one when they are in school, including the right to access facilities used by other staff at the school and equal rights at work after 12 weeks.
- 1.23 However, 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 they had not been afforded them.
- 1.24 Forty one per cent 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.¹⁶
- 1.25 Of even greater concern is the fact that the NASUWT has obtained evidence of the manipulation of the Regulations. For example, over a fifth

¹³ <http://www.legislation.gov.uk/uksi/2003/3319/contents/made>

¹⁴ <https://www.nasuwt.org.uk/uploads/assets/uploaded/e7d27137-a3cb-4db8-ae6d1c34024d344a.pdf>

¹⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/32121/11-949-agency-workers-regulations-guidance.pdf

¹⁶ <https://www.nasuwt.org.uk/uploads/assets/uploaded/e7d27137-a3cb-4db8-ae6d1c34024d344a.pdf>

(22%) of supply teachers reported that work had been cancelled on specific longer term assignments at or approaching the 12 weeks qualification period for AWR.

- 1.26 Some supply agencies exploit the provisions in the Regulations which provide that if a worker has a permanent contract of employment with an agency, the right to equal pay may not apply, the so-called 'Swedish Derogation'.
- 1.27 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 in waiving their rights to equal pay, in order to gain regular supply work.
- 1.28 The NASUWT has investigated the role played by umbrella companies as a ruse for employing supply teachers. These companies essentially straddle the relationship between schools and teachers, raking off money from the public purse and delivering very little added value to the system.
- 1.29 Research conducted by the NASUWT found that two thirds of supply teachers (66%) reported that they have been asked to sign a contract or agreement with an umbrella/offshore company when working through a supply agency, and over four fifths (81%) of those respondents stated that their pay had included deductions in respect of both employee and employer National Insurance Contributions (NICs).¹⁷ There are even instances where supply teachers have reported having the apprenticeship levy deducted from their pay.
- 1.30 The Union asserts that at the root of this problem is the lack of regulation governing these arrangements and the lack of monitoring and scrutiny.
- 1.31 This has encouraged the growth of umbrella companies across a range of different industries and sectors, including education, draining both the

¹⁷ <https://www.nasuwt.org.uk/uploads/assets/uploaded/e7d27137-a3cb-4db8-ae6d1c34024d344a.pdf>

public and private purse in order to maximise profits, whilst denying workers access to even basic employment rights.

- 1.32 The NASUWT's successful and well-attended supply teacher conferences, held twice-yearly, have heard from thousands of supply teachers trapped into working for agencies that force them to join an umbrella company in order to get work.
- 1.33 Furthermore, the NASUWT has received testimony that where supply teachers have raised concerns about their treatment, they have then found that they are subject to blacklisting practices by these agencies/companies. The process is that they are led to believe there is no longer any work for them. In essence, their experience is that the work just 'dries up'.
- 1.34 The Union is extremely worried about such practice and the way in which it effectively denies supply teachers and other agency workers access to work. When this occurs, there is no recourse or action that can be taken, a failure which significantly disadvantages agency workers in comparison to permanent employees.
- 1.35 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.
- 1.36 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.
- 1.37 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 regards to their tax liabilities, specifically in setting up a new limited company where the supply teacher is the 'sole owner', director and employee.

2. SPECIFIC COMMENTS

State-led enforcement

- 2.1 The evidence provided demonstrates that the current balance of benefits between agency worker (i.e. supply teacher) and employer is skewed significantly in favour of the employer (i.e. the agency).
- 2.2 The current balance of benefits between worker (i.e. supply teacher) and employer is skewed significantly in favour of the employer and this is evidenced in the significant levels of non-compliance in the UK labour market.
- 2.3 Issues of non-compliance, coupled with a lack of transparency, demonstrate that swathes of workers, including agency workers, are unaware of their rights and are unsure about how to report unfair practices. For those in vulnerable and precarious employment who do complain about poor practice, such as supply teachers, work often dries up. Therefore, supply teachers are often unwilling to complain due to the potential impact upon their income and financial security.
- 2.4 One of the current avenues to pursue enforcement in the UK is through an employment tribunal. This requires individual enforcement where an individual takes their employer/former employer to an employment tribunal to resolve the dispute. Before this is invoked, an individual has to attempt to resolve the issue through the ACAS Early Conciliation process, although this is optional and either party can turn it down.¹⁸
- 2.5 The other avenue individuals can pursue relies on direct enforcement from the state. Individuals can seek redress on a range of issues through a number of different government departments.
- 2.6 For example, Her Majesty's Revenue and Customs (HMRC) investigates concerns individuals may have over whether or not they are being paid the

¹⁸ <http://www.acas.org.uk/index.aspx?articleid=4028>

National Minimum Wage (NMW) or National Living Wage (NLW), whereas the Employment Agency Standards (EAS) Inspectorate deals with regulations and compliance regarding employment agencies and the employment of agency workers, such as supply teachers.

- 2.7 However, the evidence outlined above demonstrates that state enforcement in its current guise is failing many workers. For many employers, the threat of detection and having a sanction applied represents a good risk.¹⁹ For example, estimates suggest that an employer could expect a visit every 320 years from a NMW Inspector or by EAS every 39 years.²⁰
- 2.8 It was therefore right that the Independent Review of Employment Practices in the Modern Economy conducted by Matthew Taylor investigated and made recommendations about the current system for the enforcement of employment rights.²¹
- 2.9 Whilst the Union cautiously welcomes some of the recommendations which attempt to remove the situation where employers can take advantage of the insecurity and vulnerability of some workers, it is disappointed that the recommendations do not go far enough in creating a culture which the Prime Minister believed would “ensure that workers’ rights are always upheld...as we build an economy that works for everyone.”²²
- 2.10 The NASUWT is clear that any recommendations must ensure that employers who break the law can 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.
- 2.11 It is worth noting that rights are only worthwhile if they can be effectively enforced without the worker living in fear of intimidation from their employer and the prospect of losing their job.

¹⁹ https://www.mdx.ac.uk/_data/assets/pdf_file/0017/440531/Final-Unpaid-Britain-report.pdf?bustCache=35242825

²⁰ Ibid.

²¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/627671/good-work-taylor-review-modern-working-practices-rg.pdf

²² <https://www.gov.uk/government/news/millions-to-benefit-from-enhanced-rights-as-government-responds-to-taylor-review-of-modern-working-practices>

- 2.12 The NASUWT believes that agency workers, such as supply teachers, are a category of workers who are particularly at risk from receiving no holiday pay and/or sick pay. They are also a group who face more difficulty in enforcing their rights due to a lack of voice in the workplace, coupled with a lack of job security.
- 2.13 The vagaries of insecure work mean that many supply teachers miss out on key protections when they are unable to work, such as Statutory Sick Pay (SSP). A lack of transparency means that many supply teachers are unable to calculate their entitlements to either SSP or holiday pay. Rolled-up holiday pay further exacerbates the problem and means that many supply teachers are not accessing holiday pay.
- 2.14 It is therefore not surprising that many supply teachers report that they are treated as 'second-class citizens' who are not always able to access their employment rights.
- 2.15 Where supply teachers do complain about poor practice, work often dries up. The result of this is that many supply teachers are often unwilling to complain due to the potential impact upon their income and financial security.
- 2.16 Supply teachers often report being unaware who their employer is and the exact nature of the way in which their pay will be processed, including information on deductions such as National Insurance Contributions (NICs), for both the employer and employee, holiday pay and the Apprenticeship Levy.
- 2.17 The NASUWT believes that greater transparency, through a statutory entitlement to a key facts sheet, could have an impact for supply teachers as agency workers. It would enable them to understand if they are receiving their full entitlements and will also assist enforcement bodies and trade unions in assessing cases.

- 2.18 In addition, the right to representation and a voice in the workplace is a barrier which means that supply teachers, as agency workers, are unable to access union representation in the same way that many of their full-time equivalents can. The NASUWT believes that the right to trade union representation is a vital and fundamental principle and right that should apply to all workers, including agency workers.
- 2.19 The extension of the remit of HMRC to cover the enforcement of holiday and sick pay has the potential to benefit workers, provided that the appropriate level of resource is ascribed so that this can be effectively enforced without unnecessary delay.
- 2.20 Without additional capacity to manage the extra burden placed on HMRC, the extension of the responsibility for the enforcement of holiday and sick pay will not result in the level of protections workers deserve, often those who are in the most vulnerable and insecure forms of employment.
- 2.21 For example, there is already widespread non-compliance of the National Minimum Wage.²³ If the enforcement of non-compliance for holiday and sick pay is given to HMRC, estimated to be at least £1.5 billion a year for holiday pay alone,²⁴ then this would require significant investment and resource to enable HMRC to undertake this effectively.
- 2.22 Furthermore, if such powers are extended to HMRC then the NASUWT would urge against a self-correction tool, such as the case with the National Minimum Wage (NMW), as this may, in effect, let employers off the hook provided the error has been corrected. Additionally, this relies on the worker being able to check and understand if the correction has been made by their employer.
- 2.23 The Union would also expect that any online tools which are used to assist in the calculation of holiday pay and sick pay are amended so that they are fit for purpose and can provide accurate estimates based on a range of

²³ <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/lowpay/apr2016>

²⁴ https://www.mdx.ac.uk/_data/assets/pdf_file/0019/371017/Weighted-scales-Unpaid-Britain-Interim-report.pdf?bustCache=15096591

scenarios. Currently, calculations which rely on hours worked do not necessarily reflect the way in which supply teachers are employed (i.e. sessional work).

- 2.24 Any additional burden on the employer is negated as this should be seen as part of their normal compliance procedure. Furthermore, 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.
- 2.25 However, the NASUWT recognises that greater enforcement of employment rights does not address insecurity at work and whether a supply teacher decides to work. As a consequence, the benefits derived from greater enforcement of employment rights is limited to those who have a genuine choice about whether or not to accept the work which has been offered to them. Most supply teachers are not in such a position, as their assignments can be intermittent and sporadic.
- 2.26 The Government should seriously consider a licensing scheme with the provision of an accurate key facts sheet, including proof that it has been read and understood, as a condition for receiving and retaining a licence. This has the potential to be self-funding if the correct fees are applied to cover any costs incurred.
- 2.27 Employment agencies working in the education sector would be an ideal area to pilot such an initiative, where there is 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.
- 2.28 Of course, any such scheme must be fit for purpose and should have the necessary buy-in from all relevant stakeholders, including trade unions. The NASUWT notes, in this regards, comments made by Professor Sir

David Metcalf on the important role played by trade unions in preventing or reversing the fissuring of employment relationships.²⁵

Enforcement of awards

2.29 The NASUWT believes that there should be a simpler enforcement process for employment tribunals which enables workers to access their rights and entitlements without the need for additional bureaucracy.

2.30 Since 2010, there have been significant changes to the court and tribunal system, including closures, in a bid to modernise the court system, including through the use of technology.²⁶

2.31 However, the NASUWT has concerns that the digitisation of enforcement systems in Her Majesty's Courts and Tribunals Service (HMCTS) must ensure that they are fit for purpose and do not disadvantage individuals or groups; for example, those with protected characteristics as defined in the Equality Act 2010,²⁷ and those with literacy issues, including English as a second language, those with lower incomes, and those without access to the internet.

2.32 It is important to bear in mind that some of the groups identified above are more likely to work in and be susceptible to the vagaries of precarious and intermittent employment. Any attempts to streamline HMCTS should therefore not be at the expense of the service provided and access by claimants.

2.33 The NASUWT believes that the enforcement process could be further simplified if greater onus was placed upon the Government and the employment tribunal service to enforce awards. Currently, the system relies too much on individuals pursuing a claim against an employer. The

²⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/632074/labour-market-enforcement-strategy-2018-19-summary-of-issues.pdf

²⁶ <http://researchbriefings.files.parliament.uk/documents/CDP-2018-0081/CDP-2018-0081.pdf>

²⁷ <https://www.legislation.gov.uk/ukpga/2010/15/contents>

Government appears to have overlooked this recommendation, despite it being part of the Taylor Review of Modern Working Practices.

- 2.34 For example, HMCTS should assume responsibility for enforcing tribunal awards and have management and oversight including the ability of further escalation and sanctions for employers who have failed to pay tribunal awards.
- 2.35 In addition to this, the Government could also consider instructing HMRC to pay any holiday pay and sick pay owed to the worker whilst pursuing employers who do not pay. This would increase the likelihood of complaints and the Government would have a vested interest in ensuring non-payment is pursued via HMRC.
- 2.36 This could be complemented by a level of bond insurance which forces employers to demonstrate that they have sufficient funds to meet their wage obligations, including costs associated with both holiday pay and sick pay.
- 2.37 Furthermore, public procurement rules should be amended to ensure public sector bodies are prohibited from using employers which fail to adhere to minimum standards.
- 2.38 The NASUWT believes that enhanced regulatory schemes must act as a sufficient deterrent to companies and company directors. This could include barring directors who are in breach of tribunal awards from holding the position of director, or amending legislation in respect of limited liability so it no longer protects employers.
- 2.39 Underpinning all of this is better access to advice and guidance. The availability of free legal advice should be more readily available for employment matters, especially because workers making a claim to an employment tribunal may find it daunting, particularly when they are required to establish the burden of proof.

2.40 Whilst organisations such as trade unions are available to assist and offer invaluable advice, guidance and support, the Legal Services Commission does not help in employment disputes, unless it can be proved to be a criminal negligence claim.

Establishing a naming scheme

2.41 The NASUWT believes that a naming-and-shaming scheme targeting employers who do not pay employment tribunal awards could be of benefit. However, this must be given the appropriate level of resource so that it is effective and provides real-time information on those unscrupulous employers who have failed to pay an employment tribunal award.

2.42 In addition to this, any system must be fit for purpose and have the desired effect of incentivising non-compliant employers to pay tribunal awards promptly or face further escalation through additional sanctions, including greater compensation for workers affected.

2.43 The Union is concerned at the Government's proposal to extend the BEIS penalty scheme.²⁸ This scheme relies on a worker who has not received an employment tribunal award making a complaint. If they do not make a complaint then the details are not collected under the BEIS penalty scheme.

2.44 This means that a significant proportion of non-compliant employers would not be captured if the BEIS penalty scheme was extended, and, as such the NASUWT is concerned that these proposals would just address the 'tip of the iceberg'. This is particularly prescient when considering the fact that education was one of the top three sectors identified by the EAS Inspectorate for regulatory breaches, with the EAS reporting a tenfold increase of these in 2015/16 compared to the previous year.²⁹

²⁸ <https://www.gov.uk/government/publications/employment-tribunal-penalty-enforcement>

²⁹ Ibid.

- 2.45 Additionally, the Government does not recoup unpaid awards for applicants which impacts further on the appeal of the scheme for successful claimants. The Union is also concerned about the time taken before an employer is named and the fact that there is a period of time for an employer to appeal.
- 2.46 Of even greater concern to the Union is the fact that the Government estimates that changes to the naming and shaming would only name between 30 and 36 employers quarterly.³⁰
- 2.47 The Union believes that the issues around the level of reporting identified above are not going to be addressed unless there is greater awareness created through a comprehensive publicity campaign which draws attention to a naming-and-shaming scheme that expeditiously highlights and acts on employer bad practice.
- 2.48 The Government could also incentivise prompt payment by examining the role which could be played by HMRC in the recovery of unpaid tribunal awards from employers, including through the use of the tax system.
- 2.49 The NASUWT also believes that there is merit in the development of an intelligence hub as outlined by the LME Director in their *Labour Market Enforcement Strategy 2018/19*.³¹ The Union appreciates the benefit of joint working and the sharing of intelligence to produce a more effective and coherent response, with clear objectives around non-compliance, including naming and shaming. This has the potential to build up a better picture on both a national and regional level, as well as by sector.
- 2.50 Obviously, the development of such a resource must attract an appropriate level of funding and be adequately resourced in terms of manpower and technical support.

³⁰ <https://www.gov.uk/government/consultations/enforcement-of-employment-rights-recommendations>

³¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/632074/labour-market-enforcement-strategy-2018-19-summary-of-issues.pdf

- 2.51 The involvement of trade unions is crucial if the Government's proposals are to have credibility. Summary data and statistics should be shared (perhaps on a quarterly basis) and made available to trade unions with a view to identifying trends and analysing 'pinch points' so that appropriate strategies can be developed.
- 2.52 The Union believes that the Government should also consider the use of information held on a company at Companies House and whether or not companies should be obliged to record if they have been identified as an employer who has failed to pay an employment tribunal award.
- 2.53 This could act as a significant lever as the data held at Companies House is transparent and open to both the public and any potential investors looking to invest in a specific business.

Additional awards and penalties

- 2.54 The NASUWT welcomes the Government's proposal to increase the financial penalties that are applied where an employer has lost an employment tribunal and believes they can ignore the law. However, there is no merit in this proposal unless it is given practical effect.
- 2.55 There should be uplift in compensation which a tribunal can award and this should either sit alongside and be given the same status as aggravated breach penalties which are awarded to the state. In doing so, the worker is genuinely compensated for the breach and the employer no longer has an incentive to prioritise state debts over paying the worker an award due to them.
- 2.56 The Union also advocates that increased awards and penalties should be a lever by which employment tribunals can sanction an employer who has been found to have breached employment rights again, irrespective of whether the issues are related or not.

- 2.57 The use of increased penalties and awards should also be considered in cases where it is proven that employers have acted in a way that has deliberately prevented workers from enforcing their employment rights (i.e. convoluted or opaque contracts).
- 2.58 The NASUWT also believes that there should be consideration given to the issue around joint liability, specifically during the procurement process, so that clients, as end users, have an onus placed upon them to ensure that all those involved in the supply chain can prove that a worker has been provided with and understood their contract, including their rights and entitlements.

3. ADDITIONAL COMMENTS

- 3.1 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. The right to trade union representation and the right to withdraw labour, free from victimisation, is a vital and fundamental principle and right that should apply to all workers.
- 3.2 There has been an increase in the number of online platforms which have come into the market. The Union has serious concerns about the increased use of online apps as a means of managing vacancies and placing supply teachers. Whilst apps might be used as a holding diary, the companies could be based anywhere in the world. This makes it difficult to take action, particularly when it comes to the enforcement of employment rights. The Government should therefore recommend that these are brought under tighter scrutiny and regulation, possibly through the auspices of the EAS Inspectorate.