

COVID-19 UPDATE

Correspondence and representations made by the NASUWT on behalf of supply teachers

The COVID-19 pandemic has dominated all aspects of public life since March 2020, including education, not least with the introduction of further national restrictions since November, in response to the significantly increased threat to public health.

Whilst the pandemic has highlighted the importance of supply teachers, it has also spotlighted the growing casualisation of work and the situation for supply teachers, who often have no choice but to obtain work via different supply agencies, leaving them vulnerable to the vagaries of precarious, intermittent and insecure employment.

Throughout the pandemic, the NASUWT has campaigned on behalf of supply teachers and continued to make a series of representations to the Government, including the Department for Education (DfE), Her Majesty's Treasury (HMT) and the Department for Work and Pensions (DWP), highlighting the situation for supply teachers, including the increased financial uncertainty many supply teachers have faced and continue to face during the COVID-19 pandemic.

The introduction of the Coronavirus Job Retention Scheme (CJRS) in March, and associated advice and guidance, sought to allay some of the concerns of supply teachers by confirming that employment businesses could apply for the grant to cover up to 80% of wages (up to a cap of £2,500 per month) and furlough agency workers, such as supply teachers, provided they were paid through PAYE.

In April, the NASUWT wrote to the DfE (or Secretary of State) to seek clarification on the situation for those supply teachers employed through an umbrella company and allay concerns that the guidance could result in some supply teachers receiving just 80% of the National Minimum Wage (NMW), based on the way their pay was structured, a situation that was compounded by the reticence of some umbrella companies to furlough supply teachers until they received clarification on this issue.

This was subsequently followed up with further correspondence sent in conjunction with the Freelancer and Contractor Services Association (FCSA) to both the DfE and HMT in May, highlighting the concerns for supply teachers working through umbrella companies in guaranteeing NMW and simply referencing the balance of the pay as bonus or commission.

Following this, the DfE convened a meeting with the NASUWT, the FCSA and other trade unions to discuss concerns over the Coronavirus Job Retention Scheme (CJRS) and issues in respect of furlough for supply teachers working through umbrella companies. Officials from the DfE referenced revised advice and guidance on the CJRS, which captured variable payments and detailed how they could become non-discretionary, so that 80% of a supply teacher's wage could now include discretionary payments.

Whilst welcoming the revised advice and guidance on the definition of non-discretionary payments, which took account of concerns raised in the aforementioned correspondence from the NASUWT, the Union pointed to the fact that it still sat at odds with the Treasury Direction, and this had resulted in some reticence from umbrella companies paying supply teachers, for fear of being audited by HMRC and being found to have incorrectly accessed the CJRS.

In addition, the Union expressed concerns about the limited use of the Crown Commercial Service (CCS)/Cabinet Office guidance on the use of contingent labour in the public sector, specifically those agencies on the CCS portal for the provision of supply teachers.

Furthermore, the NASUWT noted the fact that the Government advice and guidance on the CJRS is not on a statutory footing, meaning there is nothing a supply teacher can do to challenge a decision if they not furloughed.

The NASUWT pressed the DfE to undertake research on how many schools and agencies accessed the CCS/Cabinet Office note, including identifying the reasons why schools and agencies chose not to utilise the scheme for supply teachers.

The Union argued for supply teachers being treated as a special case in any revisions to the CJRS scheme, as well as requesting that the DfE make cogent arguments to colleagues in the Treasury on this issue.

Finally, the NASUWT referenced the need for DfE officials to look at how a broken labour market can be fixed for the benefit of those supply teachers working in it.

In June, the NASUWT wrote to both the DfE and HMT to raise concerns over amendments to the CJRS, specifically those relating to periods of unpaid leave and how this had been interpreted by some supply agencies and umbrella companies to mean that supply teachers were no longer eligible to be paid for periods of school closure, such as the summer holidays, based on the belief that this would fall outside the scope of the Treasury Direction.

Following pressure from the NASUWT and other trade unions, this situation was clarified by revised CJRS advice and guidance, which made it clear that supply teachers were eligible for the scheme in the same way as other employees, and that they could continue to claim it during school-holiday periods, a situation which resulted in many more supply teachers being paid accordingly by their employer.

The Union wrote to the DfE later that month in a joint letter with the Recruitment and Employment Confederation (REC), a trade body representing recruitment businesses, to register concerns over the revised CJRS. These specifically pertained to increased employer contributions to the 80% grant from September through to the end of October, and the detrimental impact on the number of supply teachers being helped through furlough, particularly during the gradual reopening of schools when the demand for supply teachers will take time to return to normal.

The NASUWT and the REC advocated for the Government to continue to provide appropriate financial support through a grant or rebate for employment businesses who continue to use the CJRS and furlough supply teachers. In conjunction with this, the Union produced a template letter for members to send to their MP to highlight the need to amend the extended Job Retention Scheme to better protect supply teachers.

In addition to this, subsequent correspondence to the DfE in September reinforced the concerns the Union had over the situation for supply teachers from the start of the autumn term. This was in regard to Government guidance on the use of supply teachers and the need to mitigate the risk of COVID-19 transmission, and the need for the DfE and the Government to provide additional job protection funding.

The NASUWT also spotlighted the actions of supply agencies and umbrella companies throughout the pandemic, and the pressing need for the Government to look at what could be done to effect change in the employment and terms and conditions for supply teachers, including consideration of alternative schemes which cap the profits of supply agencies and incentivise direct employment of supply teachers.

In response to the above communications, the Union met with DfE officials again to discuss the issues in more detail, specifically the experiences of supply teachers during the COVID-19 pandemic and the subsequent wider reopening of schools. The evidence presented by the

NASUWT demonstrated that advice and guidance from the DfE was not being followed by schools and/or local authorities and that this had a significant detrimental impact on supply teachers employed directly or through local authority pooled supply. The NASUWT advocated the need for a stronger push on the use of direct employment for supply teachers, as well as employment through the local authority.

In respect of the revised regulations, and in light of the above, the NASUWT also urged DfE officials to look at financial support measures to assist supply teachers who may have to self-isolate through no fault of their own, but who will, as a consequence, lose income.

The same message was articulated to the Minister for Education in Wales. Furthermore, on the back of the correspondence, the NASUWT met with the Minister for Education to discuss the experiences of supply teachers in Wales during the COVID-19 pandemic and the wider reopening of schools from September 2020, as well as the need for the Welsh Government to act to ensure supply teachers are provided with additional job security during the COVID-19 pandemic, including through the use of supply teachers for the catch-up programme and through the 'Recruit, Recover, Raise Standards' curriculum.

Later that month, the Union wrote to HMT to press for specific targeted financial measures to support hard-working and dedicated supply teachers and enable them to remain available to schools as and when needed, particularly in situations where schools implement the Government's advice and guidance, a situation compounded by impending closure of the furlough scheme at the end of October 2020.

Following pressure from the trade unions, including the NASUWT, the Chancellor announced a short-term working scheme to come into effect from November, following the end of furlough in October. The Job Support Scheme, which has been subsequently extended, requires employers to show that their turnover has been affected by the pandemic. However, in its current form, it is likely to leave many workers, including supply teachers, unable to access this financial protection.

Further representations were made by the Union in October, including to the DfE, HMT and the DWP on behalf of supply teachers, highlighting the increased financial uncertainty they face where they are forced to self-isolate because of a confirmed case of COVID-19 in the school or schools where they are undertaking assignments. The strict criteria applied to the Test and Trace Support Payments mean that supply teachers are likely to miss out on any level of financial assistance unless they meet the eligibility criteria for Statutory Sick Pay (SSP).

The Union highlighted the significant impact this will have on supply teachers and called on the Government to address this issue as a priority, ensuring that supply teachers are able to access some financial support from the Government going forwards.

Whilst the NASUWT was pleased to receive the news that the Coronavirus Job Retention Scheme, as it was prior to September, was being extended until March 2021, and that supply teachers were still eligible, the Union has made representations to the DfE to clarify the situation, given that the Treasury Direction suggests that this may not be the case.

Briefings for MPs

Throughout the COVID-19 pandemic, the NASUWT has briefed MPs on the experiences of supply teachers, including the situation they find themselves in with the wider reopening of schools from September 2020.

The Union has detailed the current supply teacher environment and the situation with the use of umbrella companies, as well as detailing the need for a better deal for supply teachers.

The NASUWT will continue to campaign on behalf of hard-working and dedicated supply teachers during and beyond the current COVID-19 pandemic.