

Petition P-05-805 Fair Deal for Supply Teachers in Wales
3 May 2019

- 1.1 The NASUWT welcomes the opportunity to submit written evidence to the Welsh Assembly Petitions Committee looking at the petition calling for a fair deal for supply teachers.
- 1.2 The NASUWT is the largest teachers' union in Wales and the UK representing teachers and school leaders. The NASUWT has many thousands of supply teachers within its membership.

GENERAL COMMENTS

- 1.3 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 parties involved in the procurement and supply of agency workers, as well as the opportunity for the exploitation of workers.
- 1.4 A third of UK firms surveyed reported that it was now a 'strategic' active business decision rather than a stop-gap approach when considering the use of agency workers.¹
- 1.5 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

¹ <http://www.resolutionfoundation.org/app/uploads/2018/02/business-survey-slide-FINAL.pdf>

their working hours and their rights and protections. Of these, 730,000 are agency workers.²

- 1.3 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.³
- 1.4 The Resolution Foundation believes that the number of agency workers is significant and rising fast. For example, Figure 1 below shows that the number of agency workers has increased by 200,000 between the period 2011 and 2016,⁴ the equivalent of a 30% increase over the period. If such a rate of change is sustained, then this would result in over a million agency workers by the end of the decade.⁵
- 1.5 It should not 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 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’.
- 1.6 The Union also notes that the rise in insecure work is having a disproportionate impact upon groups who already suffer a labour market disadvantage, such as women and black, and minority ethnic (BME) workers.⁶ The TUC estimates that BME workers are over a third more likely than white workers to be in temporary or zero-hours work.⁷

² <https://www.tuc.org.uk/sites/default/files/the-gig-is-up.pdf>

³ <http://www.resolutionfoundation.org/app/uploads/2016/12/Secret-Agents.pdf>

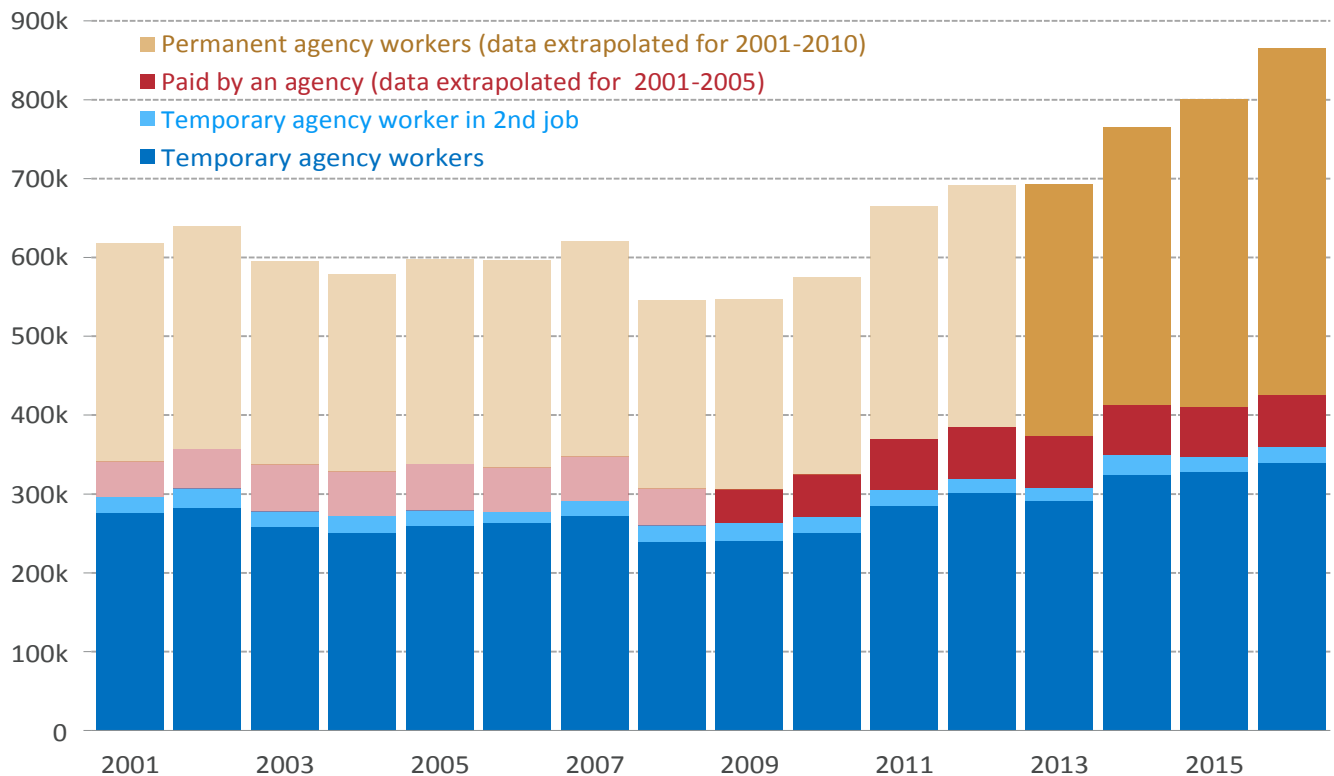
⁴ <http://www.resolutionfoundation.org/app/uploads/2016/12/Secret-Agents.pdf>

⁵ Ibid.

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

⁷ <https://www.tuc.org.uk/sites/default/files/the-gig-is-up.pdf>

Figure 1



Source: Resolution Foundation, *Secret Agents: Agency workers in the new world of work*, December 2016, p17

- 1.7 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 2011.⁸ 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.
- 1.8 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. The Union is, therefore, committed to employment in the education system that is fair to all employees regardless of employment status.
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⁸ Ibid

- 1.10 Supply teachers are committed and dedicated professionals who provide an invaluable resource for schools. As such, supply teachers make a vital contribution to securing high educational standards for all children and young people. The NASUWT believes that supply teachers should be valued for the hard work and dedication with which they undertake what is a challenging and varied role across different educational settings.
- 1.11 Despite this, many supply teachers report that they are treated as ‘second-class citizens’ who are not always able to access their employment rights.
- 1.12 Teachers may undertake supply for a variety of reasons. However, lack of availability of suitable permanent employment is a reason which is increasingly given, despite concerns regarding recruitment and retention in Wales.⁹
- 1.13 The existence of Personal Service Companies (PSCs) has unfortunately become a feature of the educational landscape in schools, in the form of supply agencies and umbrella companies.
- 1.14 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 500.¹⁰
- 1.15 The NASUWT has significant concerns about the procurement of agency and self-employed workers in the education sector. These concerns are intensifying with the increased casualisation of the workforce and the growth of supply agencies and umbrella companies.
- 1.16 Agencies and umbrella companies are making substantial profits in a largely unregulated schools sector, whilst depressing the pay of teachers. Taxpayers’ money is being siphoned off to agencies. Supply teachers are getting less, schools are paying more, whilst agencies and umbrella companies profit.

⁹ <http://www.eteachblog.com/be-alert-new-figures-reveal-issues-in-teacher-recruitment-and-retention-in-wales/>

¹⁰ https://www.niesr.ac.uk/sites/default/files/publications/NIESR_agency_working_report_final.pdf

- 1.17 There is evidence that supply teachers are 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.
- 1.18 The NASUWT's annual survey of supply teachers found that the overwhelming majority of supply teachers (83%) reported that private supply agencies were the only way to obtain work. Since 2014, the use of supply agencies by supply teachers has risen by 20%.¹¹
- 1.19 Indeed, the Recruitment and Employment Confederation (REC) Industry Trends Survey 2014-15 reported that the average daily number of placements in education had increased by 71.2% from the previous year.¹²
- 1.20 The evidence suggests that in the increasingly fragmented context in which schools operate, the role previously undertaken by local authorities is now being carried by privatised supply agencies who are exploiting the recruitment challenges in school for profit.
- 1.21 It is clear that the market in agency workers in education is big business. The amount spent by maintained schools on supply teachers for 2016/17 was in excess of £700 million.¹³ Of this, approximately £520 million went to employment agencies.
- 1.22 It is clear that the market in agency workers in education is big business. The amount spent by schools on supply teachers for 2016/17 was approximately £40 million.¹⁴ Of this, approximately £12 million went to employment agencies.
- 1.23 The NASUWT has serious concerns that the profit margins of supply agencies are increased by depressing the pay of teachers or by mis-selling the services of qualified teachers by hiring teachers to perform tasks which do not require

¹¹ <https://www.nasuwt.org.uk/uploads/assets/uploaded/450a93c7-e3e7-4a1d-ac9708dfd948034d.pdf>

¹² https://www.niesr.ac.uk/sites/default/files/publications/NIESR_agency_working_report_final.pdf

¹³ <https://www.gov.uk/government/statistics/la-and-school-expenditure-2016-to-2017-financial-year>

¹⁴ <https://www.bbc.co.uk/news/uk-wales-46263250>

their professional skills and abilities, such as supervisory roles, but charging schools for the provision of a qualified teacher.

- 1.24 Schools are charged up to a 40% commission fee which goes direct to the agency. This equates to over £329 million and is the equivalent of an extra 13,483 teachers.¹⁵
- 1.25 The NASUWT is concerned that taxpayers' money is being siphoned off to agencies. Workers are getting less, schools are paying more, whilst agencies and offshore umbrella companies are engaged in profiteering.
- 1.26 Indeed, the TUC estimates that workers in agency work, such as supply teachers, are suffering up to a 20% hourly pay penalty when compared to the pay of an 'average' employee.¹⁶
- 1.27 For example, the NASUWT's research demonstrates that three quarters of supply teachers (72%) reported being paid more for an assignment when employed directly by a school compared to being employed through an agency. At the same time, the agency employing the teacher is able to charge the school up to £100 more than the teacher receives.
- 1.28 The high levels of variation in pay rates and commission in a decentralised market can result in employment agencies charging different rates to supply the same teacher to the same school.¹⁷
- 1.29 The consequence of this for workers is that they fall victim to the replacement of regular, secure full-time employment with increasingly precarious, low-paid, insecure and irregular work.
- 1.30 Fifteen percent of supply teachers reported that they have had to claim Jobseeker's Allowance since becoming a supply teacher and over one in ten (11%) reported that they have had to claim other state benefits.¹⁸

¹⁵ NASUWT – *Supply Agencies: the facts*.

¹⁶ <https://www.tuc.org.uk/sites/default/files/the-gig-is-up.pdf>

¹⁷ https://www.niesr.ac.uk/sites/default/files/publications/NIESR_agency_working_report_final.pdf

- 1.31 Furthermore, many supply teachers are reporting that their financial situation over the last 12 months has resulted in them reporting that they have had to cut back on expenditure on food (36%), take a second job (17%) and even resort to the use of food banks (1%).¹⁹
- 1.32 The NASUWT is clear from its research that the main financial benefits of supply work accrue to the agencies and umbrella companies themselves, rather than to the workforce or the service provision.
- 1.33 Extortionate and inappropriate finder's fees in education have restricted or removed the right to work for many supply teachers, reducing the opportunity to secure permanent employment, especially for women, BME and disabled workers, who are disproportionately represented as agency workers.

2 SPECIFIC COMMENTS

The viability of a public sector solution for employing supply teachers in Wales, for example in a similar vein to the system which operates in Northern Ireland, or the recent pilot project based on cluster arrangements

- 2.1 The NASUWT has campaigned for many years to stop the exploitation of supply teachers and to improve their pay and conditions. The NASUWT believes that full restoration of the organisation and administration of supply pools must now be established on a regional, or even an all-Wales, basis.
- 2.2 The Union believes that it should be possible for local authorities working together to have the capacity to provide at least payroll facilities to schools so that supply teachers can be employed under the School Teachers' Pay and Conditions Document, so that they are paid properly to scale, have access to the TPS and can benefit from free career professional development (CPD).

¹⁸ <https://www.nasuwt.org.uk/uploads/assets/uploaded/450a93c7-e3e7-4a1d-ac9708dfd948034d.pdf>

¹⁹ Ibid.

- 2.3 The Union is concerned that any attempt to address the situation for supply teachers working in Wales must not countenance options that continue to treat supply teachers less favourably than their counterparts on substantive contracts.
- 2.4 For the sake of absolute clarity, the NASUWT cannot condone options that will facilitate or support the continued exploitation of supply teaching staff.
- 2.5 The Union has previously submitted written evidence to the *Inquiry into Supply Teaching* conducted by Children the Young People and Education Committee (CYPEC) (copy attached as Annex A) which, amongst other things, included the three core principles on which any model of supply teaching must be based that were subsequently enshrined in the Wales TUC 2016 Conference resolution on *Supply Teaching* (the WTUC resolution).
- 2.6 The NASUWT expects great weight to be placed on the following extract from the WTUC resolution:

“Conference welcomes the response from the Minister for Education and Skills on 10th February 2016 when he announced the establishment of a Taskforce ‘to consider future supply teachers delivery options for Wales’ and emphasised the role of employers, unions and key stakeholders in development options for the future.

“Conference asserts, however, that there are important core principles which must underpin any model of provision of supply teaching which include:

- employment, payment and deployment in accordance with the contractual terms and conditions which apply across the devolved administration;*
- access to the Teachers’ Pensions Scheme; and*
- access to continual professional development.”*

- 2.7 The NASUWT maintains that any proposal over the viability of a public sector solution must be assessed against these three core principles.

- 2.8 The NASUWT maintains that consideration should be given to the model that operated across local authorities in North Wales prior to the issuing in July 2015 of Welsh Government guidance document no: 178/2015 Effective management of school workforce attendance which announced the awarding of a framework agreement for a Managed Service for the provision of Agency Workers.
- 2.9 The Union understands that supply teachers, using the model that operated in North Wales, registered with their local authorities and that schools were then able to use the 'eteach' service to source supply teaching staff.
- 2.10 The supply teachers were paid at a rate commensurate with their previous experience. In addition, supply teachers were able to contribute to the Teachers' Pension scheme. However, access to CPD appears to have been very limited.
- 2.11 In Northern Ireland, supply teaching, or substitute teaching as it is known, is overseen by the Northern Ireland Substitute Teacher Register (NISTR) which is operated by the Department of Education (DE). The NISTR was designed specifically to tackle the practical issues involved in arranging suitable teaching cover identified in the Northern Ireland Audit Office report on *The Management of Substitution Cover for Teachers*, published in 2002.
- 2.12 All substitute teachers are registered through an online booking system that enables schools to book substitute teachers in real-time through a regional centralised database of substitute teachers that they manage and update. They identify when they are available to work and schools book accordingly.
- 2.13 Payment for all approved periods of substitute teaching is then made on a monthly basis, at a daily rate of 1/195 of the annual salary of a comparable teacher on a substantive contract, through the payroll system which is run by the DE.

- 2.14 It is estimated that 9,000 qualified substitute teachers are in the live pool which is made available to schools to search for, book and process payment to suitably qualified teachers.
- 2.15 This system benefits both schools and teachers in dealing with the practical issues involved in arranging qualified teaching cover. It provides flexibility for the substitute teacher to manage their own availability and the distance they are willing to travel. Schools get the advantage of accessing substitute teachers through a centralised booking system which provides information on previous experience and expertise, as well as on qualifications and criminal record checks. This information can be accessed '24/7' at no cost, in order to book cover for teacher absences.
- 2.16 The NISTR is supported and endorsed by the DE, employing authorities, the General Teaching Council Northern Ireland and Northern Ireland Teachers' Council and the teaching unions. NISTR is the only mechanism for engaging substitute teachers in all schools in Northern Ireland.
- 2.17 The NASUWT believes that alternative delivery models such as those described above should be given serious consideration as viable public sector solutions for employing supply teachers in Wales.
- 2.18 The NASUWT maintains that the advantages of a local or central government supply model which subscribes to the three core principles referred to in the WTUC resolution should be self-evident, if the will exists to ensure that supply teaching staff are not treated less favourably than their counterparts on substantive contracts, and to bring to an end the privatisation of the teaching supply service. The latter being a clear advantage to the Welsh Government as it would put truth in the principles enshrined in the *Alternative delivery models in public service delivery: An Action Plan* published in March 2016.
- 2.19 Such models would ensure that the schools benefit from the services of well-motivated supply teachers, the supply teachers benefit from being

appropriately remunerated and, taken together, this will inevitably be of benefit to the learners.

- 2.20 In addition, as the supply teachers would be employed through a local or central government system, access to the professional learning entitlements would be provided through the New Deal initiative.
- 2.21 From a broader perspective, supply teachers would be able to secure their employment rights and would have greater stability and security than is currently provided through private supply agencies.
- 2.22 Local authorities would be able to demonstrate that they meet standards of good practice in managing and providing supply teachers for schools. This would enable schools and supply teachers to feel confident about the quality of the service provider, which in turn should raise the standard and status of supply teaching. Schools would also know more about the nature and quality of the support being provided to supply teachers.
- 2.23 The NASUWT maintains that managing the provision of supply teaching in this way would reinforce the principle that education is a public service subject to national conditions which govern how staff are employed and how public money is spent.
- 2.24 A central supply teaching pool administered by the Welsh Government has the potential to provide better economies of scale than a collection of supply teaching pools operated by individual local authorities.
- 2.25 The pilot project based on cluster arrangements announced in October 2017 to improve the way supply teachers support schools involved £2.7 million of funding to support 106 schools working across 15 local authorities to create new supply teacher arrangements by employing supernumerary teachers to work across clusters of schools, covering teacher absence and supporting wider school improvements and learner outcomes.

- 2.26 The project is due to be reported on in autumn 2019, but it is understood that the benefits to teaching and learning of employing supernumerary teachers in this way have been noted in better outcomes for children and young people as a consequence of those same teachers being embedded across the schools and knowing the workings of the schools where they work really well.
- 2.27 The Union understands that staff working in the cluster arrangements report better relationships and because children know the number of staff who may cover for their regular teacher, there is better behaviour.
- 2.28 The NASUWT believes that direct employment, such as that operated in the cluster arrangements demonstrates that there is a more cost-effective of covering long-term supply needs.
- 2.29 The Union maintains that cluster arrangements, such as the one outlined above, or the adoption of a central government supply teaching pool, would better support wider education reforms than the continued use of private supply agencies that exploit supply teaching staff in pursuit of profit.
- 2.30 The evidence provided above demonstrates that the mechanics are already in place or could be put in place if there is a genuine desire and willpower to make effective change on the part of either the Welsh Government or Welsh local authorities.
- 2.31 The devolution of pay and conditions in Wales to the Welsh Government and the Independent Welsh School Teachers' Review Body (the Review Body) Remit provides the opportune moment. It was therefore disappointing that the in the first year of these new powers the remit letter failed to address the issue of supply teachers, despite the fact that the Welsh Cabinet Member for Education stating in December 2018 that they had not ruled out the introduction of a centralised or regional supply arrangement in the future.²⁰

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<http://senedd.assembly.wales/documents/s82749/7.12.18%20Correspondence%20%20Cabinet%20Secretary%20for%20Education%20to%20the%20Chair.pdf>

The improvements which could potentially arise out of new framework contract arrangements developed by the National Procurement Service

- 2.32 The NASUWT cautiously welcomes the new framework contract developed by the National Procurement Service (NPS). The Union had lobbied for significant revisions to the framework for the employment of supply teachers in schools in Wales following serious concerns over the previous framework that had resulted in New Directions gaining the tender across Wales and local authorities pressing schools to use New Directions exclusively.
- 2.33 The Union believes that the new framework has the potential to improve the pay and terms and conditions of supply teachers as well as providing improved access to professional learning opportunities.
- 2.34 The new framework allows providers to bid on a local, regional or all-Wales basis, whereas the previous framework had to be met on an all-wales basis meaning that only New Directions could bid. This will bring some welcome diversity and local provision. It also allows schools and local authority to continue to employ supply staff directly without the use of an agency.
- 2.35 However, unlike direct employment solutions to the procurement of supply, such as those identified above, the new framework would not give supply teachers access to the Teachers' Pension Scheme (TPS) and full salary entitlements, but is nevertheless an improvement on the current situation. For example, all supply teachers would be paid a minimum rate of pay at least the minimum of the School Teachers' Pay and Conditions (STPCD).
- 2.36 The NASUWT cautiously welcomes the application of a sliding scale of payments for transferring staff to permanent contracts (finder's fee) as the Union is clear from its research that the main benefits of the current system accrue to the agencies and umbrella companies themselves rather than to the

workforce or the service provision, particularly when they are charging in excess of £10,000 in finders' fees.

- 2.37 Whilst the NASUWT believes there is a need for a mechanism which provides greater clarity for supply teachers which enables schools to pay supply teachers appropriately without incurring significant costs in agency fees, the Union is not convinced that the new procurement framework will achieve this.
- 2.38 For example, the Union has concerns over exactly how the agencies applying to be on the new procurement framework will be regulated and vetted to ensure that they meet certain minimum expectations in respect of how they treat supply teachers.
- 2.39 In addition, the NASUWT notes there is very little detail about quality assurance and the guarantees that the procurement process will operate in a fair and transparent way which has inbuilt into it rigorous and robust levels of accountability and a comprehensive and fit-for-purpose code of conduct.
- 2.40 Such an approach can only be effective if it is underpinned by appropriate inspection and enforcement which ensure that providers of services to schools, and schools themselves, act appropriately in accordance with the provision of any code. The Union contends that the relevant regulatory body should be the Employment Agencies Standards Inspectorate (EAS) rather than just industry bodies which represent the interests of supply agencies.
- 2.41 Furthermore, the operation of a system which fails to apply a maximum to suppliers' commission fees is wholly unacceptable, particularly when it is, in essence, tax payer's money which is being diverted from education into the profit margins of supply agencies and umbrella companies.
- 2.42 Whilst welcoming the intention to establish a minimum rate of pay for supply teachers, the Union is concerned that the new procurement framework could see supply teachers pay depressed without any references to pay ranges and a commitment to honour the pay portability.

- 2.43 It cannot go unnoticed that supply teachers' pay already lags substantially behind the pay of teachers employed by schools in substantive posts. The NASUWT is therefore worried that the current proposal might replicate the current system at the expense of dedicated and committed supply teachers.

Any potential opportunities or risks for supply teaching arising from the devolution of pay and conditions for teachers

- 2.44 Given the commitment of the Welsh Government to ensure that, following the devolution of pay and conditions teachers should not suffer a detriment to pay and conditions when compared with teachers across the UK following the devolution of pay and conditions for teachers, the NASUWT believes that there are no risks for supply teaching and supply teachers.
- 2.45 Furthermore, the focus on establishing standardised pay and allowance scales for all teachers and school leaders in Wales also suggests an opportunity to remedy the profound damage which has been caused to the teaching profession, including supply teachers, in England and Wales by the Westminster Government since 2010, through de-regulation of teachers' pay.
- 2.46 The devolution of pay and conditions for teachers therefore presents an opportunity for the Welsh Government to set itself apart and do something different in respect of the supply teaching workforce, such as the model adopted in Northern Ireland or the introduction of regional or local authority based supply pools.
- 2.47 In addition, the establishment of an independent review body as part of the devolution of pay and conditions provides the perfect opportunity to address the exploitation faced by supply teachers by recommending that all supply teachers, including agency teachers, fall within the remit of the Review Body, and that their pay and conditions are set by the Welsh Government and that

these are consistent with pay and conditions for all teachers across the state funded sector in Wales.

Arrangements for professional learning for supply teachers, particularly in light of current education reforms

- 2.48 The National Approach to Professional Learning (NAPL), announced in November 2018 is designed to provide funding will so that schools have the time and resources they need to plan ahead for the new curriculum and ensure that changes are made in a way that will prioritise the wellbeing of teachers and minimise disruption to pupils' learning. The funding is also designed to ensure that there is cover for staff to be released for professional learning.
- 2.49 The development of the Hwb as well as other initiatives, such as the Professional Learning Passport, to support supply teachers to access career professional development (CPD) is welcome, but the Union believes that supply teachers should also be able access the funding in order to support their own learning. It was therefore pleasing that the Welsh Government has assured the Union that this should be the case, particularly when supply teachers frequently report that they are unable to access career professional development (CPD).
- 2.50 For example, the 2018 NASUWT Supply Teachers' Survey in England and Wales found that over half (52%) supply teachers stated that they had not been given access to continuing professional development (CPD) opportunities by the agencies which they had worked for in the last 12 months.
- 2.51 If, as stated, the Welsh Government recognises and values the dedication and hard work of supply teachers as an essential part of school life²¹ then it is

²¹ <https://learning.gov.wales/resources/collections/supply-teachers?lang=en>

crucial that they are able to access the same opportunities as their colleagues in full time employment, including access to high quality CPD.

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