



National Education Union

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Joint General Secretaries

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Kevin Courtney

The Right Hon Gavin Williamson MP  
Secretary of State for Education  
Department for Education  
Sanctuary Buildings  
20 Great Smith Street  
London SW1P 3BT

25 April 2020

Dear Gavin,

### **Contingent Workers and Umbrella Company Workers**

The National Education Union represents a significant number of supply and agency workers and peripatetic staff including home tutors and music instructors. We are striving to secure the best income protection arrangements for these members during the Coronavirus outbreak. Our priority is to ensure that their employment continues where this is appropriate, but that they are in all cases protected by Government arrangements where this is not possible.

We have some concerns about the take up and operation of the measures for 'contingent workers' and for workers who are engaged to work in schools via umbrella companies.

### **Contingent workers**

We strongly believe that further publicity and clarity is needed around the retention of 'contingent workers'. We welcome the [DfE advice](#) that where schools have live assignments with contingent workers, and where the school is the workers' employer, schools should continue to pay these workers from their existing school budgets rather than furloughing them. We applaud the advice that contracts that have been terminated early should be reinstated on previously agreed terms. Similarly, we have welcomed the recommendation that where schools have agency workers on live assignments who can continue to work, those assignments should continue, with the school continuing to make previously agreed payments for the supply of workers and those workers continuing to be paid, in line with the approach set out in the Cabinet Office guidance. We agree that as a first step, agencies who receive money for workers in line with this guidance should not furlough these workers and should provide schools with proof that workers are continuing to be paid as normal.

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Our concern is that very few leaders in the education sector will be familiar with the term 'contingent worker' and that many will not therefore recognise that the guidance applies to staff who have been working in their schools on non-permanent contracts, such as supply workers or music teachers. Many such staff have had their contracts terminated inappropriately and without consideration of the contingent worker guidance. These individuals may or may not have access to the discretionary furlough arrangements. They should in any case be reinstated in order that they continue to be paid as envisaged by the Cabinet Office guidance, avoiding the cost of their support falling on the State via the furlough arrangements or benefits system.

We will gladly assist in disseminating to our leadership members and to employers and agencies clearer guidance from the DfE on the meaning of contingent worker, who is included in the definition and the type and length and status of the contracts that are intended to be covered by the term. We would also welcome discussion on other steps which might be taken to ensure that employers and agencies act in accordance with the Cabinet Office guidance.

### **Umbrella Companies and the Job Retention Scheme**

We do not support the use of umbrella companies as intermediaries in the supply of teachers and support staff to the education sector. We recognise however that some of our agency members have been persuaded to enter into umbrella arrangements in order to secure regular work.

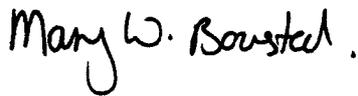
The arrangements for paying workers engaged via umbrella companies are constructed in such a way as to suggest that our members are contractually entitled only to the national minimum wage. Often, supply workers' contracts in the umbrella arrangement will require the worker's earnings to be broken down into three elements, namely pay, bonus and commission. The pay element will be expressed as equal to the minimum wage, but the reality is that the combined value of these three items is the actual regular earnings of the worker. Unfortunately, the remaining elements of the worker's earnings are not only described as commission and bonus elements but are also often expressed as discretionary in the contract - even though they are treated as obligatory payments and are not performance related. [HMRC guidance](#) published on 17 April states that discretionary bonus and commission are not to be included as pay for the purposes of calculating the 80% of furlough pay.

We are urging umbrella companies to apply through the furlough scheme for the recovery of 80% of workers' pay based on full pay (including the element of pay expressed as bonus or commission, whether discretionary or otherwise). Our members are reporting, however, that many umbrella companies are refusing to do so as they fear that HMRC might seek to recover from them the elements expressed as bonus or commission. As a result of this, we are concerned that swathes of our teacher and support staff members will be left out of pocket. We wish to seek a confirmation from the government that where umbrella companies do claim 80% of workers' pay based on full pay (including the element of pay expressed as bonus or commission, whether discretionary or otherwise) they will successfully recover that amount and that HMRC will not subsequently seek to claw back the bonus and

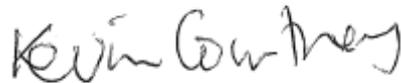
commission elements from the company. We believe that this reassurance will go some way towards encouraging umbrella companies to take further steps to protect the income of this precarious group of workers who make such a valuable contribution to the smooth running of the education service.

We look forward to hearing from you.

Yours sincerely



**Mary Boustead**  
**Joint General Secretary**



**Kevin Courtney**  
**Joint General Secretary**