

Proposed National Rules on Engagement of Agency Social Work Resource

About APSCo

The Association of Professional Staffing Companies (Global) Ltd (APSCo) is the trade association for the professional recruitment market. APSCo Global comprises APSCo Asia, APSCo Australia, APSCo Deutschland and APSCo United Kingdom as well as APSCo OutSource, the trade body for the resource outsourcing and managed service sectors. Our members place permanent and temporary staff into roles across the public and private sectors in qualified social work, teaching and clinical healthcare, IT, engineering, pharmaceuticals, and general professional.

APSCo UK is a trusted specialist in social worker recruitment and compliance, with its highly regarded Social Worker Compliance + standards and Compliance + audited membership. APSCo UK works closely with the DfE on frameworks and policy initiatives, as well as inputting into skills and talent policy. Many of our responses to this consultation are more nuanced than an "agree" or "disagree" answer so we please invite the consultation team to read our text responses in full to understand our members' position. We have sought the input of a range of MSP and 2nd tier social work supplier specialists.

Keynote summary

- Extend focus beyond just recruitment spend on agency workers, looking at ways to assist with retention of substantive staff.
- Recognise importance of regional approach and working within existing structures.
- Work with local authorities, framework providers and supply chain to develop and more collaborative contract management programme and even handed terms, with the prime goal to work for the good of the community being served.
- Control project work, although recognising it has a limited role.

There is currently a controlled and sustainable workforce supply chain in place, whereby our members estimate broadly 95% of local authorities' (LA) spend is managed by managed service providers through frameworks such as YPO, ESPO and Mstar or emerging local authority owned organisations acting as an MSP. One OutSource member embedded in social worker supply has approximately £1 billion of agency spend across the country under management, of which 40% is spent on social workers. That member reports that most LAs have signed up to memorandums of cooperation/understanding (MoUs), although these are not contractual. It is seen as an organised and structured supply chain by both our outsource members and their second-tier suppliers. Our members state a relatively small percentage of recruiters operate outside of these frameworks, although they report an increase in project spend by LAs, which causes them concern, and this is where members believe "overspend" is occurring and rules should be targeted towards reducing this percentage. However, the current proposals will not stop off-framework suppliers and may even encourage off framework amongst some LAs and suppliers.

There are reasons for the current instability of the permanent (substantive employee) workforce and agency worker workforce across local authorities. Organisational and managerial capabilities and bandwidth vary widely across regions and individual local authorities. Members report severe permanent retention problems across all regions, which have been unfairly attributed to aggressive agency poaching behaviour, which is not the case. Our members are supportive of a more collaborative model of arrangements but simply reducing spend on agency workers will not free up resource to enhance the permanent offer.

There is an over focus on agency use. The DfE must prioritise working with LAs to improve substantive employee retention and the frameworks to encourage a more collaborative contract management relationship with the supply chain. We are seeing agency worker spend replaced by project work spend, which must be controlled. Reliance on recruiters is not the root cause of the problem, it is an effect of the fundamental retention problem.

The aim of the proposed national rules is too limited in scope and an aim must also be to change LA behaviour and practices, and to review the partnership between the LAs, frameworks, MSPs and 2nd tier recruiters. Although the aim and the proposals are stated as to be limited in scope to the engagement of agency workers many of the questions point to far more deeply embedded structural issues. Further, it is not possible for the national rules to be mandated and it is unclear how they are intended to align with frameworks and existing MoUs. The DfE needs to confirm if it is considering legislation or guidance.

1. It is unclear how the proposed national rules will apply within the current supply chain and LA structures. Members struggle to see how the rules could be mandated on the end hirer LAs. It is surmised that the DfE wants to incorporate the national rules into frameworks thereby making them contractual, but that is not stated in the consultation. Therefore, they are unable to take a view on whether the rules would reduce spend or improve quality assurance. The rules need to be flexible to be followed by the supply chain.
2. We disagree that the national rules should be set out in September 2023. This is too soon, given our members' concerns about whether they are fit for purpose.
3. Disagree. Members are by no means convinced that the proposed national rules are appropriate and in any event spring 2024 would be too soon. A major concern is the lack of support in the LAs for the proposed rules – there is such a recruitment and retention issue that hiring managers in LAs are wholly focused on plugging short term gaps and meeting internal KPIs and national service standards by whatever means available to them, including a reliance on personal local relationships with recruiters who may be off framework.
4. All measures could assist the LAs to comply with rules and reduce agency reliance, but none of the measures address the basic problem that many LAs are losing their permanent staff due to poor personnel management and heavy workloads and staff are "voting with their feet" to join the agency labour force. A negative consequence of reducing the rates of agency staff pay will be professionals leaving the profession altogether, thereby exacerbating the issue, creating even further shortages at the

- front line. Framework agency roles are currently providing a legitimate option to enable experienced social workers to work flexibly within their needs.
5. Agreed. However, in many cases individual LA managers or HR departments refuse to provide more than start and end dates, rather than references despite being part of the regional MoUs already. A mandatory reference template would help, and reassures the LAs that it is a level playing field and they have to provide the reference.
 6. Members disagree in principle to the hiring prohibition periods. They consider that the problem of agency poaching is overstated and in many cases, it is the workers choosing to leave, which is their right, or LAs headhunting staff out of other LAs. They consider that these prohibitions are an unfair restriction on the worker, as a worker often due to their own family or caring commitments, usually only chooses to work within their local area. In practice cooling off periods encourage workers to travel for a short period of time to a neighbouring region which is counterproductive to the DfE's aims. Of course, a worker can always choose to work within an alternate care setting; adult social care or NHS, and they may be lost permanently to the childcare market.
 7. The proposal for a minimum six-week notice period for agency social workers via a reciprocal arrangement between LAs and agency workers is unfair as it may result in a longer notice period than a permanent resource. It fails to consider the complexity of the supply chain, in which an agency worker may be employed by an umbrella company. Further LAs generally want to retain the right to dismiss an agency worker at short notice without cause and this lack of reciprocity is not appropriate. Members state two weeks' notice up to six months and four weeks thereafter is good practice and fair to all parties, not unduly restricting an agency workers' rights.
 8. Agree. However, this is qualified by the fact that the national rules must have regional/sectoral variations and their relationship to existing MOUs needs to be clarified. The assumption is that the national rules or a form thereof will become part of the frameworks. The issue is then how to manage off framework and project work.
 9. Members recommend requiring existing framework operators to embed national rules into local agreements. They do need to be mandated to the LAs to be effective.
 10. The primary challenge to procurement routes being required to adhere to national rules will come from the LAs. In the current market with the economic forces and supply and demand many are choosing to work off framework, outside of the MOUs or via project teams. Likewise due to the skills shortages agency workers can demand higher rates, which cannot be met within framework, or to work outside IR35 as part of a project team or to work through umbrella companies with high tax home rates of pay. Members report that umbrella companies offering suspected tax avoidance schemes are prevalent due to the cost-of-living crisis. Contractors are more likely to have the option of choosing these umbrella companies off-framework as there are not the same supply chain obligations.

Price Caps

11. Greater consistency between LAs in terms of basic pay to substantive employees is of course desirable but is not necessarily possible in this market where some regions will be more desirable than others due to transport links, cost of living, accessibility to leisure facilities etc. When caps are in place, members see some LAs labelling more junior staff as senior or specialist to facilitate higher pay.
12. Disagree. Fundamentally agency worker pay rates are subject to macroeconomic supply and demand market forces. Further, agency workers although receiving AWR rights do not have access to the same pension, sickness, and other benefits as substantive employees, do not have access to the same training and career development opportunities and importantly, do not have the right to claim wrongful or unfair dismissal. This could push committed frontline agency social workers to other organisations without pay restrictions. There are no such restrictions in other comparable public sector roles, such as AHPs.
13. There should not be caps on recruiter and MSP fees, there should be an element of competition in the tendering process to drive the best deal for the LA. Caps already exist on agency and framework fees, which are set by the LAs, driving a competitive element to the process and are regional. Our members are used to working within caps.
14. Yes, there should be different price caps between LAs or regions for the same social worker agency role profile. This should be because of different costs associated with LA, with region, different local/regional labour markets, different challenges associated with circumstances of the LA. Some roles are easier to recruit e.g an area with good public transport links and more affordable housing. One MSP reports that the DfE is doing a lot of work with the London MOU and it is a decent precedent.
15. Yes they have to have the option of "break glass". This could be for a number of reasons – work following an Ofsted report, a larger volume of work or to incentivise agency workers to accept roles. Margins should be set within MSP agreements. Access should not be restricted to an overly small pool of suppliers otherwise covering supply at short notice will drive clients and agencies off framework.
16. Agree but with a different minimum level of post qualification experience. Members propose 3 years. 5 years is excessive and will result in newly qualified professionals working in other sectors. Members won't place newly qualified as agency workers, but are aware of this practice in the market. Ultimately the LAs need to police this.
17. If international recruits are registered with Social Work England, then they are not sure why this is necessary. Do the DfE need to align with SWE?
18. Project Teams: In an ideal world there would be no demand for project teams from LA clients. However, in a tight labour market with permanent retention issues LAs choose project teams as a way of meeting responsibilities. Members consider they serve a purpose if genuine managed service and with sufficient parameters and checks and balances by the LA. However, members perceive that in most cases project work is driven by either a supplier sitting outside the framework/ compliance model, swerving any MOU in place or by social workers wanting to work "outside IR35" for uncapped rates and higher percentage take home pay driven by lower tax. There are a number of significant risks: (1) If, in fact, they are "disguised deemed employees" of the LA, then the LA bears the off-payroll liability including unpaid tax,

interest and fines; (2) LAs may be unwittingly breaching public procurement rules; and (3) they are unlikely to be meeting framework compliance standards. Project teams are useful at critical times e.g., a failed Ofsted inspection, a substantial backlog of cases, a mass exodus of permanent staff but could be used within the framework model, thereby ensuring compliance. Our members struggle with how the DfE could police an outright ban on project work on the LAs, so recommend exercising more control over their use, thereby ensuring they can be within compliance and cost frameworks.

19. No comment for the LAs to determine.
20. Equalities – members report equality concerns to us, e.g., racism in some authorities, leading ethnic minority workers to leave and find work in other authorities. A number of members reported that workers from ethnic or minority backgrounds already perceive a glass ceiling around permanent progression at LAs so move to agency work. This proposal may create less opportunity for the most experienced workers to enhance their experience and earnings and may make those who already feel underrepresented at a senior level feel like they have less opportunity for development and may leave the profession. Further it may mean that any steps to limit agency workers or prohibit their rights to seek work may unintentionally disadvantage those from ethnic and minority backgrounds.