

**The future world of work and rights of workers:  
Inquiry by the House of Commons Business, Energy and  
Industrial Strategy Committee**



**UNIVERSITIES & COLLEGES  
EMPLOYERS ASSOCIATION**

**Evidence from the Universities and Colleges Employers Association (UCEA)**

**1. About UCEA:**

- 1.1. This document is the written response from the Universities and Colleges Employers Association (UCEA) to the House of Commons Business, Energy and Industrial Strategy Select Committee inquiry into the future world of work and rights of workers.
- 1.2. UCEA represents the views of higher education institutions (HEIs) across the UK in their capacity as employers.
- 1.3. UCEA is a membership body funded by subscriptions from 163 HEIs in the UK, in addition to 9 sector associate members. Our purpose is to support our members in delivering excellent and world-leading higher education and research by representing their interests as employers and facilitating their work in delivering effective employment and workforce strategies.
- 1.4. This response is based on data from the Higher Education Statistics Agency (HESA), the *New JNCHES<sup>1</sup> Hourly-paid and Casual Staff Working Group Report* (2015) and UCEA's previous responses to consultations on employment legislation.

**2. Summary of UCEA's views**

- 2.1. Many HEIs go well beyond minimum legal requirements in the benefits and rights afforded to their staff.
- 2.2. Any attempt to limit the use of flexible or atypical staffing models, or to amend the current employment law framework is likely to have a detrimental effect on UK HEIs and will reduce choice for workers. It would also create significant additional complexity to a system which has evolved through many years of case law.
- 2.3. Instead, the Government should seek to clarify where differences and similarities exist between definitions of status in different parts of legislation, such as pensions auto-enrolment, tax law and employment law.
- 2.4. This submission shows how atypical or flexible staffing arrangements are used to positive effect in the sector, with benefits for the workers involved, the student experience, and the global competitiveness of UK HEIs. It explains:
  - How atypical workers are used within higher education (HE);
  - Why atypical workers are used;
  - The benefits of atypical arrangements for the worker;
  - The use of agency workers with HE;

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<sup>1</sup> The New Joint Negotiating Committee for Higher Education Staff (New JNCHES) is the central committee for multi-employer negotiations and dialogue on pay and pay-related issues in HE.

- How the HE sector has collaborated with trade unions to address their concerns about the use of casual or hourly-paid staff.

### **3. The use of atypical workers within higher education**

- 3.1. As with employers in any other sector, HEIs use a variety of different staffing models, with benefits for both the employer and the worker. Where an individual is engaged on a basis other than that of full-time or part-time fractional employee, this is done because it is appropriate to the requirements of the role.
- 3.2. Although HEIs use many different staffing models, 96.8% of the full-time equivalent academic workforce are on permanent, open-ended or fixed-term employment contracts<sup>2</sup>.
- 3.3. Those who do not fall into this definition (3.2% of full-time equivalent staff<sup>3</sup>) are defined by the Higher Education Statistics Authority (HESA) as 'atypical' academic staff.
- 3.4. According to HESA guidance, atypical contracts meet one or more of the following conditions<sup>4</sup>:
  - are for less than four consecutive weeks - meaning that no statement of terms and conditions needs to be issued;
  - are for one-off/short-term tasks - for example answering phones during clearing, staging an exhibition, organising a conference. There is no mutual obligation between the work provider and working person beyond the given period of work or project. In some cases individuals will be paid a fixed fee for the piece of work unrelated to hours/time spent;
  - involve work away from the supervision of the normal work provider - but not as part of teaching company schemes or for teaching and research supervision associated with the provision of distance learning education;
  - involve a high degree of flexibility often in a contract to work as-and-when required - for example conference catering, student ambassadors, student demonstrators.
- 3.5. This document examines this element of the HE workforce in considering the types of staffing arrangements of interest to the inquiry. It will also consider staff that may not be covered by the above definition, such as those on hourly-paid contracts, and agency staff (including those engaged through in-house agencies or staffing banks).
- 3.6. The use of agency staff is covered in section 6 of this document. Agency workers, when not engaged on a contract of employment, have rights as "workers", such as a right to paid holiday.
- 3.7. Other staff not engaged on a permanent contract of employment (such as fixed-term employees on hourly-paid contracts) are likely to be employees with full employment rights. In addition to receiving full employment rights, rates of pay for hourly-paid staff are set with reference to the salary of equivalent full-time staff. HESA data do not distinguish employees on hourly-paid contracts and, as outlined in section 7 of this document, joint work with the trade unions is ongoing in this area.

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<sup>2</sup> HESA, 2014-15 data (<https://www.hesa.ac.uk/collection/c14025/a/terms/> )

<sup>3</sup> *ibid.*

<sup>4</sup> New JNCHES Hourly-paid and Casual Staff Working Group Report (<http://www.ucea.ac.uk/en/publications/index.cfm/njhpcwgr> )

#### **4. Why atypical staff are used**

- 4.1. Atypical staff, while often having quite small contracts, still play an important role within HEIs. Examples of ways that staff are deployed include:
- Highly skilled consultants or contractors fulfilling time-limited project work such as web design, project management, or consultancy service. Such individuals are likely to be engaged on a self-employed basis or via a limited company.
  - Specialist academics or guest lecturers, for example engineers, architects or barristers working on an ad hoc basis. These skilled professionals provide specialised input such as studio work, workshops or practical classes for specific courses. This input is highly valued by students and may be essential for a programme's accreditation. These individuals are often engaged on an hourly-paid basis.
  - Seasonal or ad hoc work, such as exam invigilation or the provision of hospitality and catering services at events. Such staff may be on fixed-term or temporary contracts.
  - Short-term cover for staff absence, for example in the case where academic staff are absent due to illness, or because they are completing research or other professional duties. Such cover may also be required for staff on maternity leave, sabbaticals or parental or adoption leave.
  - Short-term academic teaching input where a permanent contract is not appropriate and where the breadth of a full academic role may not be required such as summer school teaching or similar.
  - Tuition (such as in languages or music) where the level of demand for a course or instrumental study cannot be predicted ahead of student enrolment.
  - PhD students providing occasional tuition or supervision to support programme delivery.
  - Student ambassadors at open days or events.
- 4.2. The above are all instances in which it would not be appropriate to engage a full-time or fractional employee on a permanent contract of employment. This will especially be the case where work is likely to be unpredictable, not on a regular basis or short-term.

#### **5. The benefits of flexible atypical working for the individual**

- 5.1. HE employers are concerned to achieve the appropriate balance of benefits between worker and employer. Employers in the sector go beyond legal requirements to support workers and most have well-established trade union relationships to enable consultation and dialogue.
- 5.2. HE employers report that many workers welcome the opportunity to work in a flexible or atypical mode within their institutions. Atypical staff may have a "portfolio career" where they choose to work for many different employers to gain a broad range of experience or to deploy their skills in a variety of environments. This will especially apply to situations where specialist input is required such as GPs, lawyers, journalists, musicians or artists. A typical employment relationship would not allow such staff to fit teaching or lecturing work around their substantive job. Working "atypically" such as on a limited hours contract allows individuals with a substantive job in industry to maintain interaction with current industry training practices and share their experiences with students.

- 5.3. Staff working on an atypical basis may also choose to work in this way to fit work around family or care commitments where an individual's availability to undertake paid work may be unpredictable or irregular. Semi-retired workers or those with other sources of income may also welcome the opportunity to work on a flexible basis.
- 5.4. Students will often work in this way as it provides an opportunity to gain employment skills and experience in a way that is flexible enough to fit around their studies. Some HEIs have intentionally increased spend on agency working as they seek to offer temporary work to many more students, due to an increased focus on student employability.
- 5.5. PhD students will often take on teaching duties on an occasional basis. This is seen by them as a valuable aspect of their career development. It would not be appropriate to employ a PhD student on a full-time basis due to the occasional, flexible nature of the work. Instead an atypical arrangement or a fixed-term hourly-paid contract may be used.
- 5.6. Where individuals are engaged on a self-employed basis, they will normally be paid a premium as compared to a comparable worker. There is therefore a financial benefit to being self-employed rather than employed, and those who choose this option should be encouraged to invest some of their financial saving from it in pensions, sickness and holiday protection/benefits. The Government-backed independent review of self-employment, authored by Julie Deane in 2014, suggests a number of ways this could be achieved.

## **6. Agency workers**

- 6.1. HESA data excludes agency workers, a key focus of the inquiry. HEIs use agency workers where it would be inappropriate to employ an individual directly. Agency working allows HEIs to fill an immediate need for staff quickly and provides the HEI with a ready access to candidates and candidates with ready access to work.
- 6.2. A more regulated approach to agency working is likely to inhibit an employer's ability to engage staff on this basis to meet their particular business needs, even where this is done appropriately, responsibly, and in line with good practice as in the HE sector.
- 6.3. There is considerable existing protection for agency workers in the form of the Agency Workers Regulations (2010). The regulations ensure that agency workers are treated the same as comparable employees after 12 weeks in post. Agency workers, when not engaged on a contract of employment, also already have rights as "workers", such as a right to paid holiday.
- 6.4. Many HEIs choose to operate their own staffing banks as a way of ensuring consistent or similar terms and conditions as compared to their directly employed staff. This also allows HEIs to have access to a pool of temporary workers familiar with the institution to fulfil ad hoc or seasonal needs.
- 6.5. HEIs are also likely to go beyond the statutory rights offered to agency staff. Section 7 of this document outlines positive examples of good practice within HEIs.
- 6.6. Within the HE sector, there is no evidence that agency workers are treated any less favourably than employees in the sector they are used. The use of staffing agencies is essential to the staffing strategy of many universities.
- 6.7. When recruiting highly skilled, specialist staff, or those with 'portfolio careers' on a short-term basis, using a professional staffing agency may often be the only way to find a consultant with the required experience or skills, particularly at short notice, as the agency acts as an "aggregator" of suitable candidates.
- 6.8. Using an agency allows an HEI to have access to a pool of staff willing to work at short notice for one off events or similar, for example in hospitality. This also applies for seasonal periods

of high demand, such as engaging invigilators during peak exam season. In such a scenario it would be inappropriate for a HEI to employ a worker full-time, as the nature and frequency of such events can make it difficult to predict demand.

- 6.9. Agency work can also provide an opportunity for students to improve their employability skills and work part-time around their studies. Many students welcome the opportunity to work on this basis and some HEIs have increased their spend on agency working as they offer more temporary work to students, due to an increased focus on student employability. It would clearly be detrimental to students if they were no longer able to benefit from such flexible work opportunities.

## **7. A collaborative approach**

- 7.1. UCEA recognises that, in a large workforce like HE, there will inevitably be individual workers who are concerned about their contractual arrangements. There are some individuals for whom atypical or agency working arrangements may not be desired. The HE trade unions have previously raised concerns about such issues during the annual New JNCHES negotiation process.
- 7.2. UCEA worked with the HE trade unions in 2015 to produce a major joint report that reflected on the possible issues relating to the use of hourly-paid or casual staff. The report "*New JNCHES Hourly-paid and Casual Staff Working Group Report*", highlighted a number of effective practices within HEIs.
- 7.3. These practices were wide ranging and included:
- The introduction of variable hours contracts in some HEIs which guarantee a minimum number of hours.
  - Providing guidance to managers on the employment of students.
  - Involving trade unions when developing policies for the employment of casual staff.
  - Comprehensive induction arrangements for certain groups of staff, including improvements to IT infrastructure to monitor casual arrangements and induction.
  - Clear methods for the determination of hourly rates.
  - Terms for hourly-paid lecturers reflecting those of other academic employees on a pro-rata basis.
  - Registration agreements for casual staff, placing them into a central staffing bank on consistent terms of employment.
  - Providing clarity to individuals on their contractual arrangements and obligations in letters of engagement.
- 7.4. The report was produced jointly by UCEA and the five HE trade unions (EIS, GMB, UCU, Unison and Unite) on behalf of New JNCHES. The report did identify a difficulty in collecting data on casual and hourly-paid staff and joint working between the trade unions and UCEA is ongoing to improve data collection in this area.
- 7.5. UCEA has once again offered to work jointly with the HE trade unions as part of the 2016-17 pay settlement. This further joint work will have the aim of producing materials to assist managers in planning and decision making when engaging individuals on fixed-term arrangements.
- 7.6. In addition to the joint work outlined above, UCEA and the trade unions reaffirmed in the 2015 report their commitment to jointly agreed principles underlying good practice in fixed-term and casual employment. These are reproduced below:

*Fair and flexible employment arrangements should reflect the following principles:*

- *equality of opportunity is reflected in all aspects of employment*
- *indefinite contracts are the general form of employment relationship between employers and employees*
- *where the use of fixed-term and casual contracts is justifiable by objective reasons staff on these contracts should be given:*
  - (i) *the same opportunity as other staff to use services to assist better performance, such as staff development and training, appraisal, careers advice for research staff*
  - (ii) *similar terms and conditions of employment to those in comparable jobs with indefinite employment in the institution unless the difference can be justified, in accordance with the legislation, for necessary and appropriate objective reasons*
  - (iii) *information on, and the opportunity to apply for, more secure positions*
  - (iv) *a process for regular review to consider, as appropriate, indefinite employment on full-time, fractional or hourly-paid contracts.*

7.7. These principles offer a framework for good practice that could be a useful starting for wider application.

7.8. A collaborative approach to addressing the issues in HE has helped to raise and address concerns about the use of atypical or casual staffing arrangements. Beyond the work described here at sector level, we know that HE employers have been actively engaging with their trade unions about the way such workers are engaged and remain committed to ensuring that staff are engaged appropriately.

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