

## **UCEA responses to all elements of the unions' joint claim for 2019-20**

This paper summarises UCEA's full responses, made on 11 and 30 April 2019, to all the elements of the claim.

### **Gender Pay and Ethnicity Pay gaps**

The employers note the Trade Unions are calling for "action to close the gender pay gap, and to work on closing the ethnic pay gap, taking account of the ways in which intersectionality affects pay and grading". Sector employers are equally keen to reduce the gaps and there have been significant falls in the sector mean and median gender pay gaps over the past decade. We know from last year's work that there is a strong commitment to actions to maintain this momentum.

By the Trade Unions' acknowledgement, previous sector-level joint work has focused on finding out about practice, case studies and, prior to the statutory reporting regime, on benchmarking. Arising from the New JNCHES 2016-17 settlement, the Equal Pay Review and Gender Pay Gap reporting guidance was published in January 2018 and was a welcome addition to the suite of materials that is used by HEIs to aid their work in helping close the gender pay gap. UCEA also took forward the work agreed in the 2017-18 New JNCHES negotiating round on gender pay gap action planning which resulted in the publication in January 2019 of the report *Taking action: Tackling the Gender pay gap* drawing on data gathered from 115 HEIs.

UCEA's pioneering work *Caught at the crossroads: outlining an intersectional approach to gender and ethnicity pay gaps in HE* which was published in December 2018 has provided a timely stimulation for HEIs considering these issues ahead of the expected statutory ethnic pay gap reporting. UCEA is also aware of a root and branch review of Athena SWAN currently being undertaken by Advance HE which is due to report in Autumn 2019.

The Trade Unions' claim for "a national, time specific, agreement detailing how action will be achieved by each HEI" has to be considered against the above backdrop and within the scope of the New JNCHES pay negotiating machinery. The development and ownership of gender pay gap and ethnicity pay gap action plans is an activity for individual HEIs, taking into account their own contexts. Individual HEIs are rightly developing individual action plans - and timelines for these - that are appropriate for the challenges at their institution. They are doing this by involving a range of relevant stakeholders and are accountable within their own governance arrangements.

It is not an appropriate use of UCEA's limited resources to suggest that UCEA should collect and then "share with the unions nationally copies of all the Gender Pay actions plans drawn up by UCEA affiliates"; these plans will be freely available to all union branches. We also believe it is not desirable, as it would run counter to the Trade Unions' expectation to be involved in action planning processes at an institutional level. It is also important not to conflate action to assure equal pay for work of equal value with the distinct issues and consequent actions around the gender pay gap.

### **As part of a composite settlement in 2019-20, the employers make four substantive offers:**

- i) The New JNCHES parties acknowledge and encourage the genuine commitment shown by HEIs to closing the gender pay gap through focused and transparent actions at institutional level.
- ii) UCEA endorses and encourages the leadership being taken within the HE sector in examining ethnicity pay gaps, ahead of this becoming a legal requirement.

- iii) The New JNCHES parties agree that they would all issue statements to encourage members/employees to volunteer their protected characteristics information with their employers - highlighting the value of such information and its importance for future analyses of ethnicity, alongside gender, in pay gaps.
- iv) The New JNCHES parties commit to joint work to take the findings of the *Caught at the Crossroads* report and to seek examples from both HEIs and employers beyond the sector of how they are taking forward work on closing their identified ethnicity pay gaps:
  - The focus would be to understand ways in which the actions and interventions may differ from those designed to address the gender pay gap, whether the experiences of staff from different Black, Asian and minority ethnic (BAME) backgrounds are influencing interventions, and the intersectionality with gender.
  - The aim would be to produce a joint report sharing learning across the sector.
  - This work would commence after the current Athena SWAN review is published so that the terms of reference could take into account any significant developments arising from that review.

### **The casual workforce**

We note the Trade Unions' claim at New JNCHES is for a "framework to eliminate precarious employment practices by universities" and that this should include "ending zero hours contracts" and "moving hourly-paid staff on to fractional contracts".

We draw attention to the sector-level 'framework' already in place. The Concordat to support the Career Development of Researchers focuses on employees identified by the Trade Unions in their Claim as particularly likely to be engaged on fixed-term contracts. A widely drawn Concordat Group has been directing work during the last year on its review. It is currently out for consultation and a new Concordat is due to be published in the summer of 2019. UCEA understands that the new Concordat will ask individual HEIs to make commitments towards its principles and those HEIs will all consider their actions to achieve these.

We note that, following successful joint work by UCEA and the Trade Unions, we now have new data available in the HESA Staff Collection that examine 'zero hours' and 'hourly-paid' employees for the first time. UCEA hopes that the Trade Unions will be equally keen to see what can be learned from the examination of these data in the main and the 'atypical' reports and sees this as a potential focus for sector-level work. UCEA does see itself as having a role to analyse staff-related data and provide intelligence to the sector at an aggregate level and UCEA would continue to do this.

The employers note that the Trade Unions refer to the Taylor 'Good Work' definitions and can see that these are reflected within the New JNCHES Principles underlying good practice in fixed-term and casual employment (first established in 2002 and re-endorsed, with no changes, by the New JNCHES parties in 2016). The Principles provide an already agreed sector-level 'framework'.

### **As part of a composite settlement in 2019-20, the employers make five substantive offers:**

- i) A new joint working group that would:
  - a) undertake an examination of the data in the HESA Staff Collection on 'zero hours' and 'hourly-paid' employees and;
  - b) produce a report of the sector-level analysis and findings.

- ii) A second tranche of these data will become available in March 2020. We propose that the group might be given the further specific task of reviewing these two years of data and reporting on findings.
- iii) UCEA offers to encourage local discussions to take place with a view to reducing the use of zero hours contracts, where this is not already happening or has not already taken place, recognising that there are some roles where such contracts may be appropriate; for example, for professional experts and student ambassadors.
- iv) The parties jointly recommend to HEIs that they use the New JNCHES *Principles underlying good practice in fixed-term and casual employment* as a framework when undertaking reviews of the HEI's arrangements for the engagement of hourly-paid, fixed-term and casual employees, where a review has not already been done. UCEA recognises the importance of institutions hearing from their own employees and recommends that such reviews be undertaken in discussion with the institution's recognised Trade Union(s).
- v) Given its importance to the understanding of the sector workforce, UCEA proposes that the parties make a joint statement on the value of maintaining a full, compulsory HESA staff record. The loss of important data through the future non-requirement of a return for 'non-academic' staff will be retrogressive and detrimental to the sector's ability to demonstrate value for money and progress against equality objectives. This information is also vital for informed employer and Trade Union dialogue. Due to the timing of HESA's consultation on the future of the staff record it would be pragmatic to pursue this in a timely manner, outside the timeframe for concluding the 2019-20 negotiations.

### **Workload issues**

With regard to the explicit claim for "payment to recognise excessive workloads", the participating employers have not mandated UCEA to consider such a claim in an offered uplift to the values of the national pay spine. In any event, UCEA would not wish to condone through its actions an allocation for what the Trade Unions describe as "excessive" workloads, noting that this could clearly only be assessed on an individual employee basis. HE employers would fully expect their recognised Trade Unions to pursue at institutional level any matters in respect of individual staff members who they claim may be working beyond their contractual commitments.

HE sector employers take their responsibilities regarding the management of workloads and of stress seriously. Approaches to stress management are a matter that have in the last year been considered at sector-level by the Higher Education Safety and Health (HESH) Forum - comprising UCEA, the Trade Unions and the HSE. This has led to the joint production of a *Stress and Mental Wellbeing resources pack* incorporating a range of materials for use by HEIs including the HSE Stress Management Standards and related guidance, including trade union materials. This material is freely available for employers and Trade Unions to utilise in their discussions, using the well-established channels available in each institution.

#### **As part of a composite settlement in 2019-20, UCEA offers the following:**

- UCEA to promote the Stress and Mental Wellbeing resources pack jointly with the Trade Unions for HEIs to consider locally. The UCEA Chair would write to institutions commend use of the resources pack.
- The sector-level HESH Forum to take a role in refreshing and adding to the material in the Stress and Mental Wellbeing resources pack. This would include seeking good practice case studies to share with sector employers.

## **Scottish sub-committee of New JNCHES**

UCEA responded in some detail to this aspect in the Trade Unions' claim both last year and the year before. However, UCEA has once again sought the views of the Scottish HEIs participating in the 2019-20 JNCHES pay round to seek their direct responses to this request. With regard to the matters which UCEA, on behalf of the employers, is mandated to consider within the New JNCHES architecture, the Scottish institutions are clear that they wish these matters to be considered at the UK-wide national table.

We acknowledge that the New JNCHES Agreement allows for the parties to agree to establish sub-committees where matters in the ambit of New JNCHES (i.e. the "pay and pay-related matters that are determined at national level") that the parties are considering could be discussed. Such sub-committees could include ones focussed on one or more of the devolved nations. However, such discussions should only take place in a sub-committee if they are not taking place at the main New JNCHES Committee.

The Trade Unions' Claim for 2019-20 says that "there is clear evidence that there are some diverging trends and structures emerging in Scotland relative to the rest of the UK".

However, with regard to the matters which UCEA, on behalf of the employers, will be considering within the New JNCHES architecture, the Scottish institutions are clear that they wish these matters to be considered at the UK-wide national table. It is also clear that the Trade Unions wish for those matters which we are discussing at the New JNCHES negotiations this year to be considered at the UK-wide national table. Indeed, the claim states that "the main purpose of the (Scottish) sub-committee would be to deal with matters not currently being dealt with at the New JNCHES Committee".

The Trade Unions' claim goes on to say that the importance has become "more pronounced" and cites the "need to ensure that [the Fair Work Convention] is embedded within Scottish HEIs". The Claim describes this as "a matter beyond the scope of the full JNCHES" and the employers would concur that this is a matter that is out of scope of JNCHES, be it at full Committee or a sub-committee. UCEA cannot agree that the job of the JNCHES negotiating machinery is to "ensure" the employment practices of individual autonomous HEIs in any part of the UK, either at the national Committee or through a sub-committee.

It is not disputed that Brexit, governance requirements and some aspects of Government funding are matters that may impact on Scottish HEIs in distinctive ways, but the Scottish HEIs do not regard JNCHES as the forum at which they would discuss and consider these and other non-pay matters. As the Trade Unions have acknowledged, there is already an established forum for dialogue between Universities Scotland, representing all the Scottish HEIs (not just the 15 who currently participate in JNCHES), and the Trade Unions on Scottish policy matters. We also note that funding, with other HE policy issues in Scotland, are not matters for collective negotiation and that such issues have been raised and regularly discussed at the forum established for this purpose.

### **As part of a composite settlement in 2019-20, UCEA offers the following:**

In order that New JNCHES can maintain a current view on the matters being discussed that are specific to Scotland and to the other devolved administrations, UCEA proposes that the New JNCHES autumn general meeting be used to take a report on sector-level developments in the devolved nations. For Scotland in particular, the meeting would receive a report on the matters that have been discussed at the forum for dialogue with Universities Scotland. The parties can then give consideration to the impact that developments within the devolved nations may have on the matters that will be discussed at New JNCHES.

### **A 35-hour week**

The Trade Unions have raised contractual working hours in their Claim this year and this is a matter that UCEA does not accept lies within the scope of the New JNCHES pay negotiating machinery. The issue of the working week was last directly addressed at a national table sixteen years ago, within the 2003 Framework Agreement for the Modernisation of Pay Structures. This was a watershed enabling agreement that made the contractual matters within its scope thereafter a matter for institutional-level determination, in discussion with recognised Trade Unions.

It is for individual employers to consider how the working week they have plays out with regard to their benchmarking to National or Foundation Living Wages. UCEA provides information to its members so that they can understand how they stand with respect to these national rates and within the sector. The participating employers at New JNCHES give no mandate on the matter of their contractual arrangements as something over which they would extend the reach of JNCHES. These are matters that have long been for institutional-level determination and which HEIs fully expect the trade unions to raise at institutional level.

### **“Outsourced staff”**

This new component in a New JNCHES claim from the Trade Unions relates to the decisions taken by individual autonomous institutions regarding their organisational form and to individuals who are employees of other organisations. Employees of other organisations are clearly outside the scope of UCEA’s representative role at New JNCHES and UCEA has no instruction from any of the participating employers to discuss these matters collectively; where Trade Unions wish to raise issues it would be appropriate for them to seek to raise these with the individual employers where they are recognised.

UCEA does not agree that it is the role of the JNCHES negotiating machinery to play a role in requiring the decisions and actions of individual universities in relation to their employment practices. The participating employers at New JNCHES give no mandate on the matter of their contractual and organisational arrangements as something over which they would extend the reach of JNCHES as these are matters that have long been for institutional-level determination and which the employers fully expect the Trade Unions to raise at institutional level.