# UCEA consultation response to the Taylor review of modern working practices: Consultation on 'measures to increase transparency in the UK labour market'

UNIVERSITIES & COLLEGES EMPLOYERS ASSOCIATION

## Introduction

This is the response from the Universities and Colleges Employers Association (UCEA) to the consultation on the Taylor review of modern working practices. The response is based on views provided by 25 of our member higher education employers and focuses solely on measures to improve transparency in the UK labour market.

UCEA represents the views of higher education institutions (HEIs) across the UK in their capacity as employers. UCEA is a membership body funded by subscriptions from 163 HEIs in the UK, in addition to eight sector associate members. Our purpose is to support our member HE employers 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.

While HEIs are constituted by a variety of means (for example, Royal Charter, incorporation by statute or under the Companies Act, or charitable trust) they are defined in the national statistics as autonomous not-for-profit private corporations. HEIs are independent employers and determine their own employment policies, often in consultation with recognised trade unions; therefore there is a variety of HR practices in place in the sector.

## Section A: Written Statements

**1. Have you provided written statement of employment in the last 12 months to permanent employees and your non-permanent staff?**

The vast majority of respondent HEIs (96%) had provided a written statement of employment in the last 12 months to permanent employees and non-permanent staff.

However the high volume, resource restrictions and other impracticalities of providing these as standard was identified as an issue and a reason for not issuing full written statements centrally for casual and other atypical workers; as an alternative a statement of particulars is issued at the first point at which casual staff are paid.

**2. In general when do individuals starting paid work at your organisation receive a) a written statement and b) an employment contract or other employment particulars?**

All respondent HEIs provide written statements to individuals starting paid employment before paid work starts. However, while the majority said they provide an employment contract or other employment particulars before paid work starts, there is also practice of providing the employment contract within a month of paid work starting.

**3. How long on average, would it take a HEI of staff to produce a written statement for a new starter?**

The length of time taken to produce written statements varies but respondent HEIs advise that it takes up to an hour.

**4. How often do you seek legal advice when producing a written statement?**
The majority of respondent HEIs (75%) rarely seek legal advice when producing a written statement with 25% never seeking legal advice. However a number of HEIs advised that

they had taken legal advice when creating the initial templates for their written statements or contracts of employment.

**5. Are there other business costs associated with producing a written statement, in addition to personnel and legal costs that we should be aware of?**

The majority of our HEIs (71%) advised that there are no other business costs associated with producing a written statement, in addition to personnel and legal costs. The remainder identified that additional costs include paper, printing and postage.

**6. To what extent do you agree that the right to a written statement should be extended to cover permanent employees with less than one month's service and non-permanent staff?**

There were mixed views. A number agreed with the principle that all individuals should be informed about the terms of their employment as this develops the psychological contract, provides a fair and legal foundation for the employment relationship and highlights the obligations, duties and responsibilities of both parties.

The alternative view was that the level of administrative resource need to provide statements for ad hoc or very short term workers would be disproportionate to the advantages of extending the right to a written statement.

Our employers made a range of comments.

It was noted that flexibility for employers who have a high volume of non-permanent staff would be helpful.

It was also identified that providing a written statement to all non-permanent staff would likely place a burden on the Higher Education (HE) sector because of the volume of short-term work undertaken, for example by students and by individuals being brought in to deliver one specialist lecture a term or semester.

**7. The following items are currently prescribed contents of a principal written statement. Do you think they are helpful in setting out employment particulars?**

a) **The business's name**
   Agree.
b) **The employee's name, job title or a description of work and start date.**
   Agree.
c) **If a previous job counts towards a period of continuous employment**
   Agree.
d) **How much, and how often, an employee will get paid**
   Agree.
e) **Hours of work (and whether employees will have to work Sundays, nights or overtime)**
   Agree.
f) **Holiday entitlement (and if that includes public holidays)**
   Agree.
g) **Where an employee will be working and whether they might have to relocate.**
   Agree.
h) **If an employee works in different places, where these will be and what the employer's address is.**

The majority agree.

**8. Do you agree that the following additional items should be included in a principal written statement:**

a) **How long a temporary job is expected to last, or the end date of a fixed term contract?**
Agree.

b) **How much notice the employer and the worker are required to give to terminate the agreement?**
Agree.

c) **Sick leave and pay entitlement?**
There were mixed views, with some suggesting that rather than include full details of sick leave and pay in the written statement, alternative approaches could be attaching the sick leave and pay policy to the statement or signposting to the appropriate scheme in the organisation's employee handbook and/or website.

d) **The duration and conditions of any probationary period?**
It was agreed that the existence and duration of any probationary period should be included. However, the details and conditions of the probationary policy or scheme should be made available separately via the organisation's employee handbook and/or website.

e) **Training requirements and entitlement?**

There was a mix of views. HEIs commented that there was a case for including training requirements if specific training was required for a role or it was a condition of employment. However, in other cases, it would be preferable to signpost training policy and provision and where to access information about training via the organisation's employee handbook and/or website.

HEIs also commented that listing detailed training requirements would increase administration significantly. Policies and expenditure on training are likely to vary over time due to changes in budget and funding.

f) **Remuneration beyond pay e.g. vouchers, lunch, uniform allowance?**
There was a mix of views with approximately half agreeing strongly or slightly, some neutral and some disagreeing slightly or strongly.
(see comments below)

g) **Other types of paid leave e.g. maternity, paternity and bereavement leave?**

There was a mix of views with most respondents identifying that it would be preferable and more efficient to signpost to the appropriate policies and scheme for paid leave via the organisation's employee handbook and/or website.
(see comments below)

**Comments**

**(f)** HEIs commented that remuneration beyond pay was likely to change depending on organisational review whilst others questioned the benefit of including every allowance in the written statement and cited the administrative workload required. Employers may wish to

retain flexibility to amend such provisions and including them in the statement would make it difficult to do so.

**(g)** HEIs commented that employers will want to review and amend their policies on paid leave from time to time and such policies are, additionally, subject to change because of changes in legislation. Again HEIs commented that it would be preferable and more efficient to signpost to the appropriate policies and scheme for paid leave via the organisation's employee handbook and/or website.

An HEI made a general comment that the policies of HEIs on the suggested additional items were generally comprehensive and would significantly extend the length of written statements if included in them. Other HEIs commented that whilst it is important to provide workers with greater clarity about their employment and terms and conditions it is necessary to avoid placing too much of an additional burden on employers. Additional items to be included in the principal written statement should only include information that is useful to workers at the outset of the employment.

**9. To what extent do you agree that the principal written statement should be provided on (or before) the individual's start date?**

The majority of HEI respondents did agree that the principal written statement should be provided on or before an individual's start date. A number of HEIs did cite practical issues to be surmounted, for example, Human Resources (HR) departments are sometimes not aware of individuals starting work until after the work has begun, particularly when staff are engaged by departments at very short notice.

**10. To what extent do you agree other parts of the principal written statement should be provided within two months of their start date?**

The vast majority of respondent HEIs agree. One comment was that the HEI would seek to provide all written particulars at the same time otherwise it creates an additional administrative burden.

**11. Which of the following statements best describes your awareness of the ACAS guidance on Written Statements?**

The majority of HEIs were aware of the ACAS guidance and have knowledge of what it says.

**12. If you have some knowledge of the ACAS guidance on Written Statements, how helpful did you find it?**

Most HEIs indicated that they had found the ACAS guidance quite helpful. There were comments that the guidance is helpful because it outlines key requirements and provides a template and practical checklist for compliance. Others commented that the guidance is limited, for example, with regard to the advice it provides about the minimum information a written statement must contain.

## Section B: Continuous Service

**13. What do you think are the implications for business of the current rules on continuous service?**

HEI respondents were generally positive about the current rules. The impact of continuous service was felt to be greater for smaller employers in terms of cost when it comes to rights such as redundancy and redundancy payments. HEIs commented that the current rules can provide a good framework and provide some stability of employment for workers particularly

in relation to the use of frequent short-term contracts. HEIs considered the rules to be relatively straightforward save where an individual has been engaged in an atypical fashion, for example, on a series of short-term hourly paid contracts.

**14. Do you have examples of instances where breaks in service have prevented employees from obtaining their rights that require a qualifying period?**

A small majority of HEI respondents did not have examples of instances where breaks in service have prevented employees from obtaining rights that require a qualifying period. Where respondent HEIs did have examples, the key rights which had been affected were redundancy payments and the right to bring legal claims, for example, claims for unfair dismissal.

HEIs commented that there are particular issues around fixed-term contracts due to funding and other factors which can create issues for continuous service when an individual has more than a temporary cessation. There are a significant number of fixed term contracts in the sector due to external grant-based research funding and the occurrence of short-term teaching requirements. In some circumstances the rules on continuity mean that workers in these roles might not build up enough service for some employment rights.

Short term contracts of a fixed-term nature such as those used for cleaning or catering are used in the sector in relation to seasonal activities, such as conferences. The lack of continuity of these temporary workers mean that the individuals are likely not to have the service to qualify for pay progression or higher leave entitlements (which come with longer-term employment).

**15. Do the current rules on continuous service cause any issues in your sector?**

HEIs had a range of views and perspectives on this question. A number highlighted the fact that continuous service in many post-1992 HEIs[1], counts towards service in redundancy calculations under the Redundancy Payments (Continuity of Employment in Local Government etc.) (Modification) Order (RMO). The Order preserves continuity of employment for redundancy pay purposes (only) between bodies covered by the RMO, including post-92 HEIs, unless there is a statutory break in service. Extending the time period over which continuity is preserved between contracts will exacerbate this already onerous provision for these institutions.

The HE sector has generous occupational benefits, such as enhanced contractual sick pay, maternity, paternity and adoption pay and leave and holiday entitlement, many of which rely on qualifying service with the employer. Therefore if continuous service were to be preserved across longer breaks between contracts, more staff would accumulate qualifying service for higher levels of benefit, making these benefits more costly for HE employers to provide. An HEI commented that the issues around continuity were less about whether there has been a break in service but more about the type of service that is included, for example, if a casual worker is employed without a break and whether their previous service is treated as continuous even if they were not an employee at the time. Another HEI flagged breaks between semesters and whether this would be seen as continuous service. The rules were not seen as helpful by one HEI for contracts that include natural breaks or are based on annual hours rather than a set working pattern. Another HEI cited the common occurrence in the sector of individuals who hold multiple posts, often with different working patterns, and the complexities involved in deciding how those co-exist in relation to continuous service.

[1] New institutions incorporated since 1992, many had previously been under local authority control.

At least one HEI offers certain rights - the right to request flexible working and time off for training - to staff from day one. A number emphasised that they worked to principles of good practice and work to ensure that continuous service criteria are applied consistently to all groups of staff. For some this may mean that they already discount service breaks of up to one month.

Overall, HEIs felt that clear and consistent rules for the provision of continuous service and entitlement to redundancy pay, statutory benefits and tax would be of benefit.

**16. We have committed to extending the period counted as a break in continuous service beyond one week. What length do you think the break in continuous service should be?**

A majority of respondent HEIs considered that two weeks would be an appropriate length of break in service (with the remainder opting for one month). It was felt that two weeks would simplify the administration, discourage bad practice and provide an additional period while maintaining flexibility. An HEI commented that anything over two weeks would be a significant period of time for individuals engaged on short-term contracts to build up service at a disproportionate rate to the period of time worked.

One HEI has already introduced a fourteen day clear break period as the simplest way to deal with the range of contracts used at the institution whilst recognising that in other circumstances continuity can be maintained over a period where breaks are longer than two weeks.

Those HEIs that favoured one month considered that it would need to be made clear to employers that expanding the period would mean that workers may gain rights they do not currently accrue. One HEI already allows breaks of one month to preserve service as they considered it offered stability of employment and clarity in redundancy situations.

It would be preferable if the commitment was to increase the period to a number of weeks (preferably two weeks) rather than ‘one month’, as a ‘month’ will inevitably lead to questions about whether it is a calendar month or a certain number of days or weeks.

**17. Do you believe the existing exemptions to the break in continuous service rules are sufficient?**

The majority of respondent HEIs considered that the existing exemptions are sufficient. It was felt that it would be helpful to clarify existing ambiguities as to what service does and does not count and around the temporary cessation exemption. It was suggested that a provision to preserve continuity for formal career breaks be introduced as these are becoming increasingly common.

**18. We intend to update the guidance on continuous service, and would like to know what types of information you would find helpful in that guidance?**

The most commonly selected options were to provide real examples from case law and signpost to further information. In addition employers suggested providing scenario based guidance using examples such as how continuous service would be applied in different circumstances or scenarios.

**<u>Section C – Holiday Pay</u>**

**19. Do you think that the government should take action to change the length of the holiday pay reference period?**

While a number of respondent HEIs indicated that the government should take action to change the length of the holiday pay reference period, the majority of respondents did not.

One HEI commented that clarity is needed about how to calculate holiday pay with regard to what is included and the reference period in particular. A recent number of employment law cases (not in the HE sector) have made it difficult to calculate holiday pay and it was suggested that ACAS should take the lead with clear guidance. The 12 week period does not reflect average pay accurately, particularly for atypical workers who are more likely to work variable hours due to the cyclical nature of their work over the course of a year.

One suggestion in relation to the view that the reference period should not be changed, was that holiday pay should accrue with reference to hours worked not in relation to a reference period. A view was expressed that the calculation of holiday pay for atypical workers was already complex with a 12 week reference period and this could be exacerbated with a longer reference period.

**20. If you answered yes to Q19 should the government:**

**a) increase the reference period from the current 12 weeks to the 52 weeks recommended in the review?**

Of the HEIs wanting an extension, the majority agreed that the reference period should be increased to 52 weeks. It was suggested that this would prevent overworking and 'spikes' in holiday pay.

It was noted however that organisations would need to consider how to manage holiday calculations effectively and ensure that there were adequate systems and processes.

**b) Set a 52 week default position but allow employees and workers to agree a shorter reference period?**

Of the HEIs wanting an extension, the majority agreed that a 52 week default reference period should be set but with the ability for employees and workers to agree a shorter reference period.

**c) Set a different reference period?**

It was suggested that a reference period of 'up to 52 weeks' could be set to provide flexibility and allow for shorter employment periods.

**21. What is your understanding of atypical workers' arrangements in relation to annual leave and holiday pay?**

A smaller number of employers answered this question and the responses were mixed and indicating the range of practices among different sector employers. The nature of the business means that there can be significant use of atypical workers in and HEI and this does present some complex contractual issues. Atypical workers include a range of roles which are not normally undertaken by core staff, for example, external examiners and guest lecturers paid by the hour in relation to their input on a programme and they are engaged in different ways by different HEIs. External examiners are required to have substantive employment at a different HEI to the one for which they are undertaking external examining duties. Some HEIs treat external examiners as employees and others do not. Atypical lecturing staffs may undertake teaching at a number of institutions and, in these circumstances will have different contracts at each institution. HEIs have developed systems and processes at a local level to contract and pay such workers in accordance with legal

requirements. Sector employers also look to the principles as set out in the sector level guidance produced by UCEA together with the sector trade unions (http://www.ucea.ac.uk/en/empres/paynegs/new-jnches/jw-reports/index.cfm).

**a) Are they receiving and taking annual leave?**
There are a variety of arrangements for receipt and taking of leave.

**b) Are they receiving holiday pay but not taking annual leave?**
There are a variety of arrangements for paid holiday entitlements.

**c) Do you know of any other arrangements that are used?**
No.

**Comments from HEIs:**

In some HEIs, Lecturers and other workers engaged on a time sheet basis are paid an enhanced hourly rate which includes a separate and transparent payment for holiday. The calculation of the holiday pay element is based on the entitlement of comparable salaried staff. This enables atypical staff to take their paid holiday at times when they are not required to be working (they may in fact be contracted to work to cover holiday and other staff absences). This practice enables HEIs to manage the leave arrangements for large numbers of staff who work relatively small numbers of hours and is usually welcomed by staff.

Several HEIs confirmed that whilst atypical workers received holiday entitlement based on the hours worked, annual leave was not always taken during the employment itself. This may be because the individuals do not have the opportunity to take leave when their contract covers a short period and under these circumstances it is paid.

One HEI commented that Lecturers would normally take leave at the end of their fixed-term contracts or at a point during the month it has been accrued when they are not actually scheduled to teach.

**22. How might atypical workers be offered more choice in how they receive their holiday pay? *Please provide examples including how worker's entitlement to annual leave could be safeguarded so they are not deterred from taking leave.***

Suggestions included:

- Given that it is not always practical for employees on short-term contracts to take their contractual leave, it was suggested that they could be paid for their leave or employers could extend the contracts to cover the leave accrued and the leave would be taken in the extended period.
- Build in flexibility to allow employee choice. Employees should be able to opt in to received rolled up holiday pay. Rolled up holiday pay schemes are easier to administer and understand and are often preferable to employees when there is a mutually beneficial flexible arrangement.
- Provide clarity on the ability of organisations to make transparent and separate payments for holiday over the working period while requiring holiday to be taken either after the contract ends or at a time when the employee is not required at work.
- Establish/reinforce good management practice to ensure leave is taken. As a health and safety matter, the focus for the employer should be more on ensuring rest time, rather than on when pay is received.

## Section D: Right to Request

**23. Do you agree that we should introduce a Right to Request a more stable contract?**

The majority of respondent HEIs agree that a right to request a more stable contract should be introduced but with a number of caveats.

HEIs commented that the right to request could help employee engagement and retention and lead to greater workforce stability. The main caveat was this would be a right to request, the implication being that it can be reasonably refused where appropriate. There will be situations where individuals are engaged on the most appropriate and stable contract possible, therefore, a request may not be successful.

A number of HEIs commented that they worked with line managers and staff to regularise employment and ensure that employees are engaged on the appropriate contracts as far as possible and therefore the right to request might assist with this.

**24. Should any group of workers be excluded from this right?**

The responses to this were equally divided.

The workers it was suggested should be excluded included the following:

- External examiners
- Workers employed via an agency
- Visiting lecturers/guest lecturers engaged to deliver one or two lectures per term/academic year
- Workers with less than two years' service

The HEIs who disagreed that any group of workers should be excluded commented as follows:

- Exclusion could lead to more difficulties than having the opportunity to consider and request and justify the appropriate contract
- There should be equitable treatment for all staff

**25. Do you think this will help resolve the issues the review recommendations sought to address?**

A majority of respondent HEIs agree that the right to request could help to resolve the issues the review recommendations sought to address. Comments include the following:

- It will clarify rights and status for all
- It will provide more stability and lessen the opportunity for the misuse of casual employment
- It will increase transparency
- It will help to resolve the issues as long as employers understand the benefits

However, there were more cautious comments:

- It will add bureaucracy and will not address the issues
- It will only resolve the issues partially as employers will still be able to turn down requests
- There will always be a need for irregular working patterns and ad hoc workers and allowing workers to request a more stable contact will not remove that need.

**26. Should employers take account of the individual's working pattern in considering a request?**

The majority of respondent HEIs agree that employers should take account of the individual's working pattern in considering a request. HEIs commented that all of the terms under which the individual is employed should be considered in order to determine the appropriate outcome of the request. Business needs will also be an important consideration.

**27. Should there be a qualifying period of continuous service before individuals are eligible for this right?**

All HEIs agree that there should be a qualifying period of continuous service. A number of qualifying periods were suggested including a year, two years or 26 weeks (to match the right to request flexible working). HEIs commented again that administering the right should not become an unreasonable burden for employers.

**28. What is an appropriate length of time the employer should be given to respond to the request?**

The responses to this question were mixed with the majority of HEIs indicating that between one and three months would be the appropriate length of time for employers to respond to requests. It is difficult to suggest the appropriate length of time without knowing what the process would look like.

**29. Should there be a limit on the number of requests an individual can submit to their employer in a certain period of time?**

The vast majority of HEIs agree that there should be a limit on the number of requests that an individual can submit to their employer in a certain time period with most suggesting it should be once per 12 month period per role, similar to the right to request flexible working.

**30. When considering requests, should Small and Medium Enterprises (SMEs) be included?**

The majority of HEIs agree that SMEs should be included when considering requests as SMEs should also account for atypical staff. It was also suggested that they might need longer to respond to requests.

## Section E : Information and Consultation of Employee Regulations (2004) (ICE)

**31. Are there formal provisions in your workplace for informing and consulting employees about changes that may affect their work?**

All HEIs have formal provision for informing and consulting employees about changes that may affect them. By and large these are collective agreements or joint recognition agreements with recognised trade unions that had been in place for a number of years.

**32. How might the ICE regulations be improved?**

The following suggestions were made:

- Better communications about the regulations.
- Smaller organisations without trade unions may benefit from additional guidance and support.
- Simplify the regulations and relaunch them.
- Include a requirement for large organisations to support and train non trade union staff representatives (where appropriate) and to provide facilities to assist in consultation processes.
- It may be useful to promote the ICE regulations and how they can work in a unionised organisation and what other forms of representation can be used.

**33. Should the ICE regulations be extended to include workers in addition to employees?**

The majority of respondent HEIs do not agree that the ICE regulations should be extended to include workers, though not all had a view.

Comments included the following:

- Workers are typically staff in short-term contracts without a longer term commitment to the organisation.
- It would increase costs/bureaucracy.
- It should be limited to workers directly employed by the organisation
- Including all workers would increase transparency.
- Inclusion would enable organisations to get the views of this section of the workforce.

**34. In your opinion, should the threshold for successfully requesting ICE regulations be reduced from 10% of the workforce to 2%?**

The majority of respondent HEIs do not agree that the threshold should be reduced from 10% of the workforce to 2%.

Comments include the following:

- 2% is not a sufficient reflection of the workforce.
- Organisations would need a stronger mandate to justify this.
- The 10% threshold seems reasonable and is in line with the requirements for trade union recognition.
- 2% is too low – as it would take only one person in an organisation of 50 to trigger a request.
- It's not clear whether lowering the threshold would make it easier for the workforce to request ICE arrangements, particularly where there are already other mechanisms in place for an employer to consult with its workforce.

**35. Is it necessary for the percentage threshold for implementing ICE to equate to a minimum of 15 employees?**

There needs to be a minimum threshold but there was not a common view among HEIs as to the level of the threshold.

**36. Are there other ways that the government can support businesses on employee engagement?**

HEIs had a number of suggestions including the following:

- Review statutory family leave/dependents provisions to support work/life balance.
- Provide guidance and run initiatives on wellbeing
- Allow businesses to claim back tax on wellness initiatives or spend on physical or mental wellbeing activities.
- Provide more information and case studies and run workshops for business owners.
- Provide tools for employee engagement surveys or provide a national engagement survey that employers can access with shared benchmarks.
- Provide informal support.
- Provide financial incentives for employers who send their staff on accredited training, CPD training or adult training based on the number of training days.
- Provide tax incentives for employers that provide leadership and management training.

**37. How might the government build on the expertise of stakeholders such as Investors in People, ACAS and Trade Unions to ensure employees and workers engage with information about their work?**

HEIs suggested the following:

- Offer workplace briefings/on site workshops to Works Councils and Employer/Employee Committees.
- Establish/encourage regular dialogue.
- Gather information from the above sources.
- Encourage ACAS, IIP and the Trade Unions to link with bodies that represent employers.
- Create a national training course and a recognised qualification for employee representatives and provide it at local colleges and adult education centres.

**38. What steps could be taken to ensure workers' views are heard by employers and taken into account?**

HEIs suggested the following:

- Create a suite of consultation and communication frameworks suitable for different types and sizes of organisations which can be adopted by employers and employees.
- Encourage the running of regular employee engagement surveys and use technology to run quick surveys or 'pulse' surveys.
- Encourage the running of staff focus groups.
- Establish workplace networks and champions.
- Establish effective internal communications channels which utilise a range of communications media and encourage 'bottom up' feedback from workers
- Encourage the running of town hall meetings with senior management.
- Provide guidance and advice on other or different forms of representation and consultation in the workplace, rather than solely the traditional trade union representation which may not representative of all employees.
- Encourage the setting up workers' fora.
- Have a nominated contact point made known.

**39. Are there other ways that the government can support businesses on employee/worker engagement?**

HEIs suggested the following:

- Increase public spending.
- Provide information and case studies.
- Provide more funding and guidance and a free legal helpline.
- ACAS could provide more advice and guidance on employee/worker engagement including providing free training/workshops to SMEs who do not have this expertise or knowledge in-house.

HEIs commented that increasing statutory requirements might increase activity but employers need to engage willingly if it is to result in real gains for employees or workers.