University and College Union

Taylor Review: response from the University and College Union to the BEIS consultation on measures to increase transparency in the UK labour market

The University and College Union (UCU) is the UK's largest trade union for academics and academic-related staff in higher and further education, representing over 110,000 members working in universities, colleges, training providers, adult education settings and prisons.

UCU's view is that employers in further and higher education have consistently gamed the tiers in the UK employment law system in order to reduce their administrative and financial costs at the expense of staff. Nothing about the patterns of work in the sector justifies the use of short-term contracts, zero-hours contracts and worker arrangements for delivering frontline teaching and research on the scale we currently see. It is important to try to remove the incentives to gaming the system by universities, colleges and all employers who can well afford to employ people on fairer and more stable contracts.

This response includes testimony from UCU members taken from the results of a survey of casualised staff conducted in Spring 2015. The results formed a report published in May that year.

- *"I hate it. There is no sense in which my work is 'casual' - it is regularised, with my teaching hours taking place at the same time each week during term time. I can't just not turn up if I don't feel like it, or move the time of a class each week to whatever suits me. There is no sense in which that is even suggested by the university, as in they do not even make it possible for us to be 'flexible' or 'casual' in our working arrangements. I don't even have a contract, HR likes to remind me that I simply have 'terms of work', and that I am a worker not an employee. In the past, I have been paid 3 months in arrears. In the past, my tax has been a nightmare to sort out because of the multiple jobs I have been doing at any one time, or for short periods of time - so that's a whole load of extra labour. It's like being self-employed, but without any of the even minimal benefits that come with that. I constantly have to chase up missed or incorrect payments, made even worse by the University's refusal to itemise my pay on my payslip."*
- *"They tell me my work is ' not guaranteeable' when in fact I have taught the same courses (incidentally with outstanding feedback) for 20 years."*
- *"I was edged into this position since returning from my second maternity leave. I was put into a different job, and went along with it because I was one of the few people who didn't realise the writing was on the wall for that post (adult provision rather than 16-18.) They still need me now - but it's much cheaper for them to buy in my services without acknowledging I'm a human being with a life, responsibilities and a role in society."*
- *"After working in the same place for 10 years part time I have never been offered a permanent contract".*

- *"I've done hourly paid work in the same department for 4 years. I have a higher teaching load than members of staff on a permanent contract. No new members of staff have been employed in this time despite losing approximately 5 people. I feel utterly exploited doing the job that permanent people do, but I don't get paid for half of the work I do - no teaching prep, no module leadership pay, expected to be on call 24/7!!"*
- *"I have been on fixed term research contracts at the University for nearly 9 years - continuous employment but often with short gaps between contracts (but no overall gap as I have several contracts in different schools) - this means that legally they don't have to offer a permanent contract. But the result is nearly 9 years continuous research contracts without the chance of being made permanent for this."*

UCU welcomes the proposals to extend the right to a written statement to cover non-payment and supports the position of the TUC that it must be extended to all workers from day one. In addition, UCU welcomes the proposals to reform the rules on continuous service and supports the TUC's position that there should be 'day one' rights. However, overall UCU is deeply disappointed with the lack of ambition in the government's proposals and in particular the failure to tackle the grotesque imbalance of power in the workplace. UCU's position is that until there is greater regulation of exploitative precarious contracts through legislation and promotion of collective bargaining, then the greater 'awareness' and the 'rights to request' proposed here will remain policy fig leaves that do nothing substantial to help working people.

Question 9: To what extent to 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?

Strongly agree.

"I feel incredibly exploited. All the unpaid work I have to do in the college as a course tutor, from admin to pastoral care, is all unpaid. When there are holidays, I can't afford to take them. I have to find bits of work around the college, which is never enough to live on. I am here from 8am till 4.30pm 4 days a week, I have never seen or been given an actual contract by the agency (despite asking to see it)."

UCU supports the TUC's view that the right to a written statement should be a day one right extended to all workers as well as employees. Many universities and a growing number of FE colleges employ hourly paid teaching staff as workers or agency workers in wholly owned subsidiary companies and we are aware of many instances where these staff are completely unaware of their terms and conditions of service because they have never received a written statement. Even where employees are concerned, the short duration of employment contracts in higher education creates situations where staff do not receive their written statement or contracts until either significantly after they have begun work or, in some cases, until after their contracts have ceased. This problem has been accelerated by

the growth in the use of contracts that are of less than 12 months duration. For instance, the elite Russell Group of universities employ the vast majority of research staff in the UK university system. Around 70% of these researchers are on fixed-term contracts and according to UCU research 29% of these were on contracts of 12 months or less.

UCU supports the call for a 'day one' right to a single document containing a written statement, given to a worker in advance of starting work. This should continue to contain all the elements currently expected by employees. UCU also supports the proposals to include further elements in the written statement including the duration of the job, notice requirements, sick leave and pay entitlement, duration and conditions of any probationary period, training requirement and entitlement, all remuneration (not just pay) and other types of paid leave including paternity leave, paternity leave and bereavement leave.'

However, we also share the TUC's view that this reform in itself will not tackle the deeper problems of the use of precarious contracts which relate to the extreme imbalance of power they embed in the working relationship. Having rights can be meaningless when staff are afraid to assert them for fear of losing work:

- *"In common with other workers on this type of contract, I cannot plan my life for more than a short time ahead for fear of missing out on work. Because I cannot predict when fallow periods will arrive, I feel that I have to accept every offer of work, in case a fallow period lies ahead. It is very stressful. I also dread needing sick leave for fear of not being offered further work. "*
- *"I have never taken a day off when I was sick as I was afraid I would not be paid for the hours I was supposed to teach."*
- *"It has never been made clear to me what I am entitled to and I am made to feel awkward when I ask such questions. As such, I would never attempt to access sick pay."*
- *"I never claim sick pay as I am afraid my employers will use poor health as a reason to fire me - it also reduces my attractiveness to other employers."*

Question 10. The following items are currently prescribed contents of a principal written statement. Do you think they are helpful in setting out employment particulars?

a) Yes
b) Yes
c) Yes
d) Yes
e) Yes
f) Yes
g) Yes
h) Yes

Question 11. Do you agree that the following additional items should be included on a principal written statement?

a) Agree strongly
b) Agree strongly
c) Agree strongly
d) Agree strongly
e) Agree strongly
f) Agree strongly
g) Agree strongly

Question 12. To what extent do you agree that the principal written statement should be provided on (or before the individual's start date?

Agree strongly

Question 13: To what extent to you agree that other parts of the written statement should be provided within two months of their start date?

Agree strongly

Questions 21, 22 and 23: what are the implications of the current rules on continuous service? Do you have examples of instances where breaks in service have prevented employees from obtaining their rights that require a qualifying period? Do the current rules on continuous service cause any issues in your sector?

"I do not know from term to term whether I am going to get any teaching work. I am not told until the week before term starts if I have got work. This makes it hard to plan my finances and at the last minute I often have to drum up work from elsewhere to cover my costs. Last year my working hours were cut drastically. This was because if I had been given the same number of hours as before I would have been eligible to apply to be made permanent."

UCU believes that the current rules on continuous service are not fit for purpose and create significant opportunities and incentives to abusive employment practices. For example, the creation of 9 and 6 month teaching contracts has enabled many employers to build in breaks in service into employees working lives, thus mitigating the risk of employees accruing rights not to be unfairly dismissed, rights to redundancy pay or rights to maternity or paternity leave.

Some employers have attempted to subvert continuous service entitlements by transferring fixed-term staff into the employment of wholly owned subsidiary companies and then arguing that TUPE does not apply to them. UCU also believes that the 'risk' of staff accruing continuous service rights has also been a significant factor in the decision to engage tens of

thousands of teaching staff on zero hours contracts and especially as workers. These contracts usually include explicit contractual boilerplate denying that there is mutuality of obligation and no continuity between 'assignments'.

The University of Birmingham's 'Small Group teacher' engagement form says:

"No contract of employment or employment relationship exists outside the contracted hours and there is no requirement on the University to provide work or for the Small Group Teacher to accept work."

The University of Sheffield's Casual Worker 'agreement', is even more explicit, saying:

'Each offer of work by the University which you accept shall be treated as an entirely separate and severable engagement (an assignment). The terms of this agreement shall apply to each assignment but there shall be no relationship between the parties after the end of one assignment and before the start of any subsequent assignment. The fact that the University has offered you work, or offers you work more than once, shall not confer any legal rights on you and, in particular, should not be regarded as establishing an entitlement to regular work or conferring continuity of employment.'

UCU has experience of negotiations in which several wealthy 'elite' universities have argued that they are not prepared to agree the employment of teachers on employee contracts precisely because they will accrue employment rights, including the right to redundancy payments. Similarly, even where this is not the case, breaks in working patterns can make it difficult for workers to assert genuine continuity. Other universities have experimented with arguing that the expiry of fixed-term contracts are not redundancies in law, taking encouragement from the actions of the last government in removing the obligation to include fixed-term contract staff in the staff counted for the purposes of consultation on collective redundancies.

Question 24. What length do you think the break in continuous service should be?

Other – We support the TUC's position that all workers should have day one rights to maternity leave, the right to request flexible working, statutory redundancy pay and protection from unfair dismissal. This would raise the floor of employment rights and eradicate the issues connected with breaks in continuity. Failing this, we would support the TUC's proposals that rules on continuity of employment should be reformed so that:

- Any calendar month during which an individual does any work for an employer or which is partly, or wholly governed by an employment contract, will count towards a workers' continuous service. Workers would accrue service month by month.
- Any periods of statutory leave, including holiday and any form of parental leave, will count towards a worker's continuous service.
- Where a worker has a gap in work of more than a month, their continuous service will not be broken and the clock will not return to zero. Instead it will pause and restart whenever they do future for the same employer.

Question 29. What is your understanding of atypical workers' arrangements in relation to annual leave and holiday pay?

Eleven years after rolled up holiday pay was declared unlawful, a disturbing number of universities, colleges, adult education service providers and prison education services continue to employ the practice, meaning that many casually employed staff do not take their holiday or are not paid the correct amount for their holiday. UCU has exposed several examples in recent months of employers acting unlawfully or paying the wrong amounts as a consequence of rolling up holiday pay.

In a survey from 2016, UCU found that 15% of staff employed on insecure contracts in Further Education had experienced some form of problem accessing holiday pay. Many others report that there is no holiday pay as part of their contracts.

- *"I have never received holiday pay within my hourly paid contract"*
- *"We don't get holiday pay at all and we are not paid if we are off work due to illness or compassionate leave."*

HESA data records that there are more than 70,000 higher education academic staff returned as 'atypical workers' in the higher education sector. The majority of these 'atypicals' are employed in the Russell Group of elite universities who commonly engage these staff as workers. This means that they commonly receive lower holiday pay than their academic colleagues, often benchmarked at statutory levels. As with other zero hours contracts there is a common perception that the worker relationship entails no holiday pay. But more problematic is the fact that because atypical workers are engaged and paid by the assignment, often with an explicit statement that there is no employment relationship, and there is no ongoing expectation that hours will be guaranteed, such workers feel a great reluctance to raise issues concerning holiday, sick pay and other statutory or contractual entitlements. The fear of losing hours in the current or following working year is simply too great.

Question 30. 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.

UCU supports the TUC's view that the HMRC NMW team should be given responsibility for enforcing both statutory and contractual holiday pay, alongside the employment tribunals. But we also agree that such enforcement will only be effective if the HMRC is properly resourced and equipped to take on the role.

Providing all workers with a written statement which details holiday pay entitlements and explains how holiday pay will be calculated may assist in improving awareness. However, as indicated above, the fundamental problem is not the levels of awareness of entitlements, it is the power to raise and enforce them. The existence of contracts that provide no

guaranteed hours and allow employers to maintain workforces in a high level of dependency is the bigger problem. Until this issue is grasped, the deeper problems will remain.

Q31. Do you agree that we should introduce a Right to Request a more stable contract?

"The uncertainty is the worst aspect. I often don't know what I will be teaching until three days before term starts. There is a feeling of powerlessness of being unable to complain because we are at the mercy of managers."

"Complaining about the lack of teaching hours resulted in all humanities PGRs being given a tiny number of hours at a reduced rate."

"You need to do the work but also then prove you can do other tasks that you need to try and get a permanent lectureship. So I volunteer to give unpaid lectures and take on other tasks."

The imbalance of power in the workplace produced by contracts that do not guarantee ongoing hours of work is the critical issue. As noted above, none of these proposals address this issue. Consequently, the right to request will remain a 'paper right' as long as it is not backed up by action to regulate the use of highly precarious contracts.

Workers will simply be reluctant to make a request for fear they will be sacked or will miss out on future work.

UCU believes that the government should ban zero hours contracts. Most individuals on zero hours and short hours contracts work regular hours for their employer, but at any point their employer can reduce or zero down their hours without notice. Workers should have a written contract which guarantees their normal hours of work.

Q 32. Do you think this will help resolve the issues the review recommendations sought to address?

No, for the reasons stated above. If the government wishes to reduce the imbalance of power in the workplace, it must legislate to ban zero hours contracts and other highly exploitative short-term and precarious contracts and it must take action to enable and promote the role of unions in regulating the labour market through collective bargaining.

For example, UCU has been able to tackle issues relating to the underpayment or non-payment of holiday pay in a number of universities recently. In each case, workers were able to raise issues collectively through their union, the union raised the issue collectively with the employer and negotiated a collective solution which was then communicated to all staff, raising awareness of workers' rights and entitlements in the process. Similarly, recent agreements that have moved staff off zero hours contracts and onto proper employment contracts have been able to bring staff into occupational sick pay schemes and led to workers receiving proper sick pay. In addition to state enforcement of entitlements,

government must recognise the key role of unions and collective bargaining in ensuring decent standards of work and must remove obstacles to union organisation.