

Guidance for UCU branches in relation to implementation of government immigration rules.

The points based immigration system launched by the UK government in 2008 introduced new restrictions on workers and students entering the UK from outside the European Economic Area (EEA). This created a number of obligations for post-16 education institutions, restricting their ability to recruit and retain international staff and introducing new monitoring requirements in relation to international students. UCU remains strongly opposed to the points based system, which, we believe, discriminates against non-EEA nationals and damages the relationship of trust between staff and students.

The new immigration regime is having a damaging impact on the international reputation of UK education. International students face stringent financial requirements and are now subject to quotas which make it increasingly difficult to enter the UK educational system. International student numbers have dropped and potential applicants are now being put off by the message that they are unwelcome and by reports of the discriminatory treatment that will face them if they come to the UK.

International students bring widespread benefits to the UK. The government inclusion of them in their immigration number controls is at great cost to the UK. UCU strongly believes that international student numbers should be removed from the government calculations of its migration targets. This is a view shared by sector bodies, and also the chair of five cross-party parliamentary committees who wrote to the prime minister in January 2013 requesting that international students be removed from net migration targets. Education institutions across the UK should be focusing on the campaign to remove students from these arbitrary numerical controls

The Points Based System

Foreign nationals are now categorised as belonging to five levels or tiers:

- Tier 1 Highly skilled individuals
- Tier 2 Skilled workers with a job offer
- Tier 3 Limited numbers of low skilled workers
- Tier 4 Students
- Tier 5 Youth mobility and temporary workers

For FE and HE institutions, the system pertains mainly to highly skilled staff (Tier 1), staff who are skilled workers with a job offer (Tier 2), students (Tier 4), and sponsored researchers (Tier 5).

This also involves a licensing system for all educational institutions wishing to accept international students, leading to the vetting of educational institutions by the UK Border Agency (UKBA) and Home Office. Monitoring duties are imposed on all sponsoring institutions, applying to all non-EEA students and staff and requiring reporting to the UKBA.

According to the UKBA:

"Under Tier 4 of the points-based system, all sponsors receive an 'A' or 'B' rating. The new Highly Trusted sponsor category is a further segmentation of this sponsor rating system. It is designed to identify those sponsors who have the highest levels of compliance with their sponsor obligations, and whose students are showing the greatest compliance with the terms of their visa or permission to stay."

UCU issued guidance for branches and members affected by the implementation of this new system in 2009. This can be found here:

<https://www.ucu.org.uk/?mediaid=3566>

Furthermore, UCU commissioned a report on the impact of the new system in the post-16 education sector to inform its campaigning on the issue. The report contains excellent examples of the impact of PBI on international academics and students which branches can use in local campaigns. This can be found here:

<https://www.ucu.org.uk/?mediaid=5816>

Developments since 2010

Since the election of the coalition government in 2010, there have been a number of changes to the system, introducing further restrictions, and increasing the burden on institutions. This includes the imposition of a cap on the number of non-EEA migrants permitted to enter the UK.

The immigration cap in place since March 2011 has the following consequences:

- All educational institutions wishing to bring in international students or staff must hold 'Highly trusted sponsor' status, tightening the vetting power of the UKBA over the educational sector;
- International students on courses shorter than 12 months can no longer bring dependants into the country;
- The scrapping of the Post-Study Work Scheme, no longer automatically allowing non-EEA graduates to work in the country for two years after the end of their studies;

- An average 15% cap on the 'Certificates of Sponsorship' delivered to educational sponsors. This affects institutions' ability to choose staff according to their academic and research priorities, forcing them to work within UKBA 'quotas' instead and restricting their academic freedom.

This tightening of restrictions was followed in August 2012 by the UKBA decision to revoke the 'Highly trusted sponsor' status of London Metropolitan University (a decision reversed in April 2013), which increased an atmosphere of paranoia among many institutions, fearful of similarly losing their 'highly trusted' status. Many thus responded by introducing more heavy-handed procedures for monitoring the performance, behaviour and activity of international staff and students.

These procedures impact not only on international staff who are subject to monitoring but to all staff requested to implement procedures to monitor international students. This includes monitoring of attendance and performance (often against arbitrary benchmarks that do not apply to UK/EEA students).

UCU is opposed to the immigration cap and the restrictions it places on international staff and student recruitment.

Impact on Duties of Staff employed in FE and HE sectors

The new points-based system meant that employers applying for sponsorship from the UKBA had to appoint a number of key staff responsible for maintaining records on sponsored staff and students.

However, in practice, much of the day-to-day responsibility for monitoring staff and students and ensuring that their records are kept up to date has fallen upon existing academic and related staff members, for whom these might well constitute new duties. These duties included: publishing or making available registers of attendance of students in classes or lectures; being asked to assist in immigration checks on members of staff and students by making copies of visas in passports and sending them to personnel departments; monitoring and enforcing separate reporting mechanisms for international staff and students; international staff being asked to complete an online diary or regular report of activities, or comply with other monitoring procedures.

Checking student or staff documentation may be an existing duty for some staff (e.g. academic related staff in HE), while the taking of student attendance registers and central reporting of attendance may be a normal part of the duties of teaching and academic staff. In some cases, these were introduced as new duties for staff following the introduction of the new system in 2008 or the further tightening of procedures after 2010. This has also included the introduction of separate procedures for the attendance monitoring of international students and staff and other separate checks. A number of institutions have sought to address concerns about discriminatory treatment by introducing more rigorous

attendance monitoring and checks for all students.

UCU policy - key principles

1. Where members are asked to implement separate monitoring procedures for international staff and students, branches and local associations should remind institutions, in line with UCU policy that differential treatment of students or staff due to their place of origin, nationality or citizenship may amount to discrimination on the grounds of race. This is unlawful under the Equality Act (2010).
2. Branches may wish to consider referring the institution to the General Duty of the Public Sector Equality Duty to ascertain whether the college/university has considered its equality obligations properly in policy formulation with regard to overseas staff and students (*see appendix 1*). See also UCU guidance on the website:
<http://www.ucu.org.uk/index.cfm>
3. To operate a system of targeted monitoring of students or staff would make UCU members complicit in a discriminatory process, and potentially open to legal challenge. A mistaken confirmation of another person's identity or eligibility by an individual employee could trigger legal proceedings against that member of staff.
4. The confirmation of another person's identity on the basis of official documents, and the declaration of satisfaction regarding their right to residency or employment, are difficult judgements that require substantial training and experience.
5. UCU members are generally not trained to assess the legality or otherwise of documents relating to nationality nor can they be held responsible for the robustness or otherwise of the monitoring system that the institution has imposed.
6. Contracts generally do not include responsibility for immigration monitoring, which is part of the work of the UKBA, and staff cannot, under the terms of contracts, be asked to act in that capacity. To comply with a request to operate such a system would constitute, potentially, an agreement by individual staff to the alteration of our contracts to include monitoring for immigration purposes. UCU members are not contracted as immigration officers for the UKBA.
7. There are highly damaging educational consequences that will result from this process, including deterring overseas students and overseas colleagues from coming to the UK. Potentially creating a climate of suspicion between students and students and between staff and students. Students and staff need to have a relationship of trust and mutual respect and this will be undermined.
8. An instruction for staff to undertake 'policing' activities in relation to their students could create a climate of hostility towards staff undertaking these activities may also put the safety of staff at risk.
9. Institutions should be reminded that the UKBA wrote to HE sector bodies in February 2013 (*see appendix 2*) clarifying that institutions were not obliged to implement separate monitoring systems for international students or to introduce physical checks in order to comply with UKBA rules.
10. The letter dated 15 February 2013 clarified that the UKBA does 'not prescribe a

particular monitoring or record-keeping system due to the number and diverse range of education providers licensed under Tier 4' and that UKBA attendance monitoring policy 'does not automatically require sponsors to create separate monitoring systems for international students.' As long as HEIs are operating sufficient system procedures to monitor student attendance and engagement with their studies, separate procedures for international students are therefore not required.

11. Institutions sponsoring international students are no longer required to inform the UKBA when a student misses a number of expected contacts. However, the UKBA needs to be informed where the institution has withdrawn sponsorship from the student, as a result of the student no longer engaging in their studies either through the student withdrawing from their studies or the college/university removing them.
12. Where institutions go beyond what is required by UKBA rules in monitoring and checking international students, they are not only engaging in discriminatory behaviour but also risk damaging the international reputation of the institution and becoming a less attractive option for international students seeking to study in the UK (international students may well choose which institution to study at on the basis of which institution has the least draconian and discriminatory procedures for monitoring their attendance and engagement with their studies).

Advice to branches

1. UCU branches and LAs are advised to make the above positions clear in discussions with the employers, while expressing understanding for the difficult position in which the university/college has been placed. Branches/LAs should encourage their employers to work with them to campaign against this arbitrary cap, and remind them of the damage it is causing.
2. Where institutions seek to implement separate attendance monitoring procedures or physical checks for international students, branches/LAs should refer institutions to the letter of 15 February 2013 from the UKBA which states that there is no requirement for separate monitoring systems for international students or physical checks.
3. Where individual members of staff are requested or instructed to undertake any new duties they should be aware that refusal to undertake a reasonable request might leave them open to disciplinary action or to a charge of taking unprotected industrial action. This is why the issue should be first discussed in your branch and raised as a collective issue with management.
4. Members should not, however, engage in any discriminatory monitoring of student attendance or activities directed at any particular category of students. This includes doing nothing discriminatory at the stage of registration or enrolment in the first week. Such requests should be referred to the local branch/LA, and urgent clarification sought from the employer by the branch/LA.
5. Branches/LAs should raise the discriminatory impact of any such monitoring with the employer, and the appropriateness and reasonableness of any requests to undertake such monitoring in relation to Equality legislation, referring to the Equality Act (2010)

and the Public Sector Equality duty set out therein.

6. Branches/LAs are urged to debate this issue in the process of formulating local policy in accordance with national policy. Discussions may be facilitated with input from head office or the regional office. Members' meetings should be organised to discuss a collective response. The advice of the UCU Regional Office should be sought as part of their deliberations.
7. All branches/LAs should take the matter of the security of themselves, their colleagues, all students, and university/college property very seriously. Should there be any suspicion of a threat to any of these, such suspicions should be reported immediately.
8. Many members will already be involved in the making and keeping of attendance records on students for educational and welfare purposes in respect of students for whom they have responsibility such as being part of a tutor group. All such duties are entirely proper, within the terms of our contracts, and should continue.
9. Members should follow their normal practice for reporting attendance and should not alter the frequency of reporting in response to the requirements of the UKBA. Any and all alterations should be made only on the grounds of educational and welfare benefit, as in the normal course of events.
10. Members should not engage in discussions about the implementation of mechanisms of monitoring that are discriminatory, as this might imply an agreement to the alteration of one's contract of employment to include such responsibilities. This includes discussions about appropriate monitoring points during the year.
11. Any member who faces a legal or professional charge of discrimination (from a student or from a member of staff) should they have intentionally or inadvertently been part of this process, should immediately contact their UCU representative, and should not respond in any way until the appropriate advice has been secured.
12. Branches/LAs should request that management undertake an assessment of the impact of any new procedures put in place to implement government immigration policy on staff contracts, workload, health and safety and compliance with equality legislation. The previous UCU advice on Points Based Immigration includes model letters that branches/LAs can adapt and send to management in order to raise these questions and request impact assessments. See: <https://www.ucu.org.uk/?mediaid=3566>

Appendix 1

The Equality Act (2010)

The general equality duty is set out in the Equality Act 2010 (the Act). In summary, those subject to the equality duty must, in the exercise of their functions, have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

Appendix 2

Sponsor Compliance Unit

PO Box 3468

Sheffield

S38WA

ATTENDANCE MONITORING AND RECORD-KEEPING OF INTERNATIONAL STUDENTS

We recently met to discuss attendance monitoring and student engagement with their studies. I agreed to clarify our expectations in writing so that you could then share this with your members.

Attendance Monitoring

The fundamental principle of the Points Based System is that those who benefit from immigration must play their part in controlling it. The intention of the Tier 4 attendance monitoring policy is to ensure that students who have been given permission to come to the UK to study continue to do so. We expect all sponsors to have a system in place to continually monitor student attendance that enables you to identify when a student has stopped studying.

We deliberately do not prescribe a particular attendance monitoring or record-keeping system due to the number and diverse range of education providers licensed under Tier 4. We understand that policies and systems are likely to vary between institutions and each sponsor's arrangements should be appropriate to its own circumstances.

Our attendance monitoring policy does not automatically require sponsors to create separate monitoring systems for international students. Although the implications of non-attendance may be different for international students due to their immigration status, the requirements for Tier 4 students can be incorporated into existing policies and systems for all students, as long as these are sufficient to meet the monitoring requirements. It follows therefore that if HEI processes are already sufficient to meet the Tier 4 requirements through established academic contact points, then HEIs do not necessarily need to consider introducing physical checks in addition to and separate from these.

Our compliance officer network is starting to collect examples of systems that meet our requirements with the intention of producing detailed case studies and sharing these with the sector over the next few months.

Compliance Visits

The fundamental questions that we consider when looking at a sponsor's attendance monitoring arrangements are: whether students we have given permission to come to the UK to study at your institution are continuing to do so and whether you know that they are

continuing to attend.

Our compliance visits will focus on three main lines of enquiry when considering attendance monitoring arrangements:

1. Is the individual continuing to study at an institution?
2. Is there a robust policy and process in place to monitor continued engagement with studies?
3. Is this process being followed in practice?

Reporting Non-Attendance

We are aware of concerns within the sector about what sponsors need to report to us and when they need to report it in order to remain compliant. I can confirm that we no longer require you to report to us when a student has missed 10 expected contacts. During 2012 we changed the Tier 4 reporting requirements so that we only require you to notify us at the point that you withdraw sponsorship.

Sponsors should notify us that a student is no longer attending within 10 days of deciding that the student has stopped engaging and that you wish to withdraw sponsorship or at the next contact point after you have made the decision to withdraw sponsorship if you are highly trusted and have chosen to make two checkpoints during the year. This could be a number of weeks or months after you first started to chase a student for not attending. As a result of this concern we are currently re-writing the relevant section of our Tier 4 policy guidance for sponsors on reporting students who do not maintain contact. This guidance will be available very shortly on the UK Border Agency website and we will let you know when it is published.

Future work

I am keen that we improve the support we provide to sponsors and want to work with the sector on a number of areas. As part of a wider agenda on co-regulation a senior steering group has been established, which brings together representatives from the relevant government departments and the sector to address key issues. More specific information on this will be communicated by the steering group shortly.

We are setting up a dedicated team of compliance officers for Higher Education Institutions.

This team will develop a detailed working knowledge of the sector which should help to improve the consistency of audits. This team will consider how we provide written feedback to sponsors following an audit where no concerns were identified.

Finally, we will continue to work closely with UUK to support future workshops on sponsor obligations and to work with sector agencies to agree a series of principles around

attendance monitoring.

I hope this provides the clarification that you and your members need. Please get in touch if I can help with anything further.

I am copying this letter to the Equality Challenge Unit and the National Union of Students.

Yours sincerely,

George Shirley
Head of PBS Sponsorship

