

# **The Use of Zero Hours Contracts in Further and Higher Education**

## **Introduction**

UCU has a clear policy against the use of zero hours contracts.

We had been aware for some time, anecdotally, that the use of zero hours contracts within the UK Further and Higher Education sectors was growing. Whilst we knew about the impact of these types of contracts on our members, the official data available in the sector was insufficient to identify the scale of the issue.

What we did know was that according to the recent Workplace Employment Relations Study, the use of zero hours contracts in the Education sector has increased ten-fold since 2004.

In Higher Education we also knew that UK HEIs were reporting to HESA they employed 181,385 academic staff (2011/12) and further that they employed 82,045 staff on 'atypical' contracts – defined by HESA as "those with working arrangements that are not permanent, involve complex employment relationships and/or involve work away from the supervision of the normal work provider". However, it was impossible to know from this data how many staff were being employed on zero hours contracts.

At its meeting in May 2013, UCU's Higher Education Sector Conference passed a motion agreeing to undertake research to gather data on the use of zero hours contracts in the sector.

We approached UCEA to see if there was any possibility of undertaking joint work to gather that data but they were unable to commit to this.

Therefore on 1 July 2013 UCU sent a Freedom of Information Act request to every UK HEI asking questions about the use of zero hours contracts at the institution.

In Further Education workforce data is not mandatorily collected. The voluntary survey of Staff Individualised Records which some 70% of colleges have taken part in the past does not collect or publish information on zero-hours contracts.

UCU has raised the issue of casualised employment contracts and specifically zero-hours contracts as a part of its wage claim to the Association of Colleges (AoC) in each of the last two years. The AoC conduct negotiations for a recommended but not mandatory pay

award for their member colleges in England and specifically made the following recommendation as part of their 2011/12 final offer:

*"The AoC in conjunction with the Joint Trade unions of the National Joint Forum (NJF) wish to take this opportunity to remind Colleges of the Joint Agreement on Guidelines for the Employment of Part time employees in education and the particular benefits of employing staff on fractional contracts. The use of fractional contracts for the employment of part time staff is a positive method (way) of minimising the effects of unintended discrimination against staff in respect of sex, ethnicity and age, whilst also meeting the requirements of the Part-time Workers Regulations 2000."*

And in 2012/13:

*"with reference to zero hours contracts, AoC will re-iterate the recommendations of the Joint Agreement on Guidance for the Employment of Part Time Employees in Further Education."*

A copy of the FE England Joint Agreement on Guidance for the Employment of Part Time Employees in Further Education is attached to this submission.

Specifically the agreement recommends at Clause 13:

*13 Variable hours contracts of employment*

*13.1 Both sides recognise the value to colleges of the employment of variable hours contracted employees to meet fluctuations in demand for work of a particular kind. It is desirable that such contracts should specify a minimum of contracted hours.*

*13.2 Both sides recognise the importance of giving employees with variable hours contracts of employment security in employment and equal treatment.*

Clause 14 of the agreement also describes examples of types of instances where we accept that fixed-term contracts maybe necessary to provide flexibility and cover for specific and discrete projects or units of work.

The Further Education trade unions have always taken a realistic and practical approach to the need for flexibility in the delivery of Further Education. UCU has negotiated local agreements in many colleges that provide both a level of employment security and flexibility to the employer and safeguards for staff guaranteeing minimum hours and fair transparent mechanisms to vary contract hours upwards and downwards.

Despite these agreements local and national and on-going dialogue with the Further Education employers body, the AoC, we believe the use of zero-hours contracts to be widespread and growing in Further Education.

With no other viable method for gathering data on the use of zero-hours contracts in Further Education on 3 July 2013 UCU sent Freedom of Information requests to 275 Further Education Colleges in England, Wales and Northern Ireland. (UCU does not have constitutional coverage for Further Education in Scotland)

## **The Freedom of Information Requests**

In the requests we decided to narrow the questions to zero hours contracts only – rather than including other forms of casualised contracts. There is no single definition of a zero hours contracts and we therefore asked for data on the use of contracts under which the employer has no obligation to offer work and guarantees no minimum hours of work. In Higher Education we asked about teaching and research staff – and in the older (pre-92 institutions) we also asked about academic related staff i.e. all staff in senior roles who are not directly engaged in the provision of teaching and / or research such as administrative, computing, library and other university services staff. In Further Education we asked about lecturer/teaching staff and teaching associate staff.

In addition to wanting data about the numbers of such contracts in use we also wanted information on how such contracts are used in the sector and so we also asked questions about the numbers of staff who were, or had been, without work under their contract in any month over the previous year. We also asked those institutions who did not make use of such contacts how they managed their need for flexibility in the workforce.

The following questions therefore made up our Higher Education FOI request:

We ask that you supply the following information in relation to your institution:

2. The total number of teaching staff employed on zero hours contracts
3. The number of such teaching staff who currently have no work allocated
4. The number of such teaching staff who were offered no work in at least one calendar month since October 2012
5. The number of research staff employed on zero hours contracts
6. The number of such research staff who currently have no work allocated
7. The number of such research staff who were offered no work in at least one calendar month since October 2012
8. The number of academic-related (AR) staff employed on zero hours contracts
9. The number of such AR staff who currently have no work allocated
10. The number of such AR staff who were offered no work in at least one calendar month since October 2012
11. For the groups above, the period over which hours are offered and agreed e.g. daily, weekly, monthly, per term / semester, annually
12. If you do not make use of zero hours contracts to deliver teaching, research or academic-related services please indicate how you manage the need for flexibility in the provision of such services.

The following questions made up our Further Education FOI request:

1. Does your institution use zero hours contracts to employ any of its staff?

If YES please answer all questions below.

If NO please go straight to Question 9.

For the purposes of this request, please include the use of all contracts for which the employer has no obligation to offer work and guarantees no minimum hours of work – you may not refer to this type of contract as a 'zero hours contract' locally.

2. The total number of lecturer/teaching staff employed on zero hours contracts
3. The number of such lecturer/teaching staff who currently have no work allocated
4. The number of such lecturer/teaching staff who were offered no work in at least one calendar month since August 2012
5. The number of teaching associate staff employed on zero hours contracts
6. The number of such teaching associate staff who currently have no work allocated
7. The number of such teaching associate staff who were offered no work in at least one calendar month since October 2012

By 'teaching associate' staff we mean all staff that are employed in roles that do not encompass the full range of teaching duties of a lecturer. These staff are sometimes employed on 'non-academic' contracts and may include jobs described as assessors, trainers, instructors and tutors – you may use other titles locally to refer to these roles.

8. For the groups above, the period or units in which work is offered and agreed e.g. hourly, daily, weekly, monthly, per term / semester or annually
9. Please indicate other ways in which you manage staffing in relation to the need for flexibility in the provision of delivering teaching and associated functions.

We also asked institutions in both sectors to supply a copy of any relevant policy on the use of zero hours that they used or to provide a link to any such policy if it is publically available on their website.

## **The Findings**

### **Higher Education**

In all we sent requests to 162 HEIs across the UK.

At the time of writing we have had replies from 145 institutions – 3 of whom have refused to provide the data – either because they do not hold it (2) or because of the cost of compiling the data (1).

17 institutions (10.5%) have so far failed to respond to the request.

The rate of return is therefore 89.5%.

Whilst most institutions were able to say whether or not they used zero hours contracts there remained some uncertainty about the definition of such contracts.

Most institutions using zero hours contracts were able to provide the numbers of staff on such contracts but few were able to give reliable data on the numbers of staff without work currently and those who had been without work in any calendar month since October 2012. We had assumed that the need to operate PAYE in real time would have made such data readily available but it appears that is not the case.

**In total, 75 (52.8%) of those institutions responding stated that they did use zero hours contracts for teaching, research and / or academic related staff - 67 (47.2%) stated they did not.**

Although the pre-92 sector had a slightly higher incidence of the use of zero hours contracts (58.3% use compared with 48.8% in the post-92 sector) there appeared to be no discernible pattern on the use of zero hours contracts across the sector.

In total, the number of staff identified by 75 HEIs as working on zero hours contracts is as follows:

	<b>Total Number</b>
Teaching staff	21636
Research staff	915
Academic-related staff (pre-92s)	2174
All academic	22551
All (Teaching/Research/AR)	24725

The total number of academic and related staff in an individual institution ranged from single figures to thousands.

<b>Number of zero hours contracts in use</b>	<b>Number of institutions</b>
1-49	22
50-99	6
100-199	12
200-499	16
500-749	9
750-1000	4
1000+	5

In an attempt to determine what percentage of academic staff are on zero hours contracts we have compared the figures provided by individual HEIs to the number of teaching only,

the number of teaching and research and the number of research staff employed according to the HESA staff data 2011/12.

In some institutions, the number of zero hours contracts is actually higher than the number of academic staff returned to HESA<sup>1</sup> so the following data should be treated with some caution.

However, using the data that we have:

- **Those teaching on zero hours contracts constitute 47.2% of all teaching only staff.**
- **Those teaching on zero hours contracts constitute 15.5% of all teaching staff (HESA figures for both teaching only and teaching and research staff).**
- **Those on zero hours contracts engaged in teaching or research constitute 12.4% of all academic staff.<sup>2</sup>**

The percentage of zero hours contracts compared with the HESA data for teaching only and teaching and research staff ranges from less than 1% to in excess of 100%.

When asked over what periods hours were agreed with staff, the majority of respondents indicated that the time period varied – ranging from 1 day to one year. However, 50% stated that for those engaged in teaching the hours were usually set and agreed per term/semester or per year.

We asked those using zero hours contracts how many staff currently had no work allocated:

- 8 HEIs indicated that at the current time all their zero hours teaching staff were without work;
- 10 HEIs indicated that none of their zero hours teaching staff were without work and
- 24 HEIs indicated that between 12.2 and 98.2% of their zero hours teaching staff were without work.

The remainder were unable to answer this question.

Due to the timing of the request (when we suspected that most teaching staff engaged on zero hours contracts would be without work) we also asked how many of those staff had been without work for at least a month since October 2012. Most institutions were unable to supply this data. However, of those that did:

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<sup>1</sup> HESA staff data 2011/12

<sup>2</sup> All calculations by UCU

- 11 HEIs indicated that no zero hours teaching staff had been without work for at least a month since October 2012;
- 6 HEIs indicated that all zero hours teaching staff had been without work for at least a month since October 2012 and
- 22 HEIs indicated that between 6.6 and 99.4% zero hours teaching staff had been without work for at least a month since October 2012.

The remainder were unable to answer this question.

Those HEIs not using zero hours contracts used a range of alternatives to provide the flexibility that they required. Some of these alternatives (for example bank contracts and variable hours contracts with very low guaranteed minimum hours) offered staff little if any benefit over a zero hours contract.

However, the majority of the 67 institutions who indicated that they did not use zero hours contracts managed their need for flexibility without recourse to contracts that offered no security or guarantee of income. Many made use of fixed-term contracts for projects of fixed duration. Others used variable hours with a guaranteed minimum such that staff could be offered additional work as and when the need arose. Some use part-time and term-time only contracts. Some simply stated that they planned ahead and made use of staff resources that they already had.

Despite the majority of respondents using zero hours contracts for academic and related staff in their institutions only a handful of respondents had policies on their use.

### **Further Education**

We sent 275 requests to Further Education Colleges across England, Wales and Northern Ireland. At the time of writing we have had responses to our request from 200 colleges.

75 Colleges have so far failed to respond to our request.

The rate of return is therefore 73%.

Again while colleges that responded were able to indicate whether they used zero hours contracts or not there also remains the issue of clarity about the definition of a zero hours contract within the education context where blocks of work maybe confirmed as per a timetable however there is no overall on-going commitment to employment. On 2 September UCU met with the AoC and agreed to conduct further investigative work to verify the definition understood by some of the larger users of zero-hours contracts as reported in the responses which we have shared with the AoC.

**In total 121 (60.5%) colleges said they do use zero-hour contracts, while 79 (39.5%) colleges said they do not.**

Again in Further Education there was no discernible pattern in the use of zero hours contracts according by the type or context of college e.g. inner city general FE, predominantly 14-19, vocational mix, agricultural or overall size.

In total the numbers of staff identified as working on zero hours contracts from the 121 responses are:

- **Teaching Staff** **10 868**
- **Teaching Associate Staff** **2 739**

<b>Number of zero hours contracts in use</b>	<b>Number of institutions</b>
1-49	40
50-99	24
100-149	25
150-199	9
200-299	6
300+	9

Unfortunately there is less official workforce data published for Further Education. In order to determine an estimated percentage figure for the use of zero hours contracts for teaching staff in Further Education we have used estimated teaching staff headcount figures which have been sourced from global data from the LSIS FE College workforce data report for England 2011/12.

In the small number of institutions where we have been unable to ascertain for ourselves the total number of teaching staff we have used other sources including report and accounts. The bulk of UCU’s membership is amongst teaching staff and our data is more robust for this group so we have focused our analysis on this group.

For the 120 colleges that use zero hours contracts to employ teachers we estimate:

- Total teaching staff** **35 093**
- Total teaching staff on zero hours contracts** **10 868**
- 30%**

To gain an understanding of the scale of use of zero hours contracts in colleges from the raw numbers we have used our estimated teaching staff headcount figures to determine the ranges of percentage of teaching staff employed in this way.

<b>Estimated percentage of teachers on zero hours contracts</b>	<b>Number of institutions</b>
1% - 9%	33
10% - 19%	17
20% - 39%	26
40% - 59%	20
60% - 79%	7
80% -100%	8

In the cohort of colleges using zero hours contracts the duration of the units of work staff are engaged for varied widely however a large number were at the lower end employing staff on an hourly basis.

<b>Duration of units of work</b>	<b>Number of institutions</b>
Hourly	62
Mixture of Daily/weekly/Termly	49
Annually only	6

Of colleges using zero hours contracts 62 indicated that over 50% of such teaching staff were either currently not offered any work or had not been offered work for at least a one month period in the last twelve months. Fifteen colleges responded that none of their zero-hours staff went without work for a whole month in the last twelve months.

We asked colleges to indicate other ways in which they manage staffing in relation to the need for flexibility in the provision of delivering teaching and associated functions. In the almost 40% of colleges that said they do not use zero hours contracts a variety of alternative contracts and strategies have been to provide the level of flexibility including:

- Flexible working procedure that is open to all staff
- Effective Management of change policy
- High levels of employee communication and engagement with staff
- Variable hours contracts with minimum hours guarantees
- Annualised hours contracts with built in cover provision
- Using agency workers for emergency unplanned cover
- Effective management and planning of curriculum and staffing
- Use of part-time fractional and fixed-term contracts

We asked colleges to provide copies or links to any relevant policies on the use of zero hours employment contracts that were used in their institutions. Although 121 colleges use these contracts only 14 (12%) of these indicated that they had a policy guiding the use of zero hours contracts.

## **UCU position on Zero Hours Contracts**

For staff, zero hours contracts present huge drawbacks in comparison to permanent regular work:

- There is no guaranteed level of regular earnings that provides any certainty over meeting bills or planning for the future;
- Regular patterns of work can be reduced to zero at a moment's notice with no right to redeployment or other redundancy avoidance measures and no right to redundancy pay;

- In cases where staff are required to respond to calls to attend work at short notice, there is the additional problem of arranging care for dependants and the ensuing disruption to life outside of work;
- Many staff on such contracts are denied employee status which leads to fewer and less favourable employment rights;
- Irregular and erratic periods of work make it difficult to understand and to claim various forms of benefits;
- Teaching staff know that they will be without income throughout the holiday periods, including the long summer break without knowing if / when they will be allocated work in the new academic year;
- Zero hours contracts have also shown themselves to be more open to abuse than regular permanent contracts.
- Constant need to please the employer to secure future work can affect staff morale and perceived or real ability to raise issues of real concern in the workplace.

The consequences for employers are just as potentially damaging:

- There are no guaranteed staff for whole areas of the institution's service provision;
- The use of such contracts will affect the employers ability to attract and retain high quality staff;
- Potential reduction in continuity and quality of services provided;
- The exclusion of such staff from robust recruitment / induction / training / CPD / appraisals has the potential to affect the quality of service provision.

In short, zero hours contracts are not compatible with developing a professional workforce delivering quality services.

## **How can employers justify the use of zero hours contracts in HE and FE?**

The evidence from our FoI requests suggests that zero hours contracts give infinite flexibility to the employer even though the majority of work is planned over a longer period – for teaching staff usually a semester or a year. It is difficult to understand this miss-match between the flexibility required and the flexibility provided by zero hours contracts to the detriment of those staff employed on such contracts. If a test of objective justification was applied to any of these cases could any of the employers meet that test?

As our survey has revealed, there are numerous ways in which both HEIs and FE Colleges can achieve flexibility without recourse to the mass casualisation of staff that the spread of zero hours contracts represents.

In fact, nearly half of all HEIs and almost 40% of Further Education Colleges do not make use of such contracts, as previously stated, there appears to be no discernible pattern of which institutions make use of such contracts and which do not. All those institutions not

using zero hours contracts find ways of offering secure employment to their staff while finding other ways to manage the need for flexibility.

We can therefore only conclude that the reason such contracts are used so widely is an attempt on the part of the employers to avoid the legislative requirements relating to fixed-term and part-time contracts. This includes avoidance of enhanced sick and maternity pay, less favourable treatment, the right to a permanent contract after 4 successive years of work, duties to avoid redundancy, redundancy payments and unfair dismissal claims.

Employers may also 'benefit' from a compliant workforce too afraid of the consequences to raise any concerns including those relating to health and safety, bullying and harassment.

## **Moving Forward**

For all the reasons listed above, UCU does not believe that it is appropriate to use zero hours contracts to deliver teaching or academic and related services in the HE or FE sectors.

We would like to work with all employers to maximise the security of employment for all our members and to agree ways in which the requirement for a certain level of flexibility can be met.

We have successfully negotiated policies and agreements with large numbers of HEIs and FE Colleges on the use of fixed-term and variable hours contracts where the circumstances for such use are clearly defined and the maximum security possible is offered to staff – e.g. through the use of a minimum hours guarantee.

We cannot accept that it is appropriate for the core business of HEIs or FE Colleges to be delivered by thousands of staff who have no guarantee of income from one month to the next.

We will continue to lobby our employers' associations and politicians to take a clear stand on the exploitation of workers through the use of zero hours contracts and to introduce legislative protection against such exploitation.

In the meantime we will applaud those institutions who have striven to improve the security for their staff and who have made a decision not to use zero hours contracts and will continue to campaign to persuade the others to do likewise.