

## **WITHOUT PREJUDICE**

**This text is offered as part of a potential composite JNCHES settlement for 2019-20. If agreed, UCEA would incorporate the text below as an alternative to the text presented at 2.1, 2.2 and 2.3 in the offer originally made in April 2019. We would expect that the trade unions would consult with their members recommending this revised offer as the best achievable to conclude the 2019-20 JNCHES round and end all current industrial action.**

### **Introduction**

This agreement addresses concerns regarding fair and equitable employment arrangements, security of employment, workloads, and gender and ethnicity pay gaps. It sets out some UK-wide principles and the importance of the full involvement of trade unions in line with local consultation or negotiation arrangements to facilitate the implementation of the principles set out in this document. It is further expected that there be will local evaluations of progress on at least an annual basis and a sector-wide review of aggregate outcomes to take place at the scheduled autumn meeting of JNCHES.

We expect, within three months of ratification of this agreement, that using established local machinery, including proposals from both employers and local trade unions, the parties locally will initiate a timetable for a programme to address and implement actions based on the principles set out in this statement. This approach will underpin work in all areas discussed below, to support local implementation

The parties at New JNCHES acknowledge that HE sector employers want to provide work environments where all people feel valued, treated fairly and with respect. Sector institutions hold the responsibility as autonomous employers and distinctive institutions to develop solutions and approaches to their working environments which are relevant to their specific circumstances. They would all expect to do this in a way that listens to their employees and involves their employee representatives. In order for this to be possible, sector institutions also look to their employee representatives to work constructively and collaboratively with them: in identifying the issues which are most relevant and important to the whole workforce; in considering the broad effects for different groups or impacts on other policy aims, being mindful of unintended consequences; and in developing mutually acceptable approaches and solutions and supporting their implementation as appropriate within the context of an individual institution.

The trade unions have raised several issues around working conditions within the national pay bargaining arrangements. We acknowledge that the matters raised and which we cover here can and do intersect and that positive outcomes – including on pay - should continue to be achieved through actions being taken by institutions to ensure fair and equitable working conditions. The national pay bargaining arrangements in New JNCHES relate to pay and specifically the uplift in values of the national pay spine. The other matters around working conditions and contractual arrangements are important but local and do not fall within the scope for UCEA to conclude national collective agreements.

These are, however, important matters and the parties have concluded that there is merit, in the context of settling the bargaining round for 2019-20 and avoiding these becoming matters of dispute in future, of some sector-level statements and forward-focussed actions on the three components.

Sections 4 and 5 of this text set out respectively the expectations for how individual institutions would address the issues in their specific contexts, and the actions that UCEA and the national trade unions will take forward to examine sector-level progress.

## **1. Achieving fair and equitable employment arrangements within HE institutions**

The contractual arrangements offered to employees will be for individual institutions to determine and we expect them to develop approaches that fit the issues and needs they have at each institution.

### **1.1 Within this we set out some expectations around HEIs' employment practices:**

We would expect indefinite contracts to be the general form of employment relationship between employers and employees in HEIs. There will however be some legitimately defined reasons in any organisation for offering some fixed-term and limited casual employment arrangements.

We would expect that employees - whether full-time, part-time, term-time or hourly-paid - would only be placed on fixed-term and casual contracts where this is justified by objective reasons. Where fixed-term and hourly paid contracts are being used it is important that staff on these contracts feel valued and fairly treated. As part of this, individuals employed other than for very small hours and/or short-term work, should be given:

- the same opportunities as other staff to be supported and use services to assist their better performance, such as staff development, training, appraisal and careers advice, as appropriate to the length of their employment period;
- similar terms and conditions of employment to those in comparable jobs with indefinite employment in the institution unless the difference can be justified, in accordance with legislation, for necessary and appropriate objective reasons;
- information on, and the opportunity to apply for, more secure positions that become available in the institution;
- a process for review to consider, as appropriate, indefinite employment on fulltime or fractional contracts.

### **1.2 Actions within HE institutions Institutional level reviews:**

As part of their legitimate role, we expect staff representatives in institutions to raise with their institutions matters regarding the operation of hourly-paid, fixed-term and casual contractual arrangements over which they have concerns. We recommend to all HEIs that, where this has not already been done, they undertake a review of their institutional policies and procedures for the engagement of individuals on such arrangements. We recommend that the parties work to agree mechanisms for periodic reviews of these policies and procedures to ensure that the findings remain current and appropriate. It is important that institutions listen to the experiences of their own employees and that these reviews be undertaken in discussion with the institution's recognised Trade Union(s), in line with the approach set out in the introduction.

#### **Use of zero-hours contracts:**

The parties encourage that local discussions take place between HEIs and trade unions with a view to eliminating or phasing out the use of zero hours contracts where possible by establishing alternative flexible employment arrangements. We expect that HE institutions which do use zero hours arrangements will ensure that individuals can, if they wish, request consideration be given to an alternative contractual arrangements that will provide them with more certainty of their working hours.

#### **Fixed term contractual arrangements:**

We would expect that all HE institutions for which it is relevant become signatories to the new Concordat to Support the Career Development of Researchers. As part of this we would expect these institutions to develop their own plans around meeting the Concordat's principles with reference to employment.

We expect institutions to have arrangements to pro-actively identify staff who have held a fixed term contract or succession of fixed term contracts which taken together meet the statutory threshold of 4 years for conversion to ongoing employment. We also recommend that institutions develop policies which seek to avoid an individual, unless to the parties' mutual benefit, being issued with a succession of fixed term contracts.

### **Hourly-paid employment arrangements:**

We would expect institutions to recognise that all work by staff on the New JNCHES pay spine should be appropriately recompensed in accordance with local job evaluation procedures and associated pay and reward systems.

We would expect HEIs to minimise the use of hourly-paid employment to situations which are genuinely short-term and unpredictable or where such arrangements are mutually agreeable to both parties. We recommend that HEIs have arrangements whereby contracts are reviewed for transfer to a fractional contract once an agreed hours threshold is exceeded. We would expect that staff moved from hourly-paid to fractional contracts as a result of such reviews would be assimilated to the appropriate pay spine point in line with local job evaluation procedures and associated pay and reward systems.

We would expect that mechanisms exist for an individual who believes their hourly paid engagement does not provide fair terms for the work expected of them to have such a concern examined.

We expect that when duties associated with supporting students' learning are being offered to an institution's doctoral students, individuals will be given clarity as to the work required and the remuneration for the work they perform, including where this constitutes part of a stipendiary arrangement.

### **1.3 Sector level action**

In order that the parties at JNCHES can develop some shared perspectives on the developments in contractual arrangements at a sector level, we will establish a new joint task and finish group that would:

- a) undertake an examination of the data in the HESA Staff Collection on 'zero hours' and 'hourly-paid' employees, and;
- b) produce a report of the sector-level analysis and findings.

We would also examine such data as are usable/meaningful on protected characteristics. A second tranche of these data will become available in March 2020 and the group would be tasked with examining these two years of data with a particular view to reporting on any observable trends and developments.

This group, when established, will agree its timescale for completion of this work.

## **2. Addressing concerns regarding individuals' workloads, work-related stress, and mental health**

Approaches to workload management will vary between institutions and at times, between faculties and departments within institutions and it is appropriate that HEIs determine their own approaches to managing workloads that are appropriate to their specific contexts. HE sector employers are committed to taking seriously their responsibilities regarding the management of workloads and of stress.

There are shared responsibilities between managers, individual staff, staff representatives and leadership teams in addressing how work is being done and in ensuring that individuals can have manageable workloads, can achieve a healthy work and life balance and can exercise judgement and discretion appropriate to their roles and level of responsibility. We recommend that workload models or equivalent arrangements, compatible with contracts of employment, are established wherever practical across all areas of work.

We expect HE sector employers and local trade unions to define and implement action plans relating to workload and mental health in accordance with the principles set out in this statement.

### **2.1 Within this we set out some actions around HEIs' employment and management practices:**

We expect HE employers and their local trade union representatives to engage in dialogue about establishing a collective approach to concerns that arise relating to stress at work. We note the obligations upon employers inherent in the New JNCHES Pay Framework (2004) principle of Equal Pay for Work of Equal Value. We further note the importance of time allocation as it relates to Equal Pay for Equal Work.

We recommend that HEIs have or develop procedures, relevant to their own institutional contexts, by which they can assure themselves that individuals are being given appropriate and achievable work demands against the expectations of their role and the professional discretion they are expected to exercise.

We expect that HEIs, working with stakeholders including staff representatives, will explore aspects of their cultures and behaviours that may compound the pressures that individuals may be under in their workplaces.

For those HEIs that do not have such arrangements, we recommend that HEIs put in place systems to enable individuals to raise concerns about their workload demands and to have this fairly examined.

## **2.2 Sector-level actions**

### **Stress and Mental Wellbeing:**

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

UCEA and the trade unions, as parties in the HESH Forum, will jointly continue to develop the Stress and Mental Wellbeing resources pack. This may include the sign-posting of case study examples of practices from individual HEIs. While these materials are for HEIs to consider locally to decide upon usefulness and applicability, UCEA and UCU will actively promote the use of the resources pack.

There is also sector-level dialogue established between Universities UK, UCEA and the trade unions which enables high-level discussion of the large number of sector-level 5 initiatives currently being developed to address staff mental health issues. There are two high profile sector frameworks/charters that have been developed with stakeholders over many months, and which have ministerial and Parliamentary backing.

These include the Universities UK refresh of its Step Change framework, which is being renamed “Mentally Healthy Universities” and the Mind “Mentally Healthy Universities” project which has pilots running at 10 HEIs. The learning from this project will be shared across the sector. Additionally, the Student Minds “University Mental Health Charter” was launched on 9 December 2019. The Charter was created with input from thousands of staff and students. As with the Mentally Healthy Universities framework, it also

promotes a “whole university approach” to mental wellbeing structured under four domains – Learn, Support, Work and Live – where the Work domain relates to staff mental health. The Work domain includes several principles of good practice for HEIs. Student Minds is also developing a Charter Award Scheme in 2020, which will recognise and reward universities that promote good mental health and demonstrate good practice.

The parties to HESH, including the HSE, will continue to discuss stress and mental health of HE staff, including with reference to implementation of these frameworks. UCEA will continue to liaise with UUK and the trade unions on development of the staffing domains.

### **3. Closing gender and ethnicity pay gaps**

HE employers are very committed to taking action to seek to close gender – and ethnicity – pay gaps. UCEA’s report ‘Taking action: Tackling the gender pay gap’ examined the extensive work HEIs in all four jurisdictions of the UK are already undertaking to narrow the gender pay gap. The report demonstrates the genuine commitment already shown by HEIs to closing the gender pay gap through focused and transparent actions at institutional level.

UCEA’s pioneering work *Caught at the crossroads*: outlining an intersectional approach to gender and ethnicity pay gaps in HE, which was published in December 2018, has provided a timely stimulation for HEIs considering these issues ahead of the expected statutory ethnic pay gap reporting. We know that HE institutions will welcome further sector-level work where this may support and encourage their work and assist in the sharing of practices.

#### **3.1 We set out some expectations around HE institutions’ approaches:**

Where HEIs identify a gender pay gap (GPG) and/or particular challenges with gender distribution in their workforces, we expect that they will commit to developing programmes of action to resolve these matters. We expect HEIs to work with their recognised trade unions and appropriate stakeholders in both developing and reviewing agreed action plans, which might include issues such as promotions, progression and working patterns, and that stakeholders recognise that institutional plans will need to reflect institutional distinctiveness, size and resources.

We expect HEIs to be transparent about their action plans by making them publicly available.

We expect HEIs to monitor and review action plan outcomes with timescales for this against individual actions / outcomes. We expect that the review of action plans will include data collection and analysis to assist effective monitoring and evaluation. HEIs should share both this analysis and its conclusions with the recognised unions and other stakeholders.

Whilst noting that the GPG issue is not the same as equal pay, we expect HEIs to continue to carry out regular Equal Pay Audits to assure themselves that they do not have pay inequalities and that these are not a contributing factor to the gender pay gap.

We expect HEIs not to duplicate efforts and data analysis for their gender or ethnicity gap work but to use the opportunities provided by the analysis and data produced in following sector and other frameworks such as Athena SWAN and the Race Equality Charter. While recognising the need for confidentiality, as gender pay analysis and equal pay auditing is likely to involve the examination of personal and sensitive data, we recommend that HEIs find ways of engaging with their recognised trade unions in appropriate ways to achieve trust in their auditing processes with regard to the staff the trade unions represent.

We recommend that, where not already under way, institutions place a high priority on work to examine their BAME distribution in the workforce and data on ethnicity pay and on developing plans for interventions that will help them address the issues this highlights. The data analysis should, where possible, use the extended categories for ethnicity, keeping in mind the principles of confidentiality and statistical analysis especially when sample sizes are small.

### **3.2 Sector level actions**

#### **i) A new checklist of actions for HEIs' consideration:**

Whilst acknowledging that actions and interventions identified by institutions are always going to be decided upon in the specific context of the institution, such as in its workforce composition, geography, size and specialisms, the New JNCHES parties will undertake joint work to develop an HE specific 'checklist' of suggestions for areas of employment policy, practice and other themes which institutions might consider in examining blockages and enablers to women's career progression and issues around representation in certain gender dominated roles.



This will build on previous work undertaken through New JNCHES – on ‘Equal Pay Reviews and gender pay gap reporting – Guidance for HEIs’ which was launched in January 2018 and the ‘Taking Action’ report published by UCEA in January 2019. We will draw on examples and case studies from the sector and beyond of interventions which employers believe have made a difference and will set out a broad range of suggestions across the employment experience, from recruitment through to progression and the effect of career breaks.

This will be done through a joint task and finish group whose task will be to develop an analysis alongside potential solutions for HEIs to consider as part of the-checklist materials. This group, once established, will agree a timeline for the completion of its work.

**ii) Further examination of ethnicity pay gap data and actions being taken by employers:**

The New JNCHES parties endorse and encourage the leadership being taken within the HE sector in examining ethnicity pay gaps, ahead of this becoming a legal requirement. In order to be genuinely supportive of such work within institutions, the parties commit to new sector-level joint work which will take the findings of the *Caught at the Crossroads* report and seek examples from both HEIs and employers beyond the sector of how they are taking forward work on closing their identified ethnicity pay gaps.

The task will be to produce a joint report identifying problems across the sector and accompanying analysis to suggest effective potential solutions to those problems. Its focus would be to understand ways in which the actions and interventions may differ from those designed to address the gender pay gap, whether the experiences of staff from different Black, Asian and minority ethnic (BAME) backgrounds are influencing interventions, and the intersectionality with gender.

This work would ideally commence after the current Athena SWAN review is published so that the terms of reference could take into account any significant developments arising from that review. We will set up a task and finish group to undertake this work and this group, once established, would agree a timeline for the completion of its work.

**iii) Improving workforce data**

UCEA and the sector trade unions also agree that they would all issue statements to encourage members/employees to volunteer their protected characteristics information

with their employers - highlighting the value of such information and its importance for future analyses of ethnicity, alongside gender, in pay gaps.

#### **4. Actions at institutional level**

Sector institutions hold the responsibility as autonomous employers and distinctive organisations to develop solutions and approaches to their working conditions and contractual arrangements that are appropriate for their specific context and focus and which reflect the priorities for their workforces. We would expect this to be done in a way that listens to employees and involves employee representatives using established local machinery. Indeed, the recognised trade unions play a crucial role in working constructively and collaboratively within institutions in finding mutually acceptable solutions. The institutional dialogue will select and prioritise the most relevant components bearing in mind the importance of the matter within the institution's workforce. An important consideration will also be whether a component has recently been addressed within the institution or is already under a process of review. We are also mindful of the variation in size and organisational capacity as a factor in how organisations will prioritise or select areas of focus.

The trade unions and staff within institutions will want to have faith and trust in their individual HEIs identifying the relevance of the issues raised in their institutions, then taking action where this is not already in hand and reviewing the outcomes from their actions. Institutional level implementation, and discussions with staff representatives, will need to be evidence-based and data-informed. To this end, institutions will need to provide available and suitable data, subject to any protections of confidentiality for individuals. This will also help inform reviews, which should be undertaken at least annually, undertaken to assess the effectiveness of the actions.

#### **5. Sector-level progress review**

It is not the role of UCEA to use its engagement with the sector trade unions to monitor the actions of individual institutions. While the matters raised are not matters within the scope of the JNCHES arrangements, we are setting out here some activity around sector-level data examination and we note that it may be convenient for some of the activity to be undertaken alongside dates that have been set for the parties to meet as JNCHES.

At a sector level, UCEA and the trade unions will establish arrangements for the examination of progress on the issues through joint publication of aggregate, sector-level data where these are available. It will be agreed whether it is possible to do such

reviews annually or whether a biennial / triennial survey may be more appropriate for some areas of measurement or where there is an absence of existing data. For the matters that the JNCHES parties – UCEA and the five trade unions - take forward through joint task and finish groups; these groups will be charged with agreeing a timeline for the completion of their activities.

There are already a number of activities identified above that will contribute to UCEA and the trade unions being able to take a view on progress at a sector level. These are mentioned below alongside some additional activities:

- The JNCHES parties will undertake an examination of the data in the HESA Staff Collection on 'zero hours' and 'hourly-paid' employees and produce a report of the sector-level analysis and findings. This includes examining such data as are usable/meaningful on protected characteristics and reporting on any observable trends and developments.
- We note the expectations within the new Concordat to Support the Career Development of Researchers around implementation and review, with these responsibilities at sector-level sitting with the Concordat Steering Group. UCEA and the trade unions will use their positions on the Steering Group and contribute to meaningful engagement in sector-level review through both the annual reporting and the major review to be commissioned after three years.
- As an additional activity, UCEA and the trade unions will collect and analyse the overall data on gender pay gap at sector level.
- UCEA and the trade unions will also analyse sector-level data to produce a report on ethnicity pay gaps (taking into account any developments as they emerge on the anticipated statutory reporting framework for employers)

Any relevant issues arising from these aggregate reviews will be discussed at the Autumn meeting of new JNCHES, commencing in 2021, with an initial review of first steps in autumn 2020.