

New permanent contracts for Associate Lecturers at the OU

Introduction

The Open University (OU) is the largest provider for distance learning in the UK with the majority of the teaching provided by over 4,800 staff known as Associate Lecturers (ALs).

The ALs at the OU make up more than 50% of the staffing and has been employed on casualised contracts to deliver online and occasional face to face teaching. There was a clear divide at the Open University between the ALs and 'academic' staff, reflected in the different mode of employment but also in the differing terminology to describe staff, with all non-AL staff categorised as 'internal' thus culturally firmly placing ALs as somehow external to 'normal' staff.

Although this divide was on a larger scale than in many colleges and universities, the differentiation between staff in this way will be familiar to many – think of how 'sessional', 'hourly paid' and 'early career research' staff are often 'other-ed' in the same way.

ALs were employed to teach on particular modules and their teaching patterns could vary from year to year with no guaranteed minimum hours and no access to enhanced redundancy processes / payments if no teaching was available in a particular year. Although the legal position of ALs was unusual, the way in which they were employed and the impact of that precarity is familiar across tertiary education.

Payments for ALs were also highly complex, with no standard multiplier for non-teaching time, with ALs almost permanently on call to students. It was universally acknowledged that ALs worked over the number of hours they were being paid. In addition there was no recognition of ALs as academic staff, no time provided for scholarly activity nor was time adequately funded for CPD and most training was required to be undertaken for free.

The culture of casualisation for this group of staff runs deep and runs through everything, changing these contracts meant renegotiating policies and procedures across the university. It has also meant a cultural shift for the ALs themselves. It's why implementation has been so challenging.

Given how embedded and significant the AL contract was to the OU it is not surprising that it has taken many years to agree and implement a new contract for all ALs. Talks have started and stalled many times – in the end the new contract took 5 years to negotiate and 4 years to fully implement (with the new contract being operational from August 2022).

It was only through the hard work and tenacity of the branch, supported by their UCU regional office, and the ALs themselves, over many years, that we have been able to secure this significant win at the OU.

Whilst the situation of ALs at the OU was unique in some ways, it mirrors the casualisation of staff across tertiary education in many others. So if the OU can do it – why can't all employers?

The elements of the new contract

Commitment and resources - Commitment to improvements and a budget to make those improvements. This was secured early on and was important to ensure that these changes could be properly implemented. When staff have been exploited over many years it is not reasonable to expect changes to bring them into line with their colleagues to be achieved at no cost.

No redundancies / no minimum FTE – at earlier stages management had offered to make improvements on the proviso that the new contract would not be offered to ALs on smaller contracts and creating a requirement for a minimum FTE on transfer to the new contract. At the time this would have resulted in about 3000 redundancies so the branch stood firm and rejected this proposal. Although this led to a stall in the negotiations it has ultimately meant all ALs have been protected and can benefit from the new contract. Now ALs will be able to stay on very small contracts with no requirement that they will have to increase the size of their contract.

The principle of universality – this agreement will apply to every AL in employment with no exceptions.

The principle of no detriment – this means that on transfer no AL will be expected to do more work for the same money nor will they receive less money for the same work.

An open ended single contract – ALs will transfer to an FTE and the University is required to maintain that level of appointment unless there is a serious need to reduce work in a potential redundancy situation. At that stage the new redundancy procedure will come into play. This maintenance of employment will be achieved by appointing ALs to a specific work package that determines the skills of the AL and

the potential alternate modules that an AL can teach, crucially without having to go through an additional appointment process. In addition there will be new duties that can also be used to fill up the required hours should student numbers drop (see document 2 in the agreement at appendix 1).

This ability to manage workloads whilst maintaining agreed hours is underpinned by a skills audit (see document 1 in the agreement).

This is a key element of the agreement. This approach is something we believe could be widely applied across the sector to 'smooth out' changes in student numbers / demand for teaching on particular modules or courses. It could be applied in HE, FE, ACE and Prisons – all who over-use casualised contracts for their teaching and teaching support staff.

However, we also believe this approach could be applied to tackle the endemic casualisation of research staff and address employers arguments linked to external fixed-term funding. It's an approach we've advocated before yet employers have been reluctant to really address this issue. The OU deal offers a glimpse of a future where research staff can be moved between projects and maintain employment without having to be put at risk of redundancy every time one funding source ends.

Towards harmonisation of additional contractual terms - this relates specifically to annual leave where ALs received the statutory minimum of 20 days plus statutory holidays plus closures unlike Academic Staff who are entitled to 33 days plus statutory holidays plus closures. The new contract adds a further 7 days leave to the AL contract which means that whilst we have not achieved parity, we have moved significantly towards it. UCU has made it clear to the OU management that we do not believe this is good enough and we will continue to seek harmonisation in the future.

The introduction of paid time to be spent on self-determined scholarly activity and agreed training. This represents a move towards parity of esteem for AL staff. The idea of time for scholarly activity for ALs was strongly resisted by management and represents a significant win for UCU. We used the guidance set in: https://www.ucu.org.uk/media/9149/Scholarship-in-HE-teaching---UCU-bargaining-support-Feb-18/pdf/ucu_bargaining_scholarship-in-he_feb18.pdf to make our arguments and made it clear that this was a non-negotiable element of the agreement for us. Details are set out in document 3 of the agreement.

A new workload modeller – this has ensured that ALs are transferred over at the appropriate FTE to do the appropriate amount of work. Although it will not entirely solve the problem of ALs currently working for free it will make inroads into this problem and will allow for greater monitoring of overwork in the future. It is

important that agreements include details of how they will be implemented as many agreements that look good on paper have started to unravel when management have started to move staff onto fractional contracts. For full details on how FTEs will be calculated see document 4 of the agreement. The detail in this part of the document is a clear illustration of the amount of thought and consideration that needs to be put into agreements on implementation.

Conclusion

This contract represents a major achievement on the part of UCU and in particular on the part of the branch officers, regional official and AL activists that have worked tirelessly for many years to achieve the agreement. It was won by having a clear campaign and industrial strategy and not allowing management actions to de-rail the negotiations.

The campaign was kept on track by the dedication of the branch, regional office and AL activists and ensuring that information about progress (or lack thereof) was being regular fed back to the branch and in particular the ALs.

The negotiations were held together by the forensic analysis of management proposals by AL branch officers – which often slowed things down but meant that we could be confident that any deal was of benefit to ALL ALs and did not leave anyone behind.

There were many twists and turns along the way and the negotiations over that extended period are a good example of 'expect the unexpected'.

It has also been vital to manage expectations of members over the long course of these negotiations. Whilst no-one would have wished for the negotiations to have taken this long it was also important that we did not agree to earlier 'offers' that would have led to 1000s of ALs losing their jobs.

It is worth remembering that this agreement did not come out of nowhere – it was many years in the making and only came about because associate lecturers and the OU branch (supported by their regional official) decided to do something and spent years campaigning and negotiating for this landmark agreement. We extend our thanks to everyone involved.

Appendix 1 – The AL Agreement at the OU

**Associate Lecturer Contract Negotiations
2018 Negotiations**

Document 1 AL Skills audit and work allocation process.

The purpose of the skills audit is to:

1. Enable an AL to Identify and gather evidence for the range of modules that they believe they would be able to tutor on should a change be necessary and those that they could tutor on with development. This will contribute to the AL profile (the AL profile will be a live document that can be reviewed)
2. Provide flexibility for the staff tutor and the AL to maintain workload through the extended AL profile
3. In addition to Indicate If they would want to increase their FTE in the new contract beyond the level they currently tutor at or decrease it.
4. The AL profile will support the work load allocation process

Skills Audit Process

Step 1- Preparation and evidence gathering

5. An AL will be required to complete an AL profile which will be pre-populated with their current modules, additional duties, and modules for which they are appointable. It may also include modules they have previously tutored.
6. An AL will indicate which other modules, beyond those identified above that they may be qualified to tutor on, and to provide evidence as to how they meet the requirement of those module person specs or could meet them with reasonable staff development.
7. An AL will indicate which additional duties beyond those identified above that they may be qualified to do, and to provide evidence as to how they meet the requirement of those module person specs or could meet with reasonable staff development.
8. An AL can indicate their aspirational FTE should an opportunity to increase be available or should they wish to decrease from their current FTE equivalent

Step 2-Discussion and profile agreement to consider:

9. The range of modules that an AL could tutor on and the evidence provided. The result will form the AL profile. (There may be a need for other staff in addition to the line manager to be involved)
10. The aspirational FTE
11. Any additional work the AL may already be doing or would be willing to take on. This might include, for example, TMA monitoring, mentoring new colleagues, forum moderation etc.
12. Any preferences or restrictions on the availability to do AL work. For example geography or time.
13. Should there be failure to agree any of the above then a further review process may be required

Document 2 Work allocation criteria

Work allocation criteria

1. *Allocating work at Transfer*

- a. The University will allocate work to the agreed FTE.
- b. The agreed FTE will be as a minimum that resulting from pre-transfer workload

2. *Allocating work in Business as Usual*

- a. Work will be agreed at an annual meeting between the AL and their manager, subject to review during the year, for example to allow response to changing business need, such as covering for another AL. It is expected that normally work will be broadly similar to the previous year, with any necessary changes typically being incremental rather than radical and to meet changing student demand.
- b. The work will normally primarily comprise delivering tuition to, and supporting, students as set out by module teams and qualifications. It may also include 'additional duties' that have been identified in the AL's profile .
- c. Any shortfall will initially be maintained through allocation of new tutoring work or additional duties within the AL's profile.

3. *Increasing and decreasing FTE through mutual agreement*

- a. Where there is work beyond the currently contracted FTE of ALs competent to do the work, it may be allocated to one or more existing qualified ALs (based on the content of AL profiles) competent to do that work.
- b. Where this work appears to be an ongoing requirement, it should be offered as a permanent increase in contracted FTE. Otherwise, if the work is transient, it may be allocated as a short-term increase in FTE or as overtime
- c. The process for identifying suitable ALs needs to be fair and transparent, for example through a call for expressions of interest specifying the requirements of the work (e.g. geographic, temporal).
- d. The university will seek agreement with UCU over the principles and procedures for increasing FTE, taking account both of business need and fairness to ALs who want to develop their careers. For example, work may be allocated to an AL on the basis a broader set of capabilities than needed for the immediate work requirement. Increases in FTE will be allocated in as light touch a way as is possible in a given situation, and not normally by formal interview.
- e. Decreasing FTE can be agreed mutually with suitable notice to make alternative arrangements unless exceptional personal circumstances necessitate the change.

1. *Redundancy processes*

- a. Where there is an ongoing shortfall in work available in a portfolio area, normal redundancy processes may be invoked.

Document 3 Academic currency and professional development

This document covers the issues of Academic Currency and Professional Development.

Academic currency:

Academic Currency refers to time allocated in an AL's workload allocation to allow them to maintain their academic currency, understood either as discipline or pedagogic knowledge/skills or development required for other elements of the wider AL role. This time divides into two kinds:

(a) AL-led academic currency

Use of this time is self-directed by the AL, and may include reading around their subject, keeping up with the latest developments in their field, following up on independent study carried out by students, following up on subject-related student queries, developing and updating their teaching strategies and tutorial materials, etc.

ALs will be allocated 6 days/FTE pro rata AL-led academic currency time.

(b) Agreed academic currency and professional development

Use of this time is agreed annually by an AL and their line manager. It may cover, for example, attending a faculty development day, preparing to teach a new module in one's field, preparing for involvement in new curriculum areas or development for other elements of the wider AL role.

ALs will be allocated 1 day +5 days/FTE pro rata Agreed Academic Currency/Professional Development time.

Mandatory training:

This refers to time for professional development and training falling outside of the maintenance and development of subject-related and HE pedagogic expertise. It may cover external mandatory training (eg. GDPR, Prevent), and internal IT systems training (eg. eTMA system training, essential Adobe Connect training)

Time for these activities will be allocated in one of two ways – either:

- (a) within an ALs contracted hours if the AL is below their FTE on their core teaching duties (eg. if they have below average students numbers on a module) or indeed if they are below their contracted FTE because one of their regular and recurring 'additional duties' (eg. such as monitoring or exam verification), included in their FTE, will not be needed in a particular year; or
- (b) as additional to contracted FTE, with additional payment if the AL has no spare capacity in their allocated teaching duties.

Document 4 Calculating an AL's Transfer FTE at Offer Date

This document is for formal approval at ALNG only and should not be used as-is as part of a wider engagement with the OU community. It is envisaged that a summary version of this document will be used in wider communications

1. The Transfer FTE is defined as the calculation of the FTE level that will be offered to an AL as part of their new contract. This will include (at least) the FTE for a standard group of any Every Presentation appointment held on offer date.
2. The offer date is the point when ALs receive a formal offer of a new contract, including the calculation of their transfer FTE. This will be four months before the new contract implementation date. There will be a mechanism for an AL to appeal the calculation of their transfer FTE value.
3. The guaranteed FTE at implementation date will be based on the sum total FTE of all every presentation appointment held at the offer date plus any agreed additional duties.
4. If the AL has lost work in previous years and hence has a higher sum total FTE in one of the three years leading up to the offer date than the total sum FTE of all every presentation appointments held at offer date then it could be possible to offer a new contract at a higher FTE figure dependent on the amount of 'surplus FTE' that is released by voluntary severance. See below.

Calculating transfer FTE

5. The transfer FTE will be made up of components related to module teaching appointments which will be calculated from the module worktime modeller plus any countable (defined below) additional duties and then with any per head or pro-rata allocations for elements such as leave, professional development or academic currency added.
6. *All calculations will be carried out with up to 9 decimal places, but the final FTE contract that is issued) will be rounded to the nearest three decimal places.*

The guarantee of no detriment

7. The University will guarantee that no AL will lose remuneration for work that has contributed to the calculation of a permanent FTE (or other contractual arrangements above 1.28 FTE if needed) in transferring to a new contract. Nor will ALs be expected do more work under the new contract for the same remuneration as the old contract
8. If the calculation of a permanent FTE figure for an individual AL results in a lower remuneration than was being received for the same work under the old contract the FTE calculation will be revised upwards so that the AL receives the same salary.
9. The no detriment guarantee applies for all AL work that will be used to calculate a new permanent FTE. There may be small pieces of non-core work that an AL is contracted to at the offer date that would not contribute to the calculation of a permanent FTE or the no detriment guarantee.

Calculating Additional Duty conversion to FTE

10. Because additional duties can fluctuate up and down for ALs the FTE figure from agreed additional duties that will count towards a contracted permanent FTE will be taken from an average for the three years prior to offer date.
11. The additional duties that can count towards transfer FTE are those that are identified through the skills audit and workload allocation sub-group to be regular, repeatable, and substantial enough to meet an agreed threshold

ALs who have been teaching large group sizes

12. If an AL has received greater than 100% salary for larger group sizes for more than one of the last three years then the module FTE conversion rate will take the average additional group size payments over those three years and calculate the transfer FTE based on that number.
13. if student number forecasts or curriculum changes indicate that there will be a reduction in workload for the modules concerned in the period immediately after implementation date then a consultation will be opened with UCU to seek to resolve the situation for the numbers of Associate Lecturers affected
14. If an AL has been tutoring with group sizes of less than 100% at any point over the last three years this will be discounted and an AL's FTE calculated as if they had been tutoring student groups at the 100% rate.

Calculating total AL FTE requirement at Implementation

15. As we approach the implementation date the University will seek to calculate the total FTE requirement for the institution, including tuition work associated with teaching appointments and non-core work which has been agreed can be used to calculate an ALs contracted FTE offer. The date on which the total FTE requirement is calculated will be a compromise between the accuracy of the estimate versus providing enough time in the implementation plan to act on the results. This will seek to be a best estimate of AL workload requirement in the immediate post-implementation period based on student number forecast and anticipated curriculum change data
16. The University will also seek to calculate at a whole AL cohort level what capacity there is amongst the AL body to deliver the work required, calculated as a total FTE figure. For example this is currently around 1000 FTE for AL tuition work and 150 FTE for additional duties. There will be an initial notional calculation of each AL's transfer FTE based on their teaching appointments in the formally defined FTE reference period plus an estimate of the non-core work that has been deemed to be included in FTE calculations.

Allocating Surplus FTE

17. A calculation will be done after ALs have accepted any voluntary severance offers so that the 'surplus' AL capacity this release will be reassigned in a fair and transparent way
18. This mechanism only applies at transition and will not apply in business as usual allocation of work post-implementation
19. The priority order of allocating 'surplus' FTE once curriculum distribution has been taken into account is given below. If there is insufficient FTE in a curriculum area to cater for (a) or (b) below, without creating a redundancy situation in the curriculum area, a consultation process will be opened with UCU.

- a. ALs on leave of absence redundancy who will be offered a guaranteed FTE contract based on their last appointment.
- b. Any other ALs with Prior Considerations due to a lost module which has not been counted towards their offer. These ALs will have the same priority as those on LOA (redundancy) and will receive an offer based on the FTE of the lost module.
- c. Any ALs with MOLD status at offer date due to a lost module which has not been counted towards their offer. If there is sufficient FTE available in their subject area the university will aim to include the FTE of the lost module in their offer.
- d. ALs who have a higher annual sum total FTE based on every presentation appointments held in a three-year reference period than a one year reference period- ie they have lost work in the three year period. Their FTE allocation may be increased from the one year to a maximum of the highest sum total FTE in the three year period
- e. ALs who, in their skills audit meetings, have indicated a wish to take on more work by increasing their FTE. The prioritisation of ALs in this group will be on the basis of business need within the appropriate curriculum area and appropriate skills matching

Managing ALs working across more than one Faculty

20. If an AL is tutoring on modules for two or more faculties the FTE equivalent will be calculated separately for each Faculty and added together to identify the FTE equivalent contract. After the implementation date the allocation of work to the contracted FTE will be managed separately for each Faculty so it is important that the FTE allocation between Faculties is correctly calculated.
21. Although subsequent allocation of workload will be done on a per Faculty basis for such staff their FTE allocation will be added together and managed as one coherent contract
22. At contract offer date mechanisms will be considered to seek to consolidate AL work into one Faculty if there is a business need, and both Faculty and AL agreement.
23. After implementation the OU will only be able to manage the work of ALs who work across two Faculties. For those few ALs who have appointments across three or more Faculties the redistribution of their FTE allocation will need to be done on an exceptional basis in collaboration with Faculties but based on the principle that there will be no loss of work for these individuals

Managing ALs with greater than One FTE of AL work

24. In accordance with the “no detriment” principle no ALs will be offered a new contract which has the impact of removing work from them, including those ALs working above 1 FTE.
25. At implementation ALs who have work greater than 1 FTE will be issued contracts that fully reflect the work they are doing at offer date.
26. After implementation the University will honour the working time directive of 48 hours for staff who do not already exceed it at offer date, and for AL staff recruited after implementation so that no AL is working more than $37.5/48 = 1.28$ FTE equivalent, based on a permanent contract
27. Any AL whose offer FTE exceeds 1.28 will be required to formally opt out of the European worktime directive if they wish to be given a permanent contract for their full FTE above 1.28.

28. Any Associate Lecturer working more than 1.28 FTE for the OU on all types of contract will be encouraged to discuss their personal circumstances with their internal and AL line manager
29. For ALs who are employed outside the OU they will have a responsibility to let the OU know the FTE size of their external work.
30. From the point of new AL contract implementation onwards ALs who are already working above 1.28 FTE will not normally be allocated any further work which increases their FTE.
31. By these means the University will use natural staff turnover to work towards compliance with the European worktime directive without seeking to disadvantage affected ALs or take work away from them.

ALs on leave of absence (personal)

32. If an AL is on leave of absence (personal) their FTE will be calculated as if they were delivering their appointed module at 100% group size and be issued a permanent contract. The current leave of absence will be honoured through to its end point and then any subsequent arrangements will be under the auspices of the leave of absence arrangements under the new AL contract

ALs with single presentation contracts

33. If an AL is contracted to deliver a single presentation contract at implementation date for a temporary situation such as to cover sick leave or maternity leave then this will be converted to an agreed overtime arrangement at the appropriate FTE rate and with an end point associated with the end of the presentation for the single appointment.
34. In other situations where single presentation contracts have been issued because of situations such as late increases in student numbers where it has not been possible to go through a recruitment process and such a situation may be ongoing a mechanism will be created to make a judgement call on whether such an appointment should be converted to a permanent FTE. If an AL wishes to appeal the decision then this can be considered through the general appeal mechanism.

ALs with Alternate Presentation Appointments

35. If an AL has a fluctuating workload due to an alternate presentation appointment then they will be offered they were to be offered a choice between including the FTE in full as if the alternate presentation module was presented every presentation or having a top-up contract in alternate years.

ALs on Leave of Absence (Redundancy) at the Offer Date

ALs who are on LOA redundancy at offer date will be given an opportunity to go through the skills audit process.

Document 5 New AL Contract Transition Agreement

1. Implementation date

All ALs who have accepted the new contract will move to the new terms and conditions and agreed FTE level at the same time. After the Implementation date work will be allocated to ALs to maintain their FTE level. The Implementation date will need to be chosen with care to create the least disruption to the OU Academic Year.

2. Implementation date lead-up period

This is a period of 12 months before the Implementation date where the University and UCU will discuss and agree any modifications to the current recruitment and redundancy processes and the application of PC and MOLD. The common principle in this Implementation date lead up period is to minimise, where possible, any significant contractual changes for ALs which would then have significant personal consequences for those ALs at the point that an offer of a new contract was made. It is difficult to legislate for all possible circumstances in this period and it may be best to allow a forum such as the University/UCU Redundancy Group to consider specific cases on a module, AL cohort or individual basis in this period.

At an appropriate point in the Implementation lead up period there will be an offer of employee-led voluntary severance on the table, for any AL who is sure that they do not wish to be part of the new arrangements and does not wish to accept a new contract. It would be expected that any AL accepting voluntary severance at this point would not leave the employment of the University until they had completed the teaching of any live module presentation they have. Delayed VS would also be on offer.

3. Managing new AL appointments around the offer date

Although the implementation time line will seek to make the offer date at the point of least AL recruitment requirements it is likely that new teaching opportunities will need to be filled in the period around the offer date. Although it is difficult to mandate detailed AL recruitment arrangements in this period as a principle the University will seek to pause any module appointments for the period of the offer period. If this is not possible the principle will be to be as fair as possible to ALs who could potentially do this work whilst meeting business need.

4. Offer Date

This is the date by which all ALs receive their offer of a new AL contract, four months prior to Go Live. ALs will be given one month from the date of the offer to make a decision. The possible options that follow for ALs are; (1) acceptance of the new contract; (2) reject the new contract and accept voluntary severance;(3) acceptance of the new contract, but with a deferred voluntary severance; (4) appeal against the FTE value for the new contract.

All ALs who reject the new contract at offer stage will be offered voluntary severance. It is proposed that a review mechanism is instigated for those ALs who challenge their FTE allocation.

There will be no compulsory redundancies. ALs who do not wish to engage with the new contractual arrangements will have the opportunity to take voluntary severance or deferred voluntary severance

5. Joint University/UCU Transition Working Group

There are many situations where it is difficult to agree the specific arrangements that will pertain to individual or groups of ALs because of the specific circumstances that will pertain. It is proposed that management and UCU colleagues meet on a regular basis in the period leading up to the contract offer date to seek to understand and resolve issues on a case-by-case or exceptional basis.

6. ALs who wish to take deferred voluntary severance

ALs who do not wish to accept the full workload allocation implications of the new contract, will have the opportunity of signing up to the terms and conditions of the new contract, continue to teach their current appointment(s) only for a period and then accept deferred voluntary severance. ALs in this category would not be allocated new work through the AL workload management system,

7. Piloting skills audit and workload allocation through the Go Live Lead up Period

If we wish to 'learn by doing' with pilots that use the proposed workload allocation approach to make real decisions about ALs gaining additional work or changing their workload allocation within identified curriculum areas we will need agreement with UCU to modify or change existing approaches to AL recruitment and loss of work/redundancy. We will work carefully with UCU colleagues to see how such pilots run within an overall implementation plan timeline