



Precarious work, employment agency subsidiaries and casual workers in Further and Higher Education

- UCU is the largest trade union and professional association for academics, lecturers, trainers, researchers and academic-related staff working in further and higher education throughout the UK.
- It is often assumed that problems of precarious working and the denial of employment rights are issues confined to sectors like social care, retail and hospitality and the emerging 'gig economy'. Yet the further and higher education professions have been significantly restructured in the last few decades to the point now where insecure employment is normal.
- The use of short-term contracts of various kinds has been endemic in further and higher education for a long time but UCU is deeply concerned that employers in further and higher education are making increasing use of the different tiers of workers in British employment law to game the system, not as a reflection of their objective employment needs but as a way of avoiding obligations and rights associated with employment status.
- Our view is that many employers in further and higher education are consciously working to deny teaching staff the benefits of employment rights, viewing them as too 'costly'. This has a seriously detrimental effect on the lives of tens of thousands of staff on insecure contracts but also on the quality of the service that colleges and universities are providing.

'Shadow FE', and agency subsidiaries:

A group of FE colleges are making use of wholly owned subsidiary companies to take on hourly paid staff and hire them back into the college. These lecturers are put on worker or agency worker contracts which mean they have fewer employment rights. **Sheffield College**, for example, employs hourly paid staff to teach at the college through its wholly owned subsidiary company, 'Sparks Ltd'. **Bradford College** does the same using its wholly owned subsidiary company, 'Beacon'. **Doncaster College** has a wholly owned subsidiary company called DC Teach Ltd which it uses to hire in temporary academic staff.

These 'workers' have a contractual relationship deliberately constructed to bear many of the attributes of self-employment without any of the benefits. UCU's view is that colleges make use of these arrangements because:

- They prevent most of these teachers from accumulating service related rights such as the right to statutory minimum notice, protection from unfair dismissal, the right to redundancy pay and rights to statutory maternity leave and pay;
- They prevent people who should be employed as employees from ever accumulating enough continuity of service to become permanent employees under the fixed-term regulations;
- It allows the colleges to pay these staff off the local lecturers' pay scales;
- It take the lecturers out of the Teachers' Pension Scheme, saving the employer from paying its contributions for these staff.

Coventry University's employment agency subsidiary company

Coventry University has a growing network of subsidiary companies which it is using to deliver lower cost higher education. These include the CU Group with its campuses in Coventry, London and Scarborough and CU Services. The subsidiary companies' employees are paid less than their university equivalents and they are excluded from the Teachers' Pension scheme, which provides occupational pensions for HE and FE lecturers. CU Group is currently the focus of a national campaign from UCU on account of its union busting (<https://www.ucu.org.uk/covunishame>)

In addition, Coventry also operates a temps agency called 'TheFutureWorks Ltd' which it uses to employ PhD students as temporary agency workers.

In addition to their inferior employment status, these agency workers also have one of the lowest hourly rates of pay in the entire Higher Education sector. UCU's research into PhD student pay indicates that Coventry's headline hourly rate of £13 per hour rate makes it one of the bottom seven universities in the country.

In reality, the situation is far worse. In many universities, time is allowed for preparation time. This is usually either factored into an enhanced hourly rate or with PhD students being allowed to claim for additional hours for preparation time per class. Coventry appears to include preparation time in the £13 an hour rate and not allow separate claims for preparation time.

Coventry's agency also hit the news in October 2016 when the University attempted to use it to circumvent a recognition agreement won by UCU at another of its subsidiaries CU Services. ('Think only low-paid workers get the Sports Direct treatment? You're wrong', Aditya Chakraborty, The Guardian, 27 September 2016) (<https://www.theguardian.com/commentisfree/2016/sep/27/low-paid-workers-sports-direct-university-staff-rights-mike-ashley>)

UCU believes that it is shameful for colleges to use these subsidiary companies to effectively 'game' the British employment law system, deny staff access to

proper professional contracts and employment rights and lock them out of access to the teachers' occupational pension scheme.

The use of 'worker' arrangements in Higher education

Elite Universities like Sheffield, Birmingham, Nottingham and Warwick all make extensive use of what they call 'casual worker' or 'temporary worker' arrangements to engage large numbers of teaching staff. The University of Sheffield recently disclosed to UCU that it employs around 900 such staff in teaching roles.

The registration agreements for these workers are full of contractual 'boilerplate' – clauses intended to make it clear that no contract of employment exists for these staff. The intention is to create express contractual terms that designate their teachers as workers rather than employees. In our view this is commonly done without regard for the reality of the working relationship.

- The University of Birmingham's casual worker 'agreement' states that 'no contract of employment or employment relationship exists outside the contracted hours and there is no requirement on the University to provide work or for the Small Group Teacher to accept work'.
- The University of Sheffield's agreement similarly makes it clear that 'Each offer of work by the University which you accept shall be treated as an entirely separate and severable engagement (an assignment). The terms of this agreement shall apply to each assignment but there shall be no relationship between the parties after the end of one assignment and before the start of any subsequent assignment. The fact that the University has offered you work, or offers you work more than once shall not confer any legal rights on you and, in particular, should not be regarded as establishing an entitlement to regular work or conferring any continuity of employment'.
- The University of Warwick's proposed 'TeachHigher' contracts stated 'No contract shall exist between you and us in between Assignments ... There is no obligation on our part to offer you or to consider offering you, an engagement or Assignment and there is no obligation on your part to accept any engagement or Assignment offered. Any engagement or Assignment will be of a temporary nature and we do not and cannot guarantee any further engagement or Assignment once it has ended. While the University of Warwick abandoned its plans to create an internal subsidiary company which would market these 'temps' back to the University, it still plans to employ its part-time teaching staff on contracts for services, denying them employee status.

These 'casual workers' have a contractual relationship deliberately constructed to bear many of the attributes of self-employment without

any of the benefits. Universities and colleges defend these arrangements citing their need for flexibility to cater to fluctuating student demand. Yet student demand, where it fluctuates, tends to do so on an annual basis. UCU's view is that this level of fluctuation is easy to cater to using standard employment contracts and there is no excuse for universities to make use of worker arrangements on such a basis.

In UCU's view, universities and colleges make use of these arrangements precisely because worker arrangements prevent most of these teachers from accumulating service related rights such as the right to statutory minimum notice, protection from unfair dismissal, the right to redundancy pay and rights to statutory maternity leave and pay. We are also concerned that these contracts are used to prevent people who should be employed as employees from ever accumulating enough continuity of service to become permanent employees under the fixed-term regulations.

Why does the casualisation of teaching matter?

There are three major reasons why these colleges and universities should call time on casualisation:

1. Human hardship

Insecure contracts create unnecessary hardship and anxiety. In a UCU survey of staff on insecure contracts, over half of respondents (56%) said that they had struggle to pay the bills. Nearly two-fifths (39%) had had problems keeping up with mortgage or rent commitments and three in 10 (29%) had had difficulties putting food on the table. FE lecturers speak of being unable to plan their lives and facing a choice between continuing to teach in chronic insecurity and hardship or leaving the sector.

2. Organisational inefficiency:

A growing body of research indicates that any so-called 'efficiency' gains from hiring teachers on the cheap are in fact illusory. Recent research into the use of flexible labour has suggested that 'easy hire and fire' is a false economy that saves money only at the cost of organisational learning, knowledge accumulation and knowledge sharing, thus damaging innovation and labour productivity growth'.¹

3. Impact on the quality of teaching provision:

¹ See, for example, Diannah Lowry, 'Employment Externalisation and Employee Commitment: A Preliminary Study', *International Journal of Employment Studies*, Volume 4 Issue 1 (Apr 1996) and, more recently, Alfred Kleinknecht, Zenlin Kwee and Lilyana Budyanto, 'Rigidities through flexibility: flexible labour and the rise of management bureaucracies', *Cambridge Journal of Political Economy* (2015).

Insecure contracts and precarious work make it impossible for teachers to do their jobs properly. Staff are paid an hourly rate that is often far too low for the preparation or marking time needed and they are expected to perform other duties in support of students unpaid. Teachers face the choice of having to perform large amounts of unpaid labour indefinitely or cutting corners. As one lecturer wrote to us: *'No preparation time is paid for, no marking time is paid for, no training/staff development is paid for, no meeting time is paid for. Where do I even start to detail the consequences of this type of contract on my students (past & present)? After 8 years I have decided to call it a day and am resigning at the end of this term.'*

This problem is increasingly recognised by Ofsted and some in the wider sector. For example, several Ofsted inspection reports have identified a **'lack of stability in the teaching team'** as a problem in some FE college inspection reports. A joint Ofsted/Association of Colleges project into challenges facing colleges in improving teaching quality reported that managers had identified issues arising from the use of staff on agency contracts.

*'Managers judged that the **high proportion of agency staff used to deliver teaching as a result of this has an impact on the overall quality of teaching and learning**. For example, many agency staff had received none or very little teacher training and their work was not adequately quality assured or improved.'*²

UCU is clear that these staff are working hard under contractual conditions that make life impossible for them. Rather than blame agency staff or staff on insecure employment contracts, college and university managers should take responsibility and transfer these staff onto directly employed and more secure contracts that let them do their jobs properly.

² Association of Colleges/Ofsted Action Learning Project: 'Urban Colleges': Critical factors and good practice in teaching, learning and assessment in Urban Colleges (2013)