

University and College Union response to BEIS consultation on Matthew Taylor's 'Review of modern employment practices' on agency workers

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The University and College Union (UCU) is the UK's largest trade union for academics and academic-related staff in higher and further education, representing over 110,000 members working in universities, colleges, training providers, adult education settings and prisons.

UCU supports and echoes the overall position of the TUC on agency workers but welcomes the opportunity to contribute to the BEIS consultation with regard to the impact in further and higher education.

Precarious work, employment agency subsidiaries and casual workers in further and higher education.

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.¹

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 the sector 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 to students and the community.

UCU welcomes the proposal to abolish the Swedish Derogation, representing the most heinous practices by those using Temporary Workers Agencies. The union is however concerned that this alone will be insufficient to address the way in which employers are using agency workers to play the employment law system and evade collective agreements and regulations governing pay rates.

Due to the way UK legislation actively excludes or limits entitlements for agency workers they often miss out on basic rights in the workplace, such as the right to request flexible working and paid time to attend ante-natal appointments.

¹ <https://www.ucu.org.uk/stampout>

Employers in further and higher education are increasingly experimenting with the use of subsidiary companies to deliver large areas of their education provision. Some of these subsidiary companies are established with employee based workforces, paid at lower rates, with inferior terms and conditions and locked out of the relevant occupational pension schemes. However, a group of further and higher education employers have developed wholly owned subsidiary employment agencies.

‘Shadow FE’ and agency subsidiaries.

Groups of further education 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 Recruitment and Placement Services’. **Doncaster College** has a wholly owned subsidiary company called ‘DC Teach Ltd’ which it uses to hire in temporary academic staff.

While these agencies do provide genuine temporary workers, they have also increasingly been used to provide cheaper front line teaching. Bradford College’s Beacon, for example, provided back to its parent college almost 200 teaching staff over a 12 month period, working more than 30,000 hours for the college. Beacon’s agency workers do not have access to college pay scales, they have only statutory maternity and paternity leave and pay and they have only a National Employment Savings Trust pension.

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.

Higher education and 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 Coventry University 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 higher and further education lecturers. CU Group is currently the focus of a national campaign from UCU on account of its union busting.²

In addition, Coventry also operates a temp agency called 'TheFutureWorks Ltd' which it uses to employ PhD students as temporary agency workers. PhD students enter their programmes with an expectation that they will teach as part of their training. The sector norm is for them to be employed separately as teachers and to be paid a rate that is linked to the agreed national scales. These teachers are not providing temporary services but are employed over whole academic years in predictable patterns of employment. The only reason to employ them as agency workers is to drive down their cost.

As well as 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 class 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.³

Workers who had just won recognition in one of Coventry's subsidiary companies were dismissed and told that they could only work again if they signed up as agency workers with TheFutureWorks Ltd.

An attempt to introduce a similar wholly owned subsidiary company employing postgraduate students who teach at Warwick University was defeated after a campaign by UCU and the Students Union.⁴

² <https://www.ucu.org.uk/covunishame>

³ '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>

⁴ <https://www.ucu.org.uk/article/7541/University-of-Warwick-scraps-controversial-plans-to-use-TeachHigher-for-admin-services>

Recommendations

UCU believes it is shameful for universities and colleges to use subsidiary companies to effectively 'game' the British employment law system, deny education staff access to proper professional contracts and employment rights and lock them out of access to the teachers' occupational pension scheme. Tightening up the legal framework around agency workers would be an important part of preventing these abuses.

We would support proposals to increase the transparency of information provided upfront to people hired as agency workers. In our experience, many of the people taken on through these agencies are unaware of the terms and conditions of their work and struggle to access accurate information about sick pay, pension schemes and holiday pay.

UCU echoes calls by the TUC for the introduction of wide-ranging reforms to protect precarious staff and agency workers. We would support the TUC's call for all workers, including Agency workers to have a written statement from day one of their employment including their pay, pensions, terms and conditions and their expected hours of work.

The Swedish derogation should be repealed as soon as possible and all agency workers should have rights to equal pay.

Hirers should be required to carry out a review after 12 weeks of an agency worker doing the same job to see whether the work will continue longer term and if so should offer staff a permanent contract.

It is disappointing that the government has ignored the recommendation in the Taylor review that agency workers should be given a "right to request a direct employment contract with the hirer when they have been engaged with the same hirer for 12 months."

The penalties for non-compliance with agency workers' rights should also be increased. Agencies and umbrella companies which breach minimum standards should be required to pay increased fines and full compensation to work seekers

Public procurement rules should be adjusted to ensure that agencies and umbrella companies which breach agency workers' rights are excluded from public contracts.

Umbrella companies and subsidiary companies should be required to comply with the same standards which apply to employment businesses and agencies.