

Taylor Review: a response from the University and College Union to the BEIS/HMT consultation on employment status

May 2018

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's view is that employers in further and higher education have consistently gamed the tiers in the UK employment law system in order to reduce their administrative and financial costs at the expense of staff.

Nothing about the patterns of work in the sector justifies the use of short-term contracts, zero-hours contracts and worker arrangements for delivering frontline teaching and research on the scale we currently see.

- *"I hate it. There is no sense in which my work is 'casual' - it is regularised, with my teaching hours taking place at the same time each week during term time. I can't just not turn up if I don't feel like it, or move the time of a class each week to whatever suits me. There is no sense in which that is even suggested by the university, as in they do not even make it possible for us to be 'flexible' or 'casual' in our working arrangements. I don't even have a contract, HR likes to remind me that I simply have 'terms of work', and that I am a worker not an employee. In the past, I have been paid 3 months in arrears. In the past, my tax has been a nightmare to sort out because of the multiple jobs I have been doing at any one time, or for short periods of time - so that's a whole load of extra labour. It's like being self-employed, but without any of the even minimal benefits that come with that. I constantly have to chase up missed or incorrect payments, made even worse by the University's refusal to itemise my pay on my payslip."*
- *"They tell me my work is 'not guaranteeable' when in fact I have taught the same courses (incidentally with outstanding feedback) for 20 years."*
- *"I was edged into this position since returning from my second maternity leave. I was put into a different job, and went along with it because I was one of the few people who didn't realise the writing was on the wall for that post (adult provision rather than 16-18.) They still need me now - but it's much cheaper for them to buy in my services without acknowledging I'm a human being with a life, responsibilities and a role in society."*
- *"After working in the same place for 10 years part time I have never been offered a permanent contract".¹*

¹ Quotes are taken from the results of a survey of casualised staff conducted in Spring 2015. The results formed a [report published in May that year](#).

It is important to try to remove the incentives to gaming the system by universities, colleges and all employers who can afford to employ people on fairer and more stable contracts.

Use of worker status in elite universities

There are around 38,000 'atypical' academic staff employed within the 24 'elite' universities of the Russell Group. Many of these will be PhD students who teach, many of them using this teaching to fund their way through their PhDs. Many others will be people attempting to piece together a living out of bits and pieces of casual teaching. The majority of these 'atypical' academics are likely to be engaged as workers via contracts for services. Worker arrangements are known to be used by the universities of St Andrews, Bath, Birmingham, Cardiff, Durham, Exeter, Kent, Leeds, Nottingham, Sheffield, Swansea, Warwick and UCL. There is nothing in the patterns of working of these teachers that justifies the use of worker arrangements. 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 boiler-plate – 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 and to claim that no mutuality of obligation exists. 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 employs its part-time teaching staff on contracts for services, denying them employee status.
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UCU has a long history of challenging these so-called 'worker' arrangements and in some notable cases we have won, indicating that the reality of the working relationship is indeed that of an employee. But the complexity of each case turning on the facts, and the onerousness of each challenge, makes this a long battle of attrition that few of these staff are inclined to take.

UCU is quite clear that these universities continue to engage tens of thousands of academics as workers because of the cost-savings that are possible, not because it reflects any reality of the working relationship. UCU has experience of negotiations in which several wealthy 'elite' universities have argued that they are not prepared to agree the employment of teachers on employee contracts precisely because they will accrue employment rights, including the right to redundancy payments.

Reform of employment status

We recognise the issues identified by the government around the complexity of the tests of employment status, the potential for mis-categorisation and the difficulties in resolving disputes. However, these are symptomatic of a deeper problem which resides with the very existence of these outdated employment tiers. As indicated above, the existence of worker status, for example, creates an incentive for employers to miscategorise staff, deploy misleading contractual boilerplate and saving themselves time and money in the process. Because the use of worker status is intended to avoid any risk of continuous service or mutuality of obligation arising, it also has the effect of placing workers in a position where they cannot have any guarantee of hours or any reasonable expectation that they will be given work. They are placed in a position of such extreme dependency that even if they are aware of their employment rights, they are unwilling to assert them.

(Question 1).

For these reasons, UCU supports the TUC's position that the government should establish a commission on employment status tasked with developing a new single employee test. All workers should be entitled to the full range of statutory employment rights currently enjoyed by employees.

In addition, the government should recognise the important role that trade unions play in the workplace. For example, UCU has been able to tackle issues relating to the underpayment or non-payment of holiday pay in a number of universities recently through collective action. Similarly, UCU has been able to negotiate agreements that have moved staff off zero hours contracts and onto proper employment contracts (Universities of Edinburgh, Glasgow and Sussex) bringing employment status into line with reality. In addition to state enforcement of entitlements, government must recognise the key role of unions and collective bargaining in ensuring decent standards of work and must remove obstacles to union organisation.

(Questions 2 to 5 and 20-21)

UCU firmly opposes the proposals to codify existing status tests. Like the TUC we believe that these proposals will in fact take the labour market backwards.

Recent cases in the Supreme Court have established a focus on the reality of the working relationship which has helped mitigate the damage caused by the use of contractual boilerplate aimed at mis-categorising workers by denying mutuality of obligation. The drift of these cases has been to recognise that attention to the reality of the working relationship undermines many employer attempts to rely on express contractual terms to deny workers access to employment rights. Codification of the common law tests of employee status risks simply re-setting the bar for employers to game contractual status around and reducing employment status to a tick box exercise. The existing tiers will in fact be reinforced.

Instead, we support the TUC's call for a commission on employment status tasked with extending employment rights to all workers, raising the floor of employment rights in the process and developing a single employment test. This is complex work that needs to be undertaken carefully and with consultation.