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Employer perspectives on 'zero hours' contracts in UK higher education

Laurence Hopkins and Helen Fairfoul, April 2014

1 Introduction

The use of casual and temporary labour in the UK labour market is not a new phenomenon, but an increase in the use of so-called 'zero hours contracts' has drawn considerable attention from pressure groups, the media and all three main political parties over the past 18 months. While official figures indicate that the majority of zero hours contracts are found in the retail, hospitality, and healthcare sectors, the use of these arrangements at higher education establishments has also attracted attention and has become an area of focus for HE trade unions. This paper begins with a review of the legal framework for these contracts and temporary work in the UK, the economic conditions that have prevailed, and the political responses to pressure from media and civil society to curb their use and, where this may be the case, abuse. The main body of the paper focuses on the use of these contracts in higher education based on research by the Universities and Colleges Employers Association (UCEA) and the paper concludes with reflections on the employment relations issues and tensions within the context of an increasingly competitive higher education landscape.

2 Economic backdrop

The attention given to these arrangements has taken place within a unique post-recession environment in which the economy and labour market have not followed the trends of previous economic recoveries. After 72 months since the beginning of the 2008-09 recession, GDP is still two per cent lower than its pre-crisis peak, which is at least 24 months longer than the recoveries from the five recessions recorded in the Twentieth Century (Kirby et al, 2014). While GDP is forecast to finally recover in 2014, net employment surpassed its previous peak in September 2012 which surprised some economic observers. However, this was initially driven by an increase in the self-employed and part-time work, but as the recovery has taken hold since 2013, full-time jobs are now driving the increases in net employment. While the jobs recovery has been seen to be positive, the lack of correlation with GDP means that productivity per worker has fallen and this, along with other factors, has meant that average wages have stagnated and fallen back to 2002 levels in real-terms (Bovill, 2013).

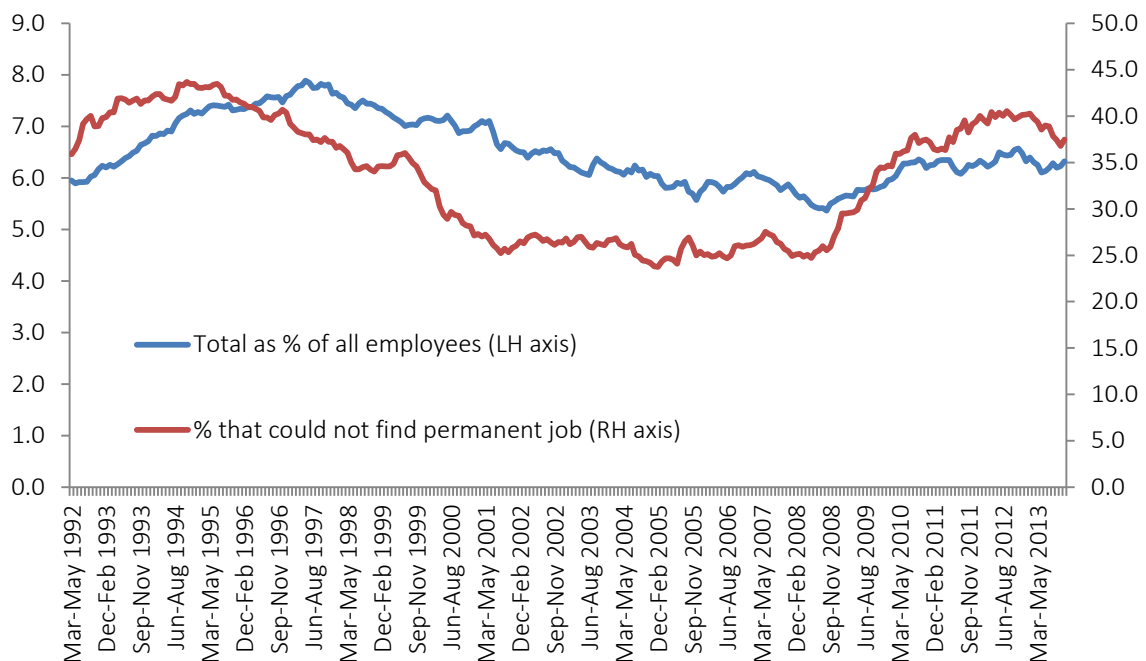
Temporary and casual work in the UK

Globalisation and the decline of collective bargaining and trade union membership are often cited as drivers of greater job insecurity and a rise in 'non-standard' employment as employers have taken advantage of the fragmentation of employee-side bargaining power in order to improve international competitiveness and increase profit margins. While the labour market in the UK has changed over the past thirty years, workforce data suggests that the change has not been as marked as some might assert and the assumptions about increases in non-standard employment are not supported by the evidence. The definition of 'non-standard' employment is also problematic as it includes part-time working which has enabled the growth in female labour market participation and has increased

flexibility for both employer and employee. Prior to the 2008-09 recession only 9.7 per cent of part-time workers wanted to be in full-time employment (ONS, Jul-Sep 2008). Part-time employment has also helped assist in the recovery of the UK labour market, particularly in the early stages of the recovery, but has meant that the percentage of part-time workers wanting to be in full-time employment has almost doubled to 18.2 per cent (ONS, Oct-Dec 2013). Just over a quarter (26.0 per cent) of the 1.38 million temporary workers in the UK (including those in seasonal, casual and agency work and those on fixed-term contracts) were, prior to the recession, in temporary employment because they couldn't find a permanent job – this has risen to 37.5 per cent in the three months to December 2014. It is therefore misleading to group types of employment – part-time working, fixed-term employment, zero hours contracts and agency working – together under the aegis of 'non-standard employment' and secondly to conflate 'non-standard' with 'sub-standard'.

The inclusion of part-time working in the definition of non-standard work is almost solely responsible for the increase in non-standard work over the past thirty years (Brinkley, 2013). Part-time working has grown significantly in the UK and, according to Eurostat data from 2012, the UK had the second highest proportion of part-time workers in the EU with 25.9 per cent of persons aged 16-64 in this category (Eurostat, 2014). The temporary workforce accounts for just 6.3 per cent of net employment in the UK and has fallen from a twenty year peak of 7.8 per cent in 1997. As can be seen from Figure 1, the 2008-09 recession has had a limited effect on this figure, but it has noticeably increased the proportion of temporary workers who are in temporary employment because they could not secure permanent employment.

Figure 1: Temporary employees in the UK, as a percentage of net employment



Source: ONS, 2014.

3 Zero hours contracts

Zero hours contracts are not defined by UK law and as such there is no single definition. The term is indeed often not used or recognised by either employers or the employees working under these arrangements. A UK House of Commons research note calls zero hours contracts a “colloquial term for an employment contract under which the employee is not guaranteed work and is only paid for work carried out” but some definitions include the requirement to be available for work and ‘on call’ (Pyper and McGuinness, 2014). The lack of a cohesive definition and the lack of employee identification with the term means that official statistics underestimate the use of zero hours contracts (Brinkley, 2013; ONS, 2013). The term has also been criticised for its use as a pejorative when many employees favour the flexibility that these arrangements provide (Brinkley, 2013). The common denominator for all the definitions is that the employee has no set hours and that the individual is not obliged to accept work offered. These contracts are legal under UK law.

Legal framework

The distinction between an ‘employee’ and a ‘worker’ is fundamental to UK employment law and determines the statutory rights and obligations of the individual with respect to their work and the relationship that the individual has with their employer. An employee is defined as an individual who works under a ‘contract of service’ while a worker is an individual that works under a ‘contract for services’ and is distinct from ‘self-employment’. The distinction between these groups has been defined by case law but the most important factor is the mutuality of obligation that exists between an employer and an employee. The obligation of the employee is to carry out work and the employer is obliged to pay for that work. A worker is not obliged to carry out the work and indeed an alternate could be supplied, as was the case in *Craigie v LB Haringey* (EAT/0556/06), or could refuse work, as determined in *Khan v Checkers Cars Ltd* (EAT/0208/05).

UK employment law is strongly influenced by European Union directives on employment which are binding and must be incorporated into statutes within a defined period. With regard to the temporary part of the workforce, the *Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002* (FTE) and the *Agency Workers Regulations 2010* (AWR) are important statutory instruments and bear brief explanation in this context. The FTE affords employees employed on a fixed-term contract¹ equivalent rights and treatment as permanent employees on open-ended contracts. Agency workers² were specifically excluded under regulation 19 of the FTE but in 2010 the Agency Worker Regulations were introduced following the passage of the EU Temporary Agency Work Directive in 2008. The legislation came into force on 1 October 2011 and gave agency workers an entitlement to the same employment and working conditions, including pay, as employees following a qualifying period of 12 weeks³.

The difference in statutory employment rights, as detailed in Table 3.1, is significant and one line of argument from opponents of zero hours contracts is that employers are reducing their obligations to

¹ Fixed-term employees are those working for a specified period of time or those employed to undertake and complete a specified task.

² An agency worker (often referred to as a ‘temp’) is someone who has a contract with a temporary working agency (an employment contract or a contract to perform work personally) but works temporarily for and under the direction and supervision of a hirer.

³ The 12 week qualifying period does not prescribe a set number of minimum hours to be eligible, but only that the individual has worked for that employer in each week during that period.

their staff and the protections afforded to those staff by placing them on contracts that ensure their worker status. However, the use of a zero hours contract does not necessarily mean that the individual working under these arrangements is a worker as this is determined by the details of the relationship between the employee and the employer and in many cases the individual will be classified as an employee as in the case of *Pulse Healthcare v Carewatch Care Services Ltd & Ors* (EAT/123/12). It is therefore more likely that the increase in the use of zero hours contracts primarily relates to the uncertain economic environment and difficulties in predicting future consumer demand.

Table 3.1: UK Employment rights, by status

Employment right	Employee	Worker	Self-employed
National Minimum Wage	✓	✓	
Protection from unlawful deductions from wages	✓	✓	
Paid annual leave	✓	✓	
Maternity, Paternity, Adoption leave and pay	✓		
Part-time status (no less favourable treatment)	✓	✓	
Fixed-term status (no less favourable treatment)	✓		
Rest breaks	✓	✓	
Right to request flexible working	✓		
Right to request time to train (companies over 250 employees)	✓		
Protection from discrimination	✓	✓	✓
Minimum notice periods	✓		
Collective redundancy consultation	✓		
Statutory redundancy pay	✓		
Protection from unfair dismissal (gained after 2 years in continuous employment)	✓		
Protection from unfair dismissal (automatically unfair)	✓		
Transfer of Undertakings (Protection of Employment) (TUPE)	✓		

Growth in zero hours and media attention

The initial interest in zero hours contracts in UK public discourse was driven by the release of data by the ONS in 2012 which indicated that the number of zero hours contracts in the UK had reached 200,000. This data was later supplemented by the publication of the 2011 Workplace Employment Relations Survey (WERS) which showed the use of zero hours contracts by workplace and industry (van Wanrooy et al, 2013) – see Figure 2. As the debate intensified and the use of zero hours contracts was revealed in high profile retail and restaurant chains, it became evident that the official figures were an under-estimate. In 2013, the Chartered Institute of Personnel and Development (CIPD), the professional body for HR professionals, estimated that there were up to 1 million zero hours contracts in the UK (CIPD, 2013). While the CIPD's calculations were not statistically robust, the figure was widely circulated and subsequently re-quoted leading to a peak in public interest, as

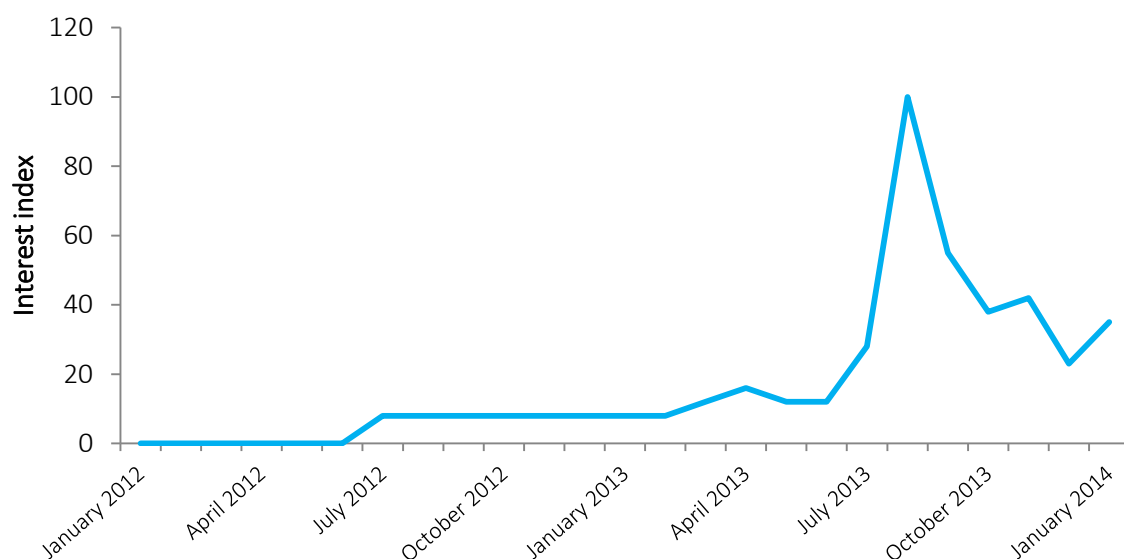
illustrated by an analysis of internet search interest in Figure 3. During this period the ONS announced that it was reviewing its collection of statistics on zero hours contracts and would be making two significant changes. Firstly, its Labour Force Survey methodology for zero hours contracts excluded individuals who were in jobs that required shift-work and so from October 2013 it would not treat these variables as being mutually exclusive. Secondly, it would introduce questions on zero hours contracts to its business survey in an attempt to obtain more accurate data. The first change resulted in a significant change in the results from the Labour Force Survey and the first estimate using the new methodology put the number of zero hours contracts at 583,000. The ONS also suggested that increased awareness about zero hours contracts may have affected survey returns as those who were previously not aware that they were working under such arrangements would have been more likely to identify with the question.

Figure 2: Use of zero hours contracts in workplaces by industrial sector

Category by current use	Sector	2011 % of workplaces
High use private services	Hospitality	19%
Higher use public-based services	Health	13%
	Education	10%
	Community services	10%
Lower use private services	Retailing	6%
	Business services	6%
Lower use public services	Public administration	4%
Low use (<2%)	Manufacturing	2%
	Communications	2%
	Energy and water	1%
	Construction	1%
	Financial services	<1%
	Average	All sectors

Source: Brinkley, 2013.

Figure 3: Search engine interest in 'zero hours contracts', January 2012 to January 2014, UK



Source: Google Trends (www.google.com/trends). Trends data is normalised and relative.

The media and trade union responses to zero hours contracts assumed that the use of these contracts was inherently unfair and represented poor business practice. During the period of peak interest there were very few employers that were prepared to offer a staunch defence of their use and thus this view went largely unchallenged in the public sphere. The only prominent exceptions were, the private sector employers' body, the Confederation of Business and Industry (CBI), and the Institute of Directors (IoD). The CBI claimed that the contracts were unfairly represented in the press and had helped to reduce unemployment levels while the IoD claimed that:

Calls to ban Zero Hours Contracts are deeply misguided and any such action would have extremely damaging results. It would hurt thousands of employees who rely on the flexibility such contracts allow and employers, especially small and medium sized firms, would struggle to hire the staff they need to meet varying demand. (Ehmann, 2013)

A number of policy think-tanks and the CIPD also published reports that revealed a very different picture of zero hours contracts to that which was being portrayed in the media. This helpfully moved the debate on from its focus on contract numbers and anecdotes of detrimental treatment. The Work Foundation analysed Labour Force Survey data on zero hours contracts and revealed that more than 80 per cent of people on zero hours contracts were not looking for another job, almost a quarter were full-time students and only 26 per cent wanted longer hours (The Work Foundation, 2013). A survey of more than 1,000 employers and 2,500 employees by the CIPD published in November 2013 was also revealing. The survey found that zero hours workers are just as satisfied with their job as permanent employees, happier with their work-life balance, and less likely to think that they are being treated unfairly by their organisation (CIPD, 2013). Only 27 per cent of zero hours workers in the survey reported being dissatisfied with their hours and 44 per cent said that they were either satisfied or very satisfied with having no minimum set contractual hours. Concerns about detriment for refusing hours were also largely unfounded with 80 per cent saying that they are never penalised for not being available for work. The survey also found that two-thirds of employers using these contracts did so because it provided them with flexibility to respond to peaks and troughs in demand while 47 per cent noted that the need to provide flexibility for employees also contributed to their decision.

4 The political response

The media attention afforded to zero hours contracts, combined with significant public campaigning by pressure groups, made the issue unavoidable for the three main UK political parties. The Coalition Government of the Conservative Party and the Liberal Democrats responded to the furore with an informal review of zero hours contracts which was followed in January 2014 by an official consultation on a small number of specific policy responses. The consultation, which at time of writing is still open, focuses solely on two aspects of the contracts which the Government indicates could address the misuse of zero hours contracts: the use of exclusivity clauses within these contracts and whether employees are provided with clear information about their employment status.

In a speech to the Trade Unions Congress, Labour Party leader Ed Miliband set out his party's position on the issue using language that clearly indicated an opposition to their use, but stopping short of advocating an outright ban on zero hours contracts:

We'll ban zero hours contracts which require workers to work exclusively for one business. We'll stop zero hours contracts which require workers to be on call all day without any guarantee of work. And we'll end zero hours contracts where workers are working regular hours but are denied a regular contract. (Miliband, 2013)

Following this speech the Party launched its own inquiry which is being led by Norman Pickavance, a former HRD at a large supermarket chain. This review has a similar remit to the official Government review. Both the Pickavance Review and the Government consultation are expected to report in the first half of 2014.

5 Zero hours contracts and the flexible workforce in higher education

The use of flexible working arrangements in the UK higher education sector is not a recent development. The nature of teaching and research work, as well as many of the support functions of HEIs, require both functional and numerical flexibility, to use the terms coined by Atkinson (1984). Teaching often requires the use of specialists and practitioners who may work in industry or other environments and contribute a proportion of their time to an HEI. Also the demand for specialist subjects may fluctuate and thus open-ended contracts may not always be appropriate. There are varied requirements for flexibility required by support functions including the need to accommodate fluctuations in administrative work due to the academic calendar and seasonally sensitive services such as catering may necessitate day-to-day changes in labour requirements. Students often form an important part of the HEI workforce from their contributions as student ambassadors to staffing campus facilities. Most of these individuals will require flexibility due to their own varied commitments and thus rigid employment contracts are not suitable for either party. Finally, there have been marked shifts in the labour market towards greater flexibility on the part of individuals who need to balance work and caring commitments or indeed the increasing number of workers in the 65+ year old age bracket wanting such flexibility. As employers committed to attracting a diverse range of talent, HEIs often exhibit 'best practice' when it comes to enabling opportunities for flexible working.

The need for flexibility within the HE workforce is evident in workforce statistics. In 2012-13, there were 128,025 staff in the sector on part-time contracts representing 33.5 per cent of all staff (excluding atypical staff) while 24.8 per cent are employed on fixed-term contracts (HESA, 2014). The proportion of staff on fixed-term contracts, however, varies significantly by occupational group as can be seen in Table 5.1 with academic staff comprising 69.6 per cent of all fixed-term contracts despite accounting for just under half of all staff in the sector. The use of fixed-term arrangements is particularly high among part-time academic staff with 55.7 per cent of staff in this group employed on fixed-term contracts compared to 25.2 per cent of full-time staff. Grouping academic staff by academic employment function is even more revealing - Table 5.2. The data clearly shows that the staff undertaking teaching only (57.0 per cent on fixed-term contracts) or research only (67.2 per cent) duties are far more likely to be working on a fixed-term contracts than those academic staff with dual responsibilities.

Table 5.1: Terms of employment, by occupational category, 2012-13

	Open-ended/permanent	Fixed-term contract	Total	% Fixed-term
Managerial, professional and technical staff	75,185	14,960	90,145	16.6%
Clerical staff	54,615	10,075	64,690	15.6%
Manual staff	38,380	3,725	42,105	8.8%
Academic staff	119,595	65,990	185,585	35.6%
Total	287,775	94,750	382,525	24.8%

Source: HESA, 2014.

Table 5.2: Terms of employment, by academic employment function, 2012-13

Academic employment function	Open ended	Fixed-term	Total	% fixed-term
Teaching only	20,120	26,675	46,795	57.0%
Teaching and research	84,080	10,520	94,600	11.1%
Research only	13,880	28,470	42,350	67.2%
Neither teaching or research	1,515	325	1,840	17.7%
Total	119,595	65,990	185,585	35.6%

Source: HESA, 2014.

The data on fixed-term arrangements for academic staff are interesting, but they are unlikely to be surprising to anyone who works in the sector in the UK or even in other countries. Research funding is discrete by nature and therefore the jobs that it creates are less likely to be in the shape of indefinite contracts. The drivers behind the higher incidence of fixed-term contracts underpinning teaching only positions are multiple, but will include the need to accommodate fluctuations in student demand and the need to provide specialist support in response to specific student needs or choices and to provide short-term cover.

Flexibility in the form of part-time working and fixed-term contracts is therefore significant, but these figures exclude an important part of the HE workforce that the Higher Education Statistics Agency (HESA) call ‘atypical’ staff. According to HESA guidance, atypical contracts meet one or more of the following conditions:

- are for less than four consecutive weeks - meaning that no statement of terms and conditions needs to be issued;
- are for one-off/short-term tasks - for example answering phones during clearing, staging an exhibition, organising a conference. There is no mutual obligation between the work provider and working person beyond the given period of work or project. In some cases individuals will be paid a fixed fee for the piece of work unrelated to hours/time spent;
- involve work away from the supervision of the normal work provider - but not as part of teaching company schemes or for teaching and research supervision associated with the provision of distance learning education;
- involve a high degree of flexibility often in a contract to work as-and-when required - for example conference catering, student ambassadors, student demonstrators.

While overall atypical figures supplied by HESA are high, the full-time equivalent (FTE) for this population of employees and workers is only a fraction of the total. There were 187,865 atypical staff recorded by HESA in 2011-12, but this equated to an FTE of only 11,782.9 – see Table 3.⁴ On an FTE basis, these staff represented just 3.7 per cent of total FTE staff (319,474) and 3.7 per cent of FTE academic staff (140,701). Over the last five years FTE atypical staff peaked in 2008-09 at 13,646 before falling in the following two years. In 2011-12 there was a 3 per cent increase in FTE atypical staff, but this is still 15.8 per cent below the level recorded in 2008-09.

Table 3: FTE atypical staff, by activity marker, UK, 2007-08 to 2011-12

Academic year	Academic		Non-academic		Total	Total as % of all FTE
	Total FTE	% of total atypical FTE	Total FTE	% of total atypical FTE		
2011-12	5251.2	44.6	6531.7	55.4	11,782.9	3.7%
2010-11	4782.8	41.8	6651.3	58.2	11,434	3.6%
2009-10	4214.9	39.3	6506.8	60.7	10,721.7	3.3%
2008-09	5768.5	42.3	7877.3	57.7	13,645.8	4.3%
2007-08	4424.5	42.7	5940.9	57.3	10,365.4	-

Source: HESA (data request 34639).

Outside of academic professionals, who comprise 41.0 per cent of the total FTE, library assistants, clerks and general administrative assistants form the next largest occupational group (28.9 per cent) followed by the cleaners, catering assistants, security officers, porters & maintenance workers group – see Table 2. The remainder are spread across a range of occupations although there is little use of atypical staff for managerial roles or for “drivers, maintenance supervisors and plant operatives” and “chefs, gardeners, electrical and construction trades, mechanical fitters and printers”.

⁴ The collection of data on atypical staff is recognised by HESA to be inconsistent and HEIs reported that it was difficult to capture all instances of atypical work in an accurate and efficient manner for the statistics agency. From 2012-13, the collection of atypical data for support staff has been made voluntary while collection of academic atypical data remains compulsory.

Table 4: Atypical staff, FTE, by occupation, 2008-09

Occupational group	Total FTE
Academic professionals	4,306
Library assistants, clerks & general administrative assistants	3,035
Cleaners, catering assistants, security officers, porters & maintenance workers	1,145
Non-academic professionals	422
Student welfare workers, careers advisors, vocational training instructors, personnel & planning officers	418
Laboratory, engineering, building, IT & medical technicians (including nurses)	368
Secretaries, typists, receptionists & telephonists	294
Artistic, media, public relations, marketing & sports occupations	210
Caretakers, residential wardens, sports leisure attendants, nursery nurses & care occupations	208
Retail & customer service occupations	67
Chefs, gardeners, electrical & construction trades, mechanical fitters & printers	22
Drivers, maintenance supervisors & plant operatives	9
Managers	8
Total	10,511

Source: HESA, 2008-09.

There are no official data that measure the use of zero hours contracts in higher education, but the University and College Union (UCU), the main academic trade union in the UK, collected data on their use under the Freedom of Information Act in 2013 (UCU, 2013). The UCU's data indicated that there were 24,725 zero hours contracts in place across the 147 HEIs that responded to its data request.⁵ Just over half of the HEIs that responded did not have any zero hours contracts in place according to the UCU's definition⁶ and the twenty HEIs with the highest number of contracts accounted for 67.4 per cent of all contracts at the 72 HEIs that had at least one contract in place.

⁵ 12 HEIs failed to provide data by the deadline and three HEIs refused to provide data.

⁶ Contracts under which the employer has no obligation to offer work and guarantees no minimum hours of work.

6 Institutional perspectives

The data on zero hours contracts and the use of casual labour are not only limited but provide no indication as to how or why these contracts are used in the first instance. UCEA interviewed a range of HEIs in August 2013 to improve its understanding of the use of zero hours contracts in the sector and to inform its submission of evidence to the Department of Business, Innovation and Skills (BIS) review of the use of zero hours contracts. The interviews were semi-structured and were conducted as a rapid information gathering exercise rather than as formal research, but the conversations, which were with HR Directors, helped fill many of the gaps in the data and provide important detail on the varied use of these contacts within HEIs. The term 'zero hours' is not widely used in the sector and casual contracts where the hours are not prescribed or may vary are more frequently described as 'variable hours' or 'hours to be notified' contracts. This section provides an outline of some of the main findings from the research.

Managing variable hours contracts

Rather than being managed in an ad hoc manner, HEIs have well established HR practices and procedures and have the capacity to ensure that staff employed on variable contracts are well communicated with and fully aware of their employment entitlements. The terms and conditions of employment are normally set out in a contract or letter of appointment and there are many examples in HE of where staff on such variable hours contracts enjoy the same terms and conditions as 'core' staff, save for the clause on hours of work. HRDs report that they do not receive any queries about the use of these contracts and had not received any challenges on their use. However, it was noted by several HRDs that the use of flexible arrangements is kept under constant review and several were reviewing their practice in more detail.

While it is often assumed that these contracts are brought in by employers to meet their own flexible work requirements, we found examples where variable hours contractual arrangements had been introduced in response to employees' requests. In one case, permanent zero hours contracts were introduced in response to staff concerns about other ad hoc casual arrangements and in another these arrangements were brought in following consultation with the staff representatives because they were a better way to provide a contractual framework for employees, including students, in areas of the business where the demand for work is known to be unpredictable.

Reasons for using variable hours contracts

It was evident from our conversations with HR Directors that variable hours contracts are only used where necessary and are used to complement rather than substitute other contractual arrangements such as fixed-term contracts and open-ended contracts. Variable hours contracts are most commonly used where there is a need to have an on-going contractual relationship for work which is not predictable or regular, but this can cover a wide range of occupational groups. Such contracts are also used in a variety of circumstances which often reflect aspects of HE provision that are unique to the institution. We did not come across any evidence from our members that variable hours arrangements are being used in circumstances when it would be possible for the employer to offer an open-ended employment contract with fixed hours.

For some HEIs, variable hours contracts reduce the bureaucracy of administering several short fixed-term contracts to the benefit of both employee and employer. While this arrangement does not

reduce the potential precariousness of the arrangement for the employee, it does provide continuity of employment for the staff member and can in many cases ensure on-going access to university facilities, such as libraries, sports facilities and email accounts. The introduction of auto enrolment for pensions⁷ has led some HEIs to offer variable hours contracts in place of ad hoc fixed-term employment.

A number of HEIs reported that variable hours contracts are used as the contract of choice for engaging professionals who are already in employment elsewhere and are not operating as self-employed. One performing arts college, for example, uses zero hours contracts for the majority of its instrumental music teachers as teaching hours are driven by student preferences related to their main instrument. While teaching hours are thus variable, they are agreed at the beginning of each academic year once enrolment numbers and preferences are confirmed. Similarly many HEIs engage language tutors to provide tuition to masters or postgraduate students who need foreign language skills for their research. At one university the employees' hours are set termly once the language needs for the coming term are known and the contract offers the same terms and conditions as full-time employees including a pro-rata hourly rate but with the exception of the clause on hours. When the contracts were introduced, at the request of the employees who wished to have on-going access to university facilities, the university developed guidance and departments were given training on their use.

Variable hours contracts enable HEIs to respond to the fluctuating demands of their students for particular courses. In any semester or year there can be teaching hours needed beyond the capacity of the 'permanent' staff available in a discipline area. Where this occurs, these hours are generally notified to the staff member once the enrolment is confirmed and the academic plans for the coming period are known and the offer to work the hours required is likely to run for at least a semester, sometimes longer. Typical instances where such contracts are used to support student learning include:

- Temporary teaching cover for permanent academic staff who are undertaking funded research or who are absent for other reasons.
- To provide PhD students with opportunities for some occasional teaching, which is valued as part of their career development.
- Specialist teaching in specific areas such as architecture, law or art where professionals from industry are required to deliver particular classes or studio work within a course, e.g. civil engineers, oil industry experts, barristers or practising artists.
- Language tutors in certain circumstances, for example where the level of demand for a minority language cannot be predicted ahead of students enrolling.
- Teaching input where a permanent contract is not appropriate and usually where the breadth of the full academic role is not required, for example in summer schools.
- Limited term cover for long-term sickness, sabbaticals, maternity or parental leave.

⁷ As required by the Pensions Act 2013, organisations in the UK must automatically enrol staff into an eligible pension scheme.

While the use of variable hours contracts for teaching and tutoring duties was often the focus of discussion, the arrangements are also used to employ staff in support staff functions. The most common examples were in areas where demand fluctuates from week to week, such as catering and security, and to cover peaks in the academic year such as exam and enrolment periods. The alternative is to use agency staff but in many cases this would be more costly for the institution.

We also heard that HEIs are committed to providing casual employment opportunities to students that enable the university to meet changes or peaks in activity but also offer work experience and income-earning opportunities combined with the flexibility that can fit around their study commitments.

If HEIs were not able to use this form of variable contract, the needs for the casual/temporary work would remain and would have to be met in other ways. The main contractual alternatives include: a series of very short-term fractional contracts, successive fixed-term contracts (with breaks in between) or using bank or temporary agency staff (which would be more costly in terms of the direct fee and the training/induction overhead). Such alternatives are unlikely to confer any additional benefit on the employees and would not offer the same continuity of employment which is valued by many staff. It would also create additional burdens on the employers, such as the administration of fixed-term contracts, complexities in payroll administration relating to auto enrolment, and the additional costs associated with temporary agency hire.

7 Atypical contracts and employment relations in HE

The issue of casual employment has been a feature of discussions between trade unions and employers, as represented by their employers' association UCEA, for several years. In 2002, UCEA and the five main HE trade unions agreed guidance on fixed-term and casual employment for HEIs which included principles for the employment of fixed-term and casual staff (UCEA, 2002). In particular, the guidance recognised that indefinite contracts are the general form of employment relationship and noted that there should be objectively justifiable reasons for using casual contracts. The guidance gave the following examples:

- the post requires specialist expertise or recent experience not already available within the institution in the short term;
- to cover staff absence as appropriate;
- to provide input from specialist practitioners;
- where the student or other business demand can be clearly demonstrated as particularly uncertain; and
- where there is no reasonably foreseeable prospect of short-term funding being renewed nor other external or internal funding being available or becoming available.

Since this guidance was produced, the UCU has continued to seek a reduction in the use of fixed-term contracts and assimilate hourly-paid employees on to the same terms and conditions as other staff.⁸ The UCU has an 'anti-casualisation committee' and this focuses on precarious employment, zero hours contracts, access to equal benefits and 'poor working conditions'. It was also established to 'play a leading role recruiting and organising other workers on casualised contracts'. The Committee

⁸ A survey by UCEA in 2010 found that only xx per cent of HEIs had not already done this...

organised a day of action on 6 March 2013, although this largely appeared to be geared towards recruitment.⁹

However, the main agenda for the HE trade unions over the past three years, particularly at multi-employer level, but also at local level, has been job security, pension reform and pay – in that order. So-called ‘casualisation’ did not feature prominently at multi-employer negotiations at the New Joint Negotiation Committee for Higher Education Staff (New JNCHES) until discussions on the pay award for 2013-14.¹⁰ These discussions coincided with the increased media attention on zero hours contracts and by the last negotiating meeting in May 2013, the trade union focus was squarely on the use of zero hours contracts rather than the use of casual labour in general.

UCEA’s negotiating remit on behalf of the 150 HEIs that voluntarily participate in the multi-employer negotiations is primarily to agree an uplift to the national pay spine and UCEA has no mandate to form agreements on contractual issues. While this inevitable, constrains the ability of issues such as zero hours contracts to be addressed in any substantive manner, the negotiations do provide a venue for discussion and for each side to critically assess each other’s position. In addition, the trade unions and employers have often agreed to carry out joint work to look at particular issues and in 2013-14 the employers offered to undertake a project to look at the use of casual labour in HEIs. As the negotiating round ended with four trade unions in dispute with the employers, this work has not moved forward.

Employment policy at the level of decisions regarding contractual terms has to be a matter for the individual autonomous HEIs as employers. At individual HEIs the situations differ widely. There are examples where employer and trade unions have agreed to use zero hours contracts in order to move away from ad hoc arrangements. There are, on the other hand, examples of the university agreeing with trade union representatives to move away from the use of zero hours contracts towards contracts that guarantee a minimum set of hours. The extent to which zero hours contracts is seen as a priority issue at the HEI will also vary. Several institutions have also reported recent or upcoming internal reviews of the use of variable hour contracts. It is likely that such reviews have been triggered by the recent focus on these arrangements by trade unions, some politicians and the media.

⁹ <http://www.ucu.org.uk/6427>

¹⁰ New JNCHES is a single table negotiating committee with a remit to, inter alia, agree an annual uplift to a 51-point pay spine which 150 HEIs in the UK use to set job level pay boundaries for staff up to the level of professor and its administrative equivalents. For a more in depth review of collective bargaining in UK higher education see Fairfoul et al (2011).

8 Conclusion

Zero hours contracts rapidly emerged as an important employment policy issue in the UK following attention from the media and civil society. UK politicians have largely responded with moderation and the Government has focused its attention on reducing misuse of the contracts and providing better information for employees. The pejorative label has been unhelpful in public discourse and made it difficult for employers to justify their use in what has been a largely hostile media environment. In HE the 'zero hours' label is often eschewed in favour of 'variable hours' or 'hours to be notified' contracts while national campaigns by trade unions have generated significant local and national media attention and used the 'zero hours' label to encompass a much wider range of casual or temporary employment.

Our investigation of the use of zero hours contracts in HE has revealed some of the reasons why these contracts are in use and how these arrangements can benefit both employers and employees. We cannot conclude that there is no misuse of these contracts but the information we have collected suggests that these arrangements are used in particular circumstances rather than as substitutes for the permanent and fixed-term workforce. A review of available statistical data indicates that these staff comprise less than four per cent of full-time equivalent work in the sector and their use has not changed noticeably in recent years. These data should provide comfort to trade union representatives that perceive a creeping 'casualisation' of the sector, indeed the use of atypical staff in the sector has fallen since the beginning of the 2008-09 recession.

The standardisation of the terms and pay of hourly-paid lecturers has regularly featured in trade union claims at New JNCHES and zero hours contracts only began to feature following media attention on the issue in 2013. The extent to which this is being dealt with through local discussions between employers and trade unions appears to vary but it does not appear to be a widespread priority. However, further evidence gathering is probably required to understand whether there are genuine causes for concern for employee representatives and to identify what steps employers are taking to address these concerns. The backdrop for discussions between trade unions and employers is challenging due to a long-running dispute on pay and will remain so for the near future.

It is unlikely that the issue will recede from public discourse in the UK before the 2015 general election, particularly while concerns remain about increases in the precariousness of employment at the edges of the labour market. HE employers will await the outcome of the BIS consultation on zero hours contracts, but feel this is unlikely to generate any changes that will have much effect on their employment practices. The trajectory of the future use of zero hours contracts will thus be due largely to local discussions between trade unions and employers potentially supported by evidence gathering, perhaps jointly with trade unions, at national level. The need for workforce flexibility in HE is long established and changes to HE policy, particularly in England, will mean that fluctuations in demand will continue. It is therefore important for these discussions to address how best to manage this flexibility while according employees without 'permanent' roles an appropriate level of certainty and terms of employment that reflect the nature of the work being carried out. The existing sector guidance on fixed-term and casual employment agreed between trade unions and employers remains a helpful starting point for both parties. It may be fair to say that a little less heat and a bit more light may be the way forward for UK HEIs to try and get the balance right.

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