

# THE EDUCATIONAL INSTITUTE OF SCOTLAND

## ZERO-HOURS CONTRACTS

The following motion was moved by the ULA and approved by the 2015 EIS AGM:

“That this AGM resolve:

- (a) to campaign strongly within branches, Local Associations and across Scotland against casualisation and zero hours contracts in all publically funded education institutions;
- (b) for Council to use Freedom of Information requests to prepare a report on the use of zero hours contracts by our employers;
- (c) to lobby the Scottish Government and COSLA for a complete abolition of zero hours contracts in Scottish publicly funded education sectors.”

### BACKGROUND

In a previous paper to Executive, which was presented to the 2015 AGM the EIS position was set out. Below is the current policy position:

1. The EIS opposes the use of “zero-hours” contracts which are becoming increasingly prevalent particularly in the Higher and Further Education Sectors in Scotland. These contracts provide for a one sided employment relationship in favour of the employer and restrict the opportunities for the employee to find other additional work because of the existence, in some cases, of exclusivity clauses in the contracts. In short, the EIS believes that these contracts are, essentially, exploitative in nature and should be substituted for other types of employment contact which, *inter alia*, provide for greater levels of job security and income reliability for the employee. Evidence obtained by the EIS also suggests that, statistically, zero-hours contracts are more likely to be held by women than by men and that, therefore, there is a discriminatory aspect to the use of these contracts. This might open up the prospect of legal action being taken against employers which make use of these contracts in the future.
2. Zero-hours contracts classify staff as being “workers” rather than “employees” which provide for fewer contractual benefits and fewer legal protections. For example, many zero-hours contract holders are not entitled to contractual benefits including: sick pay, maternity or paternity benefits, full holiday entitlement, minimum notice periods, the application of disciplinary procedures between assignments and limited pension provision. In addition, zero-hours

contract holders who are classified as “workers” do not have legal rights to: SMP and SPP, no less favourable treatment (fixed term status), request flexible working, time to train, statutory notice periods, collective redundancy consultation, statutory redundancy pay, protection from unfair dismissal, Transfer of Undertakings – Protection of Employment Regulations.

3. There is also increasing evidence that some employers are using zero-hours contracts to replace core staff to perform standard, routine and planned work for which there is often an ongoing demand and which could readily be fulfilled by staff employed on more secure, fairer forms of contract. The argument often presented by employers to justify the use of these contracts is that zero-hours contracts provide flexibility to deal with unexpected, short-term cover situations. The increasing use of zero-hours contract staff to fulfil functions previously carried out by permanent or fixed term staff completely negates the force of this argument and confirms the fact that many employers are exploiting the flexibility which these contracts offer. In short, for “flexibility” read “licence”. In addition the consequences for zero-hours contract holders when seeking to apply for mortgages or loans etc. in the current economic climate can only be imagined and can only add further to the intense insecurity felt by individuals trapped in this type of contract.
4. There is also anecdotal evidence that the use of zero-hours contracts and the limited job security and income reliability which they provide, are resulting in increased levels of staff turnover with staff constantly seeking opportunities for positions which offer greater security, better contractual benefits and improved legal protection. In these circumstances both parties to the employment contract are the losers and, in many important services and industries, the overall and ongoing level of service to the student, client or customer can only suffer. There is also some evidence which suggests that zero-hours contracts are beginning to replace the use of agency staff in some sectors. Although agency staff themselves are at the lower end of the continuum when it comes to job security/income guarantee, nevertheless agency staff are statutorily entitled to parity with other employees with the host employer after 12 weeks of employment.
5. There exists no “mutuality of obligation” within a standard zero-hours contract. Many workers employed on these contracts feel that they cannot afford to reject any offer of work for fear of being discarded in future allocations of hours of work in favour of those who can accept all or nearly all of the hours offered. This lack of “mutuality of obligation” combined with the use of draconian exclusivity clauses further adds to the insecurity of the contract holder and further shifts the balance of power and advantage further in favour of the employer.

**In short, the EIS would want to see zero-hours contracts replaced with permanent or fixed term (part-time or annualised hours) appointments wherever possible.**

6. As indicated above, the EIS opposes the use of zero-hours contracts and would wish to have introduced the following statutory protections which would prevent/reduce the extent of exploitation of staff currently employed on these unsatisfactory contracts.
  - (a) develop a statutory definition of "zero-hours" contracts;
  - (b) move towards the eventual abolition of "zero-hours" contracts as they currently exist across the UK;
  - (c) move towards a statutory abolition of exclusivity clauses as part of zero-hours contracts;
  - (d) move towards a statutory abolition of zero-hours contracts which do not incorporate full and proper "mutuality of obligation";
  - (e) the development of immediate statutory guidance on situations where zero-hours contracts should not be used;
  - (f) amend the provisions of section 1 (4) of the Employment Rights Act 1996 to require the inclusion of a minimum number of contracted hours in any statement of particulars on employment;
  - (g) extending a number of statutory protections which other employees/workers enjoy including:
    - (i) Statutory Redundancy Pay;
    - (ii) Protection from Unfair Dismissal;
    - (iii) TUPE;
    - (iv) Collective Redundancy Consultation;
    - (v) Minimum Notice Periods;
    - (vi) Right to request 'Time to Train';
    - (vii) Right to request Flexible Working;
    - (viii) Right to claim no Less Favourable Treatment (fixed term status)
    - (ix) Right to claim no Less favourable treatment (part-time status)
    - (x) Right to receive Maternity, Paternity, Adoption Leave and Pay.
7. The EIS will continue to campaign against the use of "zero-hours" contracts and will utilise any legal avenue which might be open and which might ameliorate the worst excesses of these contracts. In addition the Institute will work closely with the STUC, TUC, and all affiliates in order to attempt to secure our objectives.

## **FURTHER WORK**

In May 2015, post submission of motions to the AGM, FOI requests were conducted by the F&HE Department and the results (Appendix 1) have been shared with both FELA and ULA. The findings from the FOIs will be used to develop policy and monitor the situation in both FE and HE. Appendix 2 provides the current policy reports from both FELA and ULA.

The EIS has continued to campaign against "zero-hours" contracts and has raised such contractual issues with employers and supported TUC and STUC campaigning on this issue. During meetings with both COSLA and the Scottish Government the EIS has made clear its opposition to zero hours contracts. The EIS has also featured zero hours contracts in the "Standing Up for Scottish Education" election manifesto. In addition, Executive Committee recently made a financial donation to Serving Up Change: The Fight for Workers' Rights documentary which is a documentary aimed at exposing the reality of exploitative zero-hours contracts and the impact of this on young workers.

## **RECOMMENDATIONS**

- (1) Executive Committee endorses our current policy and EIS commitment to opposing zero hours contracts.
- (2) Executive Committee confirms its continued support for campaigns opposed to zero hours contracts.

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