Key learnings
The Augar Report and other hot topics in HE
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Introduction

Welcome to the Summer edition of our InStep magazine, looking at all things topical in higher education.

Recent weeks have been dominated by the publication of the long awaited report from the Augar review of post-18 education and funding in England. Most of the widespread national media coverage focused on the much anticipated recommendation for a cut in undergraduate tuition fees. This is, however, only one of the 53 recommendations made in the report, which is far more wide-ranging in scope and potential impact than the immediate press coverage suggests. In this magazine we examine the key issues arising from the report from an HE perspective.

The end of March saw the deadline for HE in respect of the publication of the second set of gender pay gap statistics. This has allowed for comparison of what, if any, improvement there has been since the first set of figures and the degree to which action plans to reduce the pay gap have worked. In the last issue of InStep we considered how universities could use positive action to close pay gaps more quickly. In this issue we look at other initiatives, positive steps and critical interventions which institutions may wish to consider as part of their diversity strategy in order to reduce pay gaps and increase representation.

Brexit and the question of citizens’ rights remains at the forefront of the issues facing universities. At the time of writing the UK remains in the EU with the question of whether an exit will be with or without a deal still very much up in the air. The immigration White Paper envisages a revised sponsorship system applying equally to EEA and non-EEA nationals. In this issue members of our specialist education immigration team provide an update on the proposed new system and the effect of a deal or no-deal exit on this.

The recent introduction of the Tenant Fees Act provides greater protection to students living in university accommodation. Institutions and their agents will need to navigate these new rules and satisfy the various conditions in order to avoid falling foul of the Act and suffering the consequences. Members of our education estates team, who recently delivered a webinar on this topic to over 100 delegates from the education sector, provide an update on the key issues.

Concerns have been raised in the sector about the increase to employer contributions into the Teachers’ Pension Scheme. This comes at a time of increasing financial uncertainty within the UK economy as a whole, as well as within education. In this issue our specialist education pensions team provides an update on the current position, the Government’s response to its consultation on what (if anything) it should do to support education institutions and what it will mean for institutions.

In times when HEIs are looking at their international strategy we thought it timely to provide a reminder of the key HR issues that institutions need to keep in mind when entering into collaborative partnerships.

Finally, we consider the latest developments in reforms to employment law and practice following the Government’s response to the Taylor Review of Modern Working Practices and the impact this will have on your institution.

I hope you find the magazine interesting and useful. As always we value your comments and suggestions for topics to be covered in future issues.

Diane
Augar review recommends wide-ranging changes to education and funding at higher education institutions

The long awaited report from the Augar review of post-18 education and funding in England was published by the Department for Education on 30 May 2019. Most of the widespread national media coverage focussed on the much anticipated recommendation for a cut in undergraduate tuition fees. This is, however, only one of the 53 recommendations made in the report, which is far more wide-ranging in scope and potential impact than the immediate press coverage suggests.

Indeed a clear focus in the report is on the strategic balance of public funding for different sectors of tertiary education. The recommendations include a shift of emphasis and funding from HE to FE to address what it describes as the disparity between the 50% of young people who participate in higher education and “the rest” and the UK skills and productivity gap. The report contrasts the fact that, in 2017-18, more than £8 billion of public funding was committed to support 1.2 million UK undergraduate students in English HE institutions in 2017-18 while £2.3 billion of public funding supported 2.2 million full and part time adult FE students in the same period.

The Foreword to the report describes post-18 education in England as “a story of care and neglect”. It acknowledges that universities are one of the UK’s world class industries and, as such they are “cared for” and “worth caring about” and large parts of the report are “devoted to building on their considerable achievements”. However, the report states strongly that “the neglected” 50% of the 18-30 year-old population who do not go to university, and older non-graduates, are also worthy of attention.
The report’s recommendations are guided by eight principles adopted by the review panel:

- post-18 education benefits society, the economy, and individuals
- everyone should have the opportunity to be educated after the age of 18
- the decline in numbers of those getting post-18 education needs to be reversed
- the cost of post-18 education should be shared between taxpayers, employers and learners
- organisations providing education and training must be accountable for the public subsidy they receive
- government has a responsibility to ensure that its investment in tertiary education is appropriately spent and directed
- post-18 education cannot be left entirely to market forces
- post-18 education needs to be forward looking

The panel’s recommendations are made under six headings. The ones which are most relevant to HEIs are those which fall under higher education, apprenticeships, the student contribution system and post-18 maintenance. Below we summarise the main recommendations in the report in relation to each of these.

**Higher education**

The review considers that the HE sector “broadly fulfils” the objective of a sector which is “accessible to all, supported by a funding system that provides value for money and works for students and taxpayers, incentivises choice and competition and encourages the development of the skills we need as a country.” However, the review considers that a significant minority of university students are “left stranded” with poor earnings and mounting “debt”, with consequences for them personally and economic consequences “for the state that foots the bill.” A significant aspect of this section of the review is the proposed interventions to address perceived low value degree courses within an expanding sector and an “accidental over-investment in some subjects and an under-investment in others that is at odds with the government’s Industrial Strategy and with taxpayers’ interests.”

As widely anticipated, the headline recommendation in relation to HE is a reduction in the cap on tuition fees for undergraduates studying at English institutions. The proposal is a maximum fee of £7,500 per annum (down from the current figure of £9,250), to be introduced by academic year 2021/22. This fee cap would be frozen until 2022/23 and then increased in line with inflation from 2023/24.

This is recommendation based on three observations:

- fees at English universities are amongst the highest internationally
- £9,250 is considered to be more than the reasonable cost of providing the lowest cost courses
- the Government should have more say in how the state subsidy for higher education is spent given the public subsidy of higher education through teaching grants and the significant proportion of student loans which will not be repaid

Importantly, however, the review recommends that the overall fee income which would otherwise be “lost” by universities if tuition fees are reduced should be replaced, in full, by increases in the Government the teaching grant. However, while the aim is to leave the average unit of funding unchanged at sector level in cash terms, the report recommends that some subjects should receive a greater share of the teaching grant “top up” than others. The review explicitly states that it would expect some subjects to receive little or no subject specific teaching grant over the £7,500 base rate (whilst suggesting that that the Office for Students (OfS) should consider separate arrangements to support specialist institutions offering the highest quality provision that might otherwise be adversely affected by this). The review concludes that the fact that almost all HEIs have set fees at the maximum level has resulted in some subjects receiving an effective increase in income at more than twice the income of others, a differential for which the panel found no basis in the cost of provision.

To determine how much, if any, teaching grant each subject should receive, the report recommends that the OfS carry out a review of the reasonable costs for different subjects in the light of sector best practice, historical levels and international comparisons. It is envisaged that this “should rebalance funding towards high cost and strategically important subjects and to subjects that add social as well as economic value”.

The report also recommends that a portion of the increased teaching grant should be used to more effectively support access, participation and success for students who have experienced socio-economic disadvantage, including part-time and mature students.

The current freeze on average per-student resources should also, in the panel’s view, continue for three further years, with inflation based increases resuming in 2023/24. This is expressly suggested as a means to help fund investment in other parts of post-18 education and reflects the panel’s view that the HE sector generally can absorb this freeze because its overall financial position is reasonably sound, with an overall strong balance sheet and operating surplus.
One of the more controversial elements of the review has been the question of whether a minimum entry threshold should be applied to undergraduate courses. The report has stopped short of an immediate recommendation for this, recognising that such a threshold would be a “significant intervention into what has been designed as a competitive autonomous market”. However, the panel recommends that if, by 2022/23, the sector has failed to address the problem of recruitment to courses which have poor retention, poor graduate employability and poor long term earnings benefits, the Government should intervene by way of a contextualised minimum entry threshold, a selective numbers cap or a combination of both.

Finally, the report recommends that student finance should no longer be offered for foundation years, unless agreed with the OfS in exceptional cases. Here the report is looking at one-year courses offered by universities for students who do not have the prior attainment requirements to enter the course of their choice in order to give them the knowledge they need to progress on to the first year of their chosen course.

The review has concluded that some universities are using foundation years to create four-year degrees in order to entice students who do not otherwise meet their standard entry criteria. However, in recognition of the potential impact on widening participation, the panel recommends that this measure should not be implemented without at least two academic years’ notice and encourages universities to develop their own Access to HE Diplomas (discrete courses of further education at Level 3) or collaborate with further education colleges to create these.

**Apprenticeships**

The review has concluded that as the current reforms to the apprenticeship system remain very much in progress it is not appropriate to undertake a wholesale evaluation of the current arrangements. However, the panel have made recommendations to address emerging issues which they consider to have a direct bearing on whether the current reforms succeed.

Firstly, the panel has concerns about the subjects being studied and their level. The vast majority of apprenticeships are in Business, Administration and Law and very few apprenticeships are at Levels 4 and above (and even then heavily concentrated in a few sectors). Therefore, the report recommends that the Government closely monitors the extent to which apprenticeship take up reflects the priorities of its Industrial Strategy, both in content and in geographic spread.

Secondly, the review identifies specific concerns in relation to degree apprenticeships (level 6 and above), in particular that some employers are rebadging existing training activity – including graduate schemes – to claim apprenticeship funds, and putting senior managers through Level 7 courses paid for by the levy (the review questions whether this represents good value to the public purse); and that early figures show that degree and higher level apprentices are more likely to come from areas with higher participation in education. Consequently, it recommends that funding for Level 6 and above apprenticeships should normally be available only for apprentices who have not previously undertaken a publicly-supported degree.

Thirdly, it believes that the large number of training providers and the wide range of levels of apprenticeship provision make supervision a complex task, with seven responsible bodies working together under the Quality Alliance umbrella. The proposed solution is to make Ofsted the lead responsible body for the inspection of the quality of apprenticeships at all levels with a provision that no provider without an acceptable Ofsted rating should receive a contract to deliver training in their own right.

Fourthly, the review recommends that all approved providers of government-funded training, including apprenticeship training, must make clear provision for the protection of learners in the case of closure or insolvency.

**The student contribution system**

This section of the report examines the financial contributions students make to their undergraduate studies (the review does not consider the loan system for postgraduate study). It points out that the tripling of student fees in 2012 made little difference to the repayments made by graduates in the bottom four deciles but markedly increased the total amount repaid by higher earners.

According to Government forecasts, the top 30% of lifetime earners will repay more than 100% of their original debt on average (due to the repayment of both their original debt and a large portion of interest accrued); the middle 40% will repay 45% and the lowest-earning 30% will repay less than 10%. The report is concerned that under the existing system the proportion of borrowers who repay very little is too high and it therefore make proposals to change this. The changes would not apply, with one exception to existing borrowers but rather to those commencing their studies in 2021/22.

Key components of the current system are the income levels at which repayment starts (the contribution threshold); the payment over which payments are made (the contribution period) and the amount of interest charged. The report recommends the following changes:

- the contribution threshold should be set at the level of median non-graduate earnings. On current prices, this would mean a reduction from £25,000 to £23,000 but by 2021/22 it will be approximately £25,000. The panel considers that the increase in the contribution threshold from £21,000 to £25,000 in 2018 took many borrowers out of repayment at very significant cost to the taxpayer
Amongst the recommendations are:

- the contribution period should be extended from 30 to 40 years
- on interest rates, the in-study interest (charged from the day a loan is taken out until the student becomes eligible to make repayments) should be reduced to track inflation rather than inflation plus 3%, whereas the post-study interest rate should remain at inflation plus 3%

Because interest is paid on the loan, some borrowers will repay more than 100% of their initial loan, and those that pay back more slowly – in the middle to upper end of the earnings distribution – can pay proportionally more than the very highest earners who are exposed to interest for a shorter time. The report acknowledges that a longer repayment period of 40 years could exacerbate this and recommends that the introduction of a lifetime cap on repayments of 1.2 times the initial loan amount in real terms. It suggests that this cap should be introduced for all current Plan 2 Borrowers (those loans originating from 2012 when terms were changed) as well as future borrowers.

Finally, the report says it is widely recognised that the current terminology used to describe student finance can be unhelpful and misleading. It suggests that the Governments introduces new finance terms under the banner of a new ‘student contribution system’ reducing focus on ‘debt’ levels and interest and emphasising contribution rates.

**Post-18 maintenance**

The report says that maintenance should be available to all learners on equal terms, whether in HE or FE to reflect the principle that everyone should have the opportunity to be educated after the age of 18. Maintenance should apply to higher levels of study (Levels 4 to 6), adjusted for the duration and intensity of study and be set on a basis that reflects the needs and characteristics of learners at different levels and across different modes of study.

The report concludes that the current system works well for most groups but debt is still a deterrent for the disadvantaged - such students leave study with higher levels of debt (particularly since the removal of maintenance grants in 2015/16) and there are growing concerns about the student cost of living.

Amongst the recommendations are:

- that students from low-income households should receive a substantial part of their maintenance support in the form of a grant in order to reduce their level of debt on graduation – a minimum of £3,000 is proposed
- maximum maintenance support should be set in line with the National Minimum Wage for age 21 to 24 on the basis of 37.5 hours per week and 30 weeks per year
- higher levels of support should continue, as now, for courses which are longer in duration

- in delivering a maintenance system comprising a mix of grant, loan and family contribution, the Government should ensure that the level of grant is set as high as possible to minimise or eliminate the amount of additional loans required by students from disadvantaged backgrounds

In relation to student accommodation, the report recommends that the OfS should examine the cost more closely and work with students and providers to improve the quality and consistency of data about costs, rents, profits and quality.

The review concludes that the proposed maintenance system for students at Levels 4 to 6 would not be appropriate for learners at Level 3 and below. Instead the funding available for bursaries should increase to accommodate the likely growth in Level 2 and Level 3 adult learners and the support on offer to Level 2 and Level 3 learners should be made clearer by both the Government and FE colleges to ensure that prospective learners are aware of the support available to them.

**Comment and reaction**

Theresa May, who commissioned the review, has welcomed its proposals including the reintroduction of means-tested maintenance grants, the reduction in tuition fees and increased financial support for FE. However, what is less clear is what approach her successor will take. Continuing political uncertainty creates significant doubt as to which recommendations will be implemented, to what extent and over what timescale - the review must be seen as a potential direction of travel rather than any definitive blueprint for reform.

For universities a key issue and concern will be the proposed lower tuition fee cap of £7,500 and the impact this may have on income and sustainability, particularly when combined with other financial threats and uncertainties (e.g. increased pension costs, Brexit and challenges to international student recruitment). The review expressly positions the lower fee cap and its freezing until 2022/23 as “the best way to encourage the sector to achieve further efficiencies”.

If this proposal is taken forward, a critical issue will be the degree to which the Government is prepared to replace this shortfall in full by increasing the teaching grant. Indeed responding to the recommendations Alistair Jarvis, Chief Executive of Universities UK, said “On the face of it the fee-level recommendations may look good for students, but unless the government gives a cast-iron guarantee on full replacement funding, it could prove to be a wolf in sheep’s clothing”.


Commenting on the review’s recommendations on tuition fees UCU have said “From what we have seen, the recommended tuition fee changes look like the worst of all worlds. Institutions would have their hands tied on funding while students would still graduate with tens of thousands of pounds of debt that many will never fully pay off. It is crucially important that changes don’t leave institutions with less resource as that would be hugely damaging for students and staff”.

Another important consideration will be the extent to which this “top up” will vary according between different degree courses. The review expressly proposes a rebalancing of funding - via a differentiated teaching grant top up - “towards high-cost and strategically important subjects and to subjects that add social as well as economic value to students and taxpayers”. This is likely to impact institutions with significant numbers of students in arts, humanities and social sciences subjects, reducing the extent to which fee income from these courses can cross subsidise teaching in other areas. The report also expressly states that its proposals will “rebalance” funding towards high-cost and high-value subjects and “are likely to result in more funding going to institutions with a strong research base”.

The longer term threat, at least at HE provider level, is of greater intervention in a currently competitive but autonomous market via the imposition of a contextualised minimum entry threshold and/or a selective numbers cap, in relation to courses with poor retention, poor graduate employability and poor long term earnings benefits. Institutions will also note the numerous references to OfS’ regulatory powers, e.g. in relation to senior pay and governance, grade inflation, entry tariffs and unconditional offers, and generally in relation to poor quality provision and outcomes.

Questions have also been raised as to whether the proposals will widen participation and criticism that they mainly benefit higher earning graduates.

For more information please contact:

**Diane Gilhooley**
Partner, Head of Eversheds Sutherland’s UK and International Education Practice
T: +44 161 831 8151
dianegilhooley@eversheds-sutherland.com

**Chris Mordue**
Partner
T: +44 113 200 4856
chrismordue@eversheds-sutherland.com

**David O’Hara**
Professional Support Lawyer
T: +44 616 831 8541
davido’hara@eversheds-sutherland.com
Reducing gender pay gaps and increasing representation - initiatives, positive steps and critical interventions

Legislation on gender pay gap reporting was introduced in March 2017, with education institutions given a deadline of 30 March 2018 for the first set of reporting statistics. The primary aim of revealing pay gaps is to encourage employers to focus their efforts on reducing them. However, there appears to be little improvement in national pay gap figures between the figures for 2017 and 2018.

The second set of reported average figures had led to further national coverage of the higher education sector. For example, on 29 March 2019, BBC News reported that ‘more than nine out of ten British universities pay their average male employee more than they pay their average female employee’ and that ‘British universities report a higher median pay gap, 13.7% on average, than the national average of 9.1% in 2018’.

So what do the latest set of sector figures in fact show? UCEA reported on 5 April 2019 that, based on its analysis of gender pay gap reports from 127 higher education institutions, the typical median gender pay gap in the HE sector has fallen from 15.6% in 2017 to 13.7% to 2018. However, the mean gender pay gap remains similar at 14.9%, compared to 14.8% in the previous year. UCEA also reported that the percentage of women in the lower pay quartile has increased from 65.1% to 66.1% and the percentage of females in the top pay quartile has slightly decreased from 44.3% to 44.2%.

In the last issue of InStep we considered how universities could use positive action to close pay gaps more quickly. In this article we look at other initiatives, positive steps and critical interventions which institutions may wish to consider as part of their diversity strategy in order to reduce pay gaps and increase representation.

What steps should HEIs be taking?

In the year between publication of the first and second set of pay gap figures, a lot of helpful guidance has been published on the types of steps employers may take to narrow their gender pay gap, including guidance provided by the Government Equalities Office (‘GEO’), UCEA and ACAS.

In our experience these suggestions reflect the steps institutions are taking to address their gender pay gaps but it is worth a reminder of the guidance so that institutions can review whether there are any additional actions which they have not yet considered.

In August 2018, the GEO published guidance entitled: Reducing the gender pay gap and improving gender equality in organisations: evidence-based actions for employers. The intention of the guidance is to help employers create more effective actions plans and it sets out a number of actions which it says are likely to improve the recruitment and progression of women and reduce the gender pay gap. These are split into three categories - effective actions, promising actions and actions with mixed results.

Effective actions (which have been tested in real world settings and have been found to have a positive impact) are:

- including multiple women in shortlists, ensuring that there is more than one woman in the shortlisted qualified candidates
- using skill-based assessment tasks in recruitment, rather than relying only on interviews
- using structured interviews for recruitment and promotions to reduce the risk of unfair bias to influence decisions
- encouraging salary negotiation by showing salary ranges, as research suggests that women are less likely to negotiate their pay
– introducing transparency to promotion, pay and reward processes, so that managers understand that their decisions need to be objective and evidence based, as they can be reviewed by others
– appointing diversity managers and/or a diversity task force

The second category is promising actions (those which are promising and require further research to improve the evidence on their effectiveness and how best to implement them). These include improving workplace flexibility for both men and women, encouraging the uptake of shared parental leave and offering mentoring, sponsorship and networking programmes.

The final category of actions with mixed results includes having diverse selection panels and providing training in relation to unconscious bias, diversity and leadership development. These actions are described as “mixed” as they have been shown to have a positive impact sometimes and at other times a negative impact – this might be due to how they are implemented or other factors that are not yet fully understood. However, our experience is that a number of institutions have found these initiatives helpful.

In February 2019, the GEO put the examples of actions employers can take into context, and published guidance entitled: Four steps to developing a gender pay gap action plan. Based upon GEO’s analysis of what employers who have developed successful action plans said about the process, the four steps recommend by the GEO to develop a gender pay gap action plan are as follows:

1. Analyse your data and identify actions (understanding why your organisation’s gender pay gap exists and adopting a systematic approach to identifying actions)
2. consult and engage (gain buy-in from senior people and involve a wide range of stakeholders and staff bodies)
3. revise, assess and embed your action plan (it is important to monitor and evaluate your action plan, changing and adapting it as required)
4. allow enough time (developing an action plan is an ongoing process, from considering and planning the approach to adopt to reviewing effectiveness and ensuring that it continues to remain relevant to any issues with your gender pay gap that you are trying to address)

Shortly after the GEO’s guidance on developing action plans was published, in March 2019, UCEA also published guidance for HEIs, entitled: Gender pay gap action planning road map. Like the GEO, UCEA recommends that consultation and engaging stakeholders, understanding why your gender pay gap exists, evaluation and review and timescales are all key considerations in developing gender pay gap action plans. In addition, UCEA recommends further actions for HEIs in developing and structuring gender pay gap action plans, focusing on integration of plans with equal pay reviews and other diversity initiatives and cross-referring to documents such as the GEO guidance and other institutional policies. Issues with gender pay are also likely to be relevant to a number of existing practices and policies in an institution, and as such, UCEA points out that universities may need to consider which policies to target, for example, policies on recruitment, reward, flexible working and staff development.

Finally, the ACAS publication Managing gender pay reporting, updated in February 2019, repeats its original guidance on the essential considerations for reducing the gender pay gap. Those actions include developing an evidence base, ensuring related policies and practices are consistent and up to date, providing training and support for managers, encouraging and reviewing career development, promoting flexible working and family rights and considering positive action (which was considered in our last issue).

This plethora of guidance provides a useful insight into potential actions institutions may take and how institutions should approach developing gender pay gap action plans. It is, however, for institutions to consider what works best for them. So what actions are institutions actually taking?

What actions are institutions taking?
We have analysed the action plans of HEIs, published on the Government Gender Pay Gap Service website. Common action points include looking at recruitment and promotion policies and processes with a focus on fair selection, providing training in respect of unconscious bias and diversity, reviewing pay systems and ensuring policies are family friendly and promote flexible working.

Comparing the steps in action plans published by the institutions with the lowest pay gaps, and those with the highest pay gaps, the main difference appears to be that the institutions with the lowest pay gaps plan to continuously review and monitor their policies and practice, whilst the institutions with the highest pay gaps tend to have reviewed policies and practices but do not set out in their plan whether they intend to continue to review them. Referring back to the GEO guidance for developing a gender pay gap action plan, revising, assessing and embedding an action plan is a key step. In order to effectively address a gender pay gap, an ongoing commitment to an action plan, including continued reflection, monitoring and review, appears evidently most effective.

Those institutions with the lowest pay gaps also more often refer to consultation with staff at different levels of seniority in respect of policies and a focus on addressing the whole employment relationship, from new starters, existing staff and promotions and the senior leadership team.
Actions that appear to be less commonly implemented by institutions include mentoring programmes, focus groups and forums, on-campus childcare facilities such as school holiday clubs and activities and visible role models at all levels of the institution.

This analysis very much chimes with our own experience of advising clients on actions to close the gender pay gap - we are finding that the following are the most common steps being taken:

- reviewing salary bands and levels
- considering changes to recruitment practices such as removing names from applications and having a gender balanced appointment panel
- introducing development programmes for female talent to break down promotion barriers
- implementing initiatives (such as taster days) to provide a better understanding of what the roles involve and can offer female candidates to attract talent of the future
- increasing flexible working - such as encouraging shared parental leave take up
- undertaking equal pay audits (to check no equal pay risks)
- providing unconscious bias training

**Conclusion**

With the annual publication of gender pay gap statistics and the forthcoming requirement for employers to publish pay data in relation to ethnicity, effective action plans putting into place steps to address pay gaps are a key priority for institutions. Furthermore, many of the steps referred to above can be equally applicable in addressing other pay gaps, such as for ethnicity.

On the publication of the first set of gender pay gap figures last year much of the attention was on the size of the gap itself. Whilst this will no doubt continue our view is that, with the ability to compare statistics for each institution on a year by year basis, we are likely to see a subtle shift in interest away from the actual figure itself to how it has changed in relation to previous years and, in particular, what each institution is doing to reduce its pay gap over time.

There are clearly a number of positive steps that can be effective to tackle pay gaps but, of course, what may be effective for one individual institution may not necessarily be so for another. However, this in itself demonstrates the importance of institutions really understanding why their pay gap exists, pledging to continually monitor any pay gap issues and committing to develop and adapt their action plans as appropriate.

**For more information please contact:**

**Diane Gilhooley**  
Partner, Head of Eversheds Sutherland’s UK and International Education Practice  
T: +44 161 831 8151  
dianegilhooley@eversheds-sutherland.com

**Chris Mordue**  
Partner  
T: +44 113 200 4856  
chrismordue@eversheds-sutherland.com

**David O’Hara**  
Professional Support Lawyer  
T: +44 616 831 8541  
davido’hara@eversheds-sutherland.com
The outcome of Brexit remains uncertain (though the extension of the deadline to 30 October by which an agreement must be reached has been generally welcomed by our clients as a greater opportunity to plan for changes) but the immigration position of EEA citizens living and working in the UK has now been defined by the Government in the event of a deal, no deal or a long delay. If an agreement is reached on the terms for the UK to leave the European Union, all citizens of EEA countries arriving before 31 December 2020 must apply to stay permanently by 30 June 2021.

Should no deal be agreed, only those EEA citizens arriving in the UK before the Brexit day would be able to make such applications. Those arriving between that date and the end of 2020 would be able to obtain a temporary working visa, valid for up to three years, only. The Home Office also advises employers that the current process to make right-to-work checks, whereby only evidence of the citizenship of EEA citizens is necessary, will continue to be all that is required of anyone hired before 2021; employers will not need to confirm their current staff have settled or pre-settled status either now or in the future.

It is tempting to consider immigration law as the one part of the Brexit process which has actually been resolved, but what of the system to be introduced for workers from EEA countries after 2020, when applications to register for settled and pre settled status will no longer be possible? We have some detail regarding this also. The Immigration White Paper, published at the end of last year, will be subject to detailed consultation, with implementation set to commence in 2021. A consultation period of one year is proposed during which the efficacy of the new system is assessed.

The key recommendation of the White Paper is that the UK’s Immigration Rules will apply to EEA and non-EEA migrants alike, replacing the current immigration system with one applicable equally to both. Tier 2 would therefore become the main route for EU nationals to work in the UK from January 2021. This builds on the previous report of the Migration Advisory Committee and the report envisages restricting immigration from EEA countries in 2021, accommodating potential workers within a slightly expanded points based system.

Many of the proposals in the White Paper simplify current business immigration requirements, a positive step for employers. Removal of the current Tier 2 immigration quota, an end to the resident labour market test, assistance to students seeking to remain and greater possibility to apply in-country for permission to work would all reduce the considerable regulatory burdens on institutions seeking to sponsor workers for employment and will be welcome. Comments that the system should be “as straightforward and light touch as possible” and low-cost to employers where possible acknowledge long-standing concerns about a complex system which transfers significant risk to employers who choose to hire overseas workers. Suggestions elsewhere in the White Paper that the system should be self-funding and that increasing the level of the Immigration Skills Charge may control applications in future hint that the Government may seek to regulate permission to work in practice with high application fees, which will of course be less popular.

The greatest immediate concern for employers is likely to lie in the proposals regarding lower skilled workers as Tier 2 has skills and salary criteria. For permission to sponsor most workers, a minimum salary of £30,000 is suggested; whilst there is to be further consultation about this, that has been a major source of concern for employers to date and means the alternative suggested visa for lower-skilled workers becomes very significant. The White Paper envisages that lower skilled workers should be limited to a twelve month working visa and this period would be followed by a “cooling off” period, meaning employers would effectively be limited to one year of
employment per member of staff, then obliged to seek a replacement. There is a proposal that such a visa category should only exist temporarily to assist with short-term labour shortages following Brexit and would come with restrictions based on nationality, duration and, possibly, a quota.

Eversheds Sutherland has recently conducted nationwide training with Home Office representatives for employers, attended by those representing universities, colleges, academies and a wide cross-section of the economy. We have identified several areas in respect of which we feel employers within the education sector are likely to have further questions regarding the White Paper:

1. **How may lower-skilled workers be accommodated by the new system?**

   Major areas of the economy relies on lower skilled (or, more accurately here, lower salaried) workers. There is no obvious way for them to stay longer than twelve months within these proposals and the obligations of employers when offering them employment are not clear at present. Feedback we have received from clients indicates this suggested visa route would not adequately serve those who rely on large numbers of EEA staff. Employers often seek to invest in such staff, ensuring they gain skills as they have more experience to take up more senior positions in organisations. A twelve month “guest worker” visa simply does not allow that to happen; only the shortest-term resource needs could be met by this.

   The need to abide by “cooling off” requirements would be an additional complication, as would the possibility that this may be limited by quotas. We would anticipate, on the basis of the feedback we have received, that there would be significant employment gaps in the UK unless an alternative means to sponsor workers with lower salaries could be found. We would hope the consultation period would allow evidence of the impact of this to be fully assessed.

2. **Is the right balance being struck between skill, salary and shortage?**

   Theresa May stated in the preface to the report that the intention is to create a system “where it is workers’ skills that matter”. In fact, the report consistently emphasises salary as the key determinant of whether permission to work will be issued, not skill nor shortage. It is proposed to reduce the skill level necessary to qualify for a Certificate of Sponsorship to RQF Level 3 rather than the current requirement (Level 6) and to abolish the requirement that employers can demonstrate no settled workers are available to fill a specific role. Mrs May’s statement should have replaced the word “skills” with “salaries”; there would actually be fewer checks in this proposed system on the workers having the necessary skills.

   The new proposals may make it significantly easier to work in the UK if paid a salary of above £30,000 per year or, possibly, less than that, but many currently sponsored workers earn less than that. Those who struggle to accommodate post-doctoral researchers in the current points based system, for example, will appreciate that amendments which oblige them to be paid higher salaries may well simply mean it becomes impossible to offer sponsorship to many international candidates.

   The Migration Advisory Committee has previously distinguished roles for sponsorship based on whether they are suitably skilled, in shortage within the British economic and, more generally, if it is otherwise sensible to include them. Restricting lower skilled migration may have a dramatic impact in some sectors of the economy. The final element of that consideration, “sensibly” assessing what the needs of each sector are likely to be in future, is a more subjective way to consider the immigration system but could be examined in far greater detail during the consultation period. A subsequent publication by the Migration Advisory Committee has recommended to the Government a considerable expansion of the Shortage Occupation List, those roles which are considered in
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endemic shortage within the UK. It is not clear, however, what role the Shortage Occupation List is to play in the new immigration system.

3. Is the system simple enough?
The White Paper acknowledges that reporting requirements and upfront costs for employers should be kept to an absolute minimum. This will be partly achieved through greater sharing of employment, benefits and immigration records, which may minimise the time it takes to hire a skilled migrant. An intention to process most work visas within three weeks is welcome.

The current points-based immigration system, originally intended to be transparent and objective, now requires over a thousand pages of law, policy and guidance on how to interpret both. Adding to the current complexity, a far more complicated immigration regime will exist in the UK post-Brexit. The EU Settlement Scheme, to be implemented in the UK whether there is an agreement to leave the EU or not, provides a deadline of 18 months for 3.6 million people, currently considered generally outside such requirements, to make immigration applications. Citizens of EEA countries will, by 2021, change from being considered as if permanent residents of the UK to people with either settled status, pre settled status, those who could have applied but did not so have unclear status, individuals with temporary visas in the event of no-deal Brexit (European Temporary Leave to Remain), family members with derivative rights based only on the four above categories and those subject to the new immigration system needing working visas; six categories instead of one! How can employers supposed to distinguish between these in 2021? Can they genuinely be confident that UKVI will be able to create processes simple enough to do so?

4. How will this be impacted by wider negotiations after Brexit?
This White Paper is set against the backdrop of uncertainty regarding the terms on which the UK will leave the European Union. It is unclear at present whether there will be an agreement to do so and the terms on which the UK will trade with EU states in future are far from resolved yet.

The Migration Advisory Committee’s report advised there would be no inherent benefit in continuing to allow free movement for European Union citizens in itself. That has been accepted by the Government in this report, but the presumption that there would be no further discussion of the benefits of free movement in trade agreements seems an unlikely one. The Home Secretary acknowledges as much in the report, advising that the future system “will be flexible as we go on to strike future trade deals with the EU and other countries”. We would anticipate considerable revision to a new immigration system to be introduced in 2021 as a result.

5. What is the wider message of restrictive immigration policies?
The Home Secretary is clear that it is not the Government’s intention to limit immigration to extent that this may damage the UK. The system “welcomes talent from every corner of globe and demonstrates the United Kingdom is open for business.” Notwithstanding that, an Annex to the report acknowledges the definite economic consequence of restricting immigration by EU citizens; it is estimated that a reduction in the UK workforce of between 200,000 and 400,000 EEA citizens could mean GDP will be between 0.4% and 0.9% lower than it would otherwise have been in 2025.

We would hope the consultation would address issues arising from perceptions that the UK is no longer a suitable destination for EEA citizens, such that difficulties in recruitment and retention of staff are minimised. Our clients report recruitment difficulty and loss of EEA staff already due to uncertainty regarding research funding after Brexit. A reduction in economic growth, combined with a more general concern of EEA citizens that they are less welcome in the UK than previously, may make it difficult to attract and retain talented staff from outside the UK.

The report comments that the changes outlined represent the “most significant changes to the immigration system in more than 40 years”, with employers therefore requiring time to adjust. When introducing the White Paper to the House of Commons, the Home Secretary further commented that the year-long programme of engagement would help to refine the new system, which should not be considered final at this stage. This approach does seem appropriate; we would anticipate revision of the White Paper based on the terms of the UK’s departure from the European Union and, we hope, employers’ feedback.

For more information please contact:

Simon Kenny
Principal Associate
T: +44 161 831 8226
simonkenny@eversheds-sutherland.com

David O’Hara
Professional Support Lawyer
T: +44 616 831 8541
davido’hara@eversheds-sutherland.com
Tenant Fees Act 2019 - Permitted or prohibited? Not so fee simple

The Tenant Fees Act 2019 (the “Act”) came into force on 1 June 2019. The Act applies to assured shorthold tenancies, residential licences to occupy and student accommodation tenancies (by a specified educational institution) in England, with the Act proposed to come into force in Wales in September 2019. The Act seeks to shake up the landlord/agent/occupier relationship by giving greater protection to residential tenants. This will affect any institution – higher and further education – who have student accommodation which they let out.

The Act introduces a distinction between “Permitted Payments” and “Prohibited Payments”; governing the types of fees institutions and their agents will and will not be able to charge students. The former includes rent, holding and security deposits, default and termination payments with the latter capturing charges for inventories, credit checks, cleaning services and administration, amongst others. Institutions and their agents will need to navigate these new rules and satisfy the various conditions in order to avoid falling foul of the Act and suffering the consequences.

Whilst the new regime currently only applies to new and renewed agreements, from 1 June 2020 it will apply to all agreements, whenever they were entered into. This will have significant implications for institutions and their agents who will find certain charges newly classified as “Prohibited Payments”, and so unenforceable.

Although we believe there are relatively few student accommodation agreements currently in force which will still be live when 1 June 2020 comes around, the retrospective nature of the reforms will make it necessary for institutions to future-proof their template agreements. This will apply to accommodation contracts entered into by students attending institutions from September 2019 who have not entered into their accommodation agreement before 1 June 2019.

Key Points

- rent is a Permitted Payment but an institution or its agent cannot have a stepped rent, e.g. the student paying a higher amount of rent for the first few months, in order to recover costs the institution would otherwise have charged for administration, inventories, end of term cleaning etc

- security deposits are Permitted Payments but there are caps which are tied to the annual rent under the accommodation contract. Where the rent payable under the accommodation contract is less than £50,000 per annum, the security deposit held by the institution is a maximum of the equivalent of 5 weeks rent

- holding deposits can only be as much as one week’s rent and, in the event that the agreement is not entered into within 14 days of the deposit being paid, it must be returned to the person who paid it, unless the payee has otherwise agreed

- if a tenancy agreement is entered into, the holding deposit must be repaid to the payee unless the payee agrees that it can be used towards the security deposit or rent

- payments for default are limited to loss of keys and failing to pay rent. There are further rules which must be complied with in relation to these, contained in the Act

- payments for damages for breach are unaffected but must still be compliant with the consumer law framework

- institutions should check their template accommodation contracts to ensure these are compliant with the Act

For more information please contact:

Charlotte Tanikal
Principal Associate
T: +44 113 200 4024
charlottetanikal@eversheds-sutherland.com

Charlotte Miller
Senior Associate
T: +44 113 200 4215
charlottemiller@eversheds-sutherland.com
Increase to employer contribution rates in the Teachers’ Pension Scheme

HE providers face significant increases to payroll costs as a result of increases in employer pension contributions. These escalating pensions costs compound the existing budgetary pressures and financial uncertainty faced by many institutions in light of demographic changes, Brexit, increasing regulatory costs and the potential implications of the Augur review for the current tuition fee cap.

The Government has confirmed that English employers in the Teachers’ Pension Scheme (TPS) will face an increase of over 43% to their employer contributions i.e. from an employer contribution rate of 16.48% of pensionable pay to 23.68%, when they take effect from September 2019.

On 15 January 2019, Government launched a consultation on the proposal to support certain education institutions with the increase in employer contributions to the TPS in Financial Year 2019–20.

Responding HE providers raised concerns about the impact of the combined impact of the confirmed cost increases under the TPS and what many believe will be cost increases under the Local Government Pension Scheme (LGPS). Similar concerns have been raised in relation to the increasing costs of the Universities Superannuation Scheme (USS). Additional challenges arise for university medical schools which offer the NHS Pension Scheme (NHSPS), with pensions costs adding to the difficulties faced in recruiting and retaining clinical academics.

In April 2019 the Government published its response to the consultation. In answer to the third consultation question posed “Please provide any additional evidence relating to the impact on all sectors, which you think the Government should consider when considering these proposals’ the Government responded:

“The Department conducted initial analysis on each sector, which suggested that state schools and further education colleges were in high levels of need for additional support. Therefore, the Department has concluded that, while the judgement is finely balanced, the evidence presented by respondents does not sufficiently justify a change in approach.

The Department will therefore not fund Universities (and other organisations providing HE) obliged to offer TPS at this stage, or take any mitigating actions against the risks identified in the consultation.”

Therefore the Government has confirmed that it will not be providing funding to HE in relation to the increase in the employer contribution rate. HE providers will therefore be faced with increased costs that they will have to pay for themselves or try and seek extra funding elsewhere.

There are various potential solutions to these pensions cost challenges. These will depend on the institution’s specific legal status and the rules of the relevant pension scheme, but may include:

- removing existing staff from scheme membership and offering alternative pension provision
- limiting or removing access to the schemes for new starters
- ceasing participation in the schemes altogether.
This could potentially be done by:

- creating a subsidiary company – this could be used to employ new staff and create the opportunity to offer them alternative pension arrangements, as the subsidiary would not be required to participate in the relevant schemes. Existing staff could also be transferred to the subsidiary to achieve the same result

- amending contracts of employment of new or existing staff to remove or vary the contractual right for staff to participate in the schemes

- offering an alternative pension arrangement to run alongside the existing schemes such that staff can choose to opt out of the existing schemes and join a different arrangement with lower employee contributions

- amending the LGPS admission agreement (if relevant) to change the institution’s offering in respect of the LGPS

- this is a complex area requiring careful consideration of legal, reputational and employee relations issues.

- we would recommend that any institutions considering any changes to address the issue of increased contribution rates should take legal advice on these issues before proceeding
International collaborative partnerships – key HR issues

Why do universities enter into international collaborative partnerships?
University partnerships provide a huge amount of opportunities for students and staff alike. Along with research opportunities and cultural awareness, institutions can offer international experiences including study abroad programmes and staff exchanges. In terms of teaching, benefits include curriculum development and degrees formed in collaboration with partner institutions.

Collaborative provision is important to universities as it enables their courses to be made available to students from a wide range of geographical areas and offers them a truly global education experience. It can also be beneficial to the university’s partner institutions, and students studying there, in offering valuable links to higher education in the UK, research and staff development opportunities, opportunities for student progression and the benefits available to all university alumni.

An area where collaboration can be useful is the provision of transnational education (TNE). TNE is the delivery of an educational award in a country other than that in which the awarding body is based. It can include, but is not limited to, branch campuses, distance learning, joint and dual degree programmes, fly-in faculty, or a mix of these, often referred to as blended learning. According to the latest figures 84% of UK universities now deliver TNE, with this number increasing year on year since 2007–08 and in 2016/17 707,915 students were on UK HE TNE programmes, an increase of 11.2% from 2013–14.

HR implications – international collaborative partnerships

There will inevitably be HR implications involved when putting in place international partnerships. At the outset, thought needs to be given as to whether staff will be sent from the UK to work overseas either permanently or temporarily, or whether staff will be recruited from the local overseas market. It may also be necessary for staff to be recruited from the overseas partner institution to come into the UK to work for the UK university. It is important for a university to undertake proper due diligence at the outset to establish what the overseas position is and to understand exactly what the key issues and risks are relating to that specific jurisdiction.

1. Employment relationship

It will be crucial to firstly establish the nature of the employment relationship and identify who will act as the employer. If the role and work is being undertaken overseas, will the university’s UK employment contract suffice or will a local employment contract be required? It is generally more common for the employee to be employed by the UK university, although ultimately this will depend on the relevant jurisdiction and what is permitted/required by law. It may be the case that a dual contract is necessary. In this scenario, the employee would gain employment rights (and possibly other relevant legal rights) in both the UK and the overseas territory.

The question of who is the employer is therefore important, as the law may impose a number of liabilities on an employer (including the obligation to make tax deductions and social security contributions) and give a number of rights to the employee (including the right not to be terminated without cause). While it is difficult to apply general principles, it is more likely that the employee will be subject to local laws of the overseas country where the employee enters into a direct employment relationship with the overseas partner institution.

Another option is a secondment arrangement. This is more likely to be used where a UK university sends their staff overseas to work for a specific period of time. In these circumstances an agreement should be put in place setting out a number of key issues including, but not limited to, any remuneration/benefits, any changes to current terms and conditions whilst on the secondment and whether the employee will remain employed by the UK university whilst on secondment. It is fairly typical that an employee on secondment remains employed by their original UK university employer during the secondment, and will, following the termination of the secondment, return to the UK university employer.

Overseas collaborations can take the form of a ‘flying faculty’, which is a common model within HE. This is where a university will work with an overseas partner institution to provide courses of study delivered by a teaching team of academics who make regular trips abroad, to teach international students. Due diligence should be carried out in order to identify an appropriate partner institution and an agreement entered into setting
out key issues such as responsibilities for managing and issuing certificates and transcripts; the language of instruction and assessment; the financial arrangements; identifying the legal jurisdiction under which any disputes will be resolved; the quality assurance of the courses of study; and the admissions and enrolment onto the courses of study.

There are also some key practical considerations to be mindful of when using this model including resourcing, preparing teaching sessions, support for academics, and negotiating flights, transfers and accommodation. Universities will also need to set out in detail roles and responsibilities of the academics whilst overseas, taking into account any cultural differences as well as managing their workload whilst being overseas.

2. Territorial scope and jurisdiction

A key issue when drafting the employment contract will be who has jurisdiction in the event of an employment dispute. It is usually preferable for the contractual arrangements to be governed by UK law, although, in some cases, the courts of the overseas country may also be able to determine the matter in question. It would be useful for the employment contract to set out exactly what law it will be governed by so that this is made clear from the outset, although bear in mind that such a clause cannot prevent a country’s ‘mandatory rules’ from applying. In other words, an employee working abroad could still benefit from another country’s mandatory rules, even if the contract stipulated a choice of UK law. The question will be a concern for the UK university only where local employment laws impose additional obligations than the UK equivalent.

3. Immigration, visa and work permit requirements

There will likely be key issues to consider in relation to immigration and visa issues before an employee can work overseas. For example, in China, any staff recruited to work over there who are deemed to be foreign nationals, must be sponsored and require a work permit visa. An approach should be made to the Local Labour Bureau to establish exactly what its requirements are, and we are aware that it may be necessary in the circumstances for the employee to enter into an employment contract with a locally registered employer in order to be eligible for a work permit visa.

This could significantly affect the proposed contractual arrangements, and so these sort of issues should be identified and dealt with at any early stage. Of course, the visa requirements will vary with the local legislation of each country and so it is important to consider the local immigration rules in the relevant country.

4. Practical considerations for staff working overseas

When dealing with staff working overseas, the following non-exhaustive issues should be considered and included within the contract of employment as necessary:

- what is the purpose and reason for needing staff to work overseas?
- what is the likely duration and arrangements on termination?
- who will be the employer?
- what is the relevant jurisdiction?
- what are the payroll arrangements? It may be a requirement to pay in local currency rather than via UK payroll
- what are the key job duties and responsibilities?
- are any additional remuneration and benefits to be provided whilst overseas?
- will the UK university will be vicariously liable for the tortious acts of its employees overseas?
- who will supervise and manage the employee’s personnel issues? i.e. absence, disciplinary/grievance issues, etc.
- is there sufficient protection in relation to IP and confidentiality in the contract?
- what are the health and safety obligations for staff working overseas?

5. Tax and pension issues

Whilst outside the scope of this article, when setting up international collaborative partnerships, specialist advice should be sought in relation to tax implications, including taxable benefits (relocation costs, hardship allowance, accommodation allowance); income tax; social security and national insurance contributions; use of a tax agency; and the risk of permanent establishment. With regard to pension, consider whether the employee would be entitled to participate in the UK pension scheme.

For more information please contact:

Diane Gilhooley  
Partner, Head of Eversheds Sutherland’s UK and International Education Practice  
T: +44 161 831 8151  
dianegilhooley@eversheds-sutherland.com

Robert Gray  
Legal Director  
T: +44 161 831 8275  
robertgray@eversheds-sutherland.com

Francesca Smith  
Senior Associate  
T: +44 29 2047 7520  
francescasmith@eversheds-sutherland.com
The Good Work Plan: Consequences for Education Institutions

Following its response in February 2018 to the Taylor Review of Modern Working Practices, the Government has finally taken steps to implement many of Matthew Taylor’s recommended changes. Some changes have already come into force, including increases to the maximum penalty for an “aggravated” breach of employment and the extension of the right to a payslip to all workers from their first day. Further commitments have been set out in the Government’s Good Work Plan, published just before Christmas, under the headings of fair and decent work; fairer enforcement and clarity for employers and workers. In this article, we look at the potential impact of the more important of these commitments.

Fair and decent work
The Good Work Plan states that “At the heart of Matthew Taylor’s recommendations was an overarching ambition that all work should be fair and decent and for employers to offer opportunities that give individuals realistic scope to develop and progress”. This was in part due to findings in the Taylor Review that the one-sided flexibility of atypical working practices can leave workers in a vulnerable position, particularly in respect of unpredictable working patterns, establishing continuous employment and holiday pay. The Government has therefore made a number of commitments intended to give effect to the Taylor Review’s overarching ambition.

Stable and predictable contracts
The Government has committed to providing a statutory right for workers to request a more fixed working pattern in terms of the number of hours worked or fixed working days from their employer after 26 weeks of service. Many roles within the education sector rely on non-standard working practices, from supply teachers, exam invigilators and associate lecturers to catering and administrative support staff. The majority of atypical working practices within the education sector are welcomed by both the employer and the worker. However, some workers would prefer improved regularity of work and financial stability which are currently not provided by their flexible working arrangements. If an education institution has such workers, they can expect fixed working pattern requests when the legislation is introduced.

No timescale has been given for this legislation, or the form it will take (we are anticipating that it will be similar to the right to request flexible working), but education institutions may want to consider planning for the changes straightaway. Reviews could be carried out of all atypical working arrangements to ensure that the different types of workers are fully understood. Steps could also be taken to understand whether workers are content with their working patterns and how to overcome any issues. Such a review could lead to policies being implemented on how to approach atypical contracts which will help to ensure that institutions are prepared for the future reform.

Continuity of employment
In the Good Work Plan, the Government has announced its intention to legislate to extend the qualifying period for a break in continuous service from one week to four weeks. It is hoped that this will deter unscrupulous employers from imposing very short, artificial breaks in service as a means of reducing their liabilities or, where breaks are genuine, give extra protection to those who work intermittently for the same employer.

This new legislation will not change the current position that temporary cessations of work during holidays is unlikely to amount to a break in service for term time workers. Therefore continuity of employment will be preserved for holiday periods. Extra care should be taken, however, if ex-employees are offered new roles shortly after their previous employment has ended to ensure their length of continuous service is accurately reflected in their employment contracts or, if they are not being re-engaged as employees, but offered consultancy work, it is genuinely not an employment relationship.
Abolition of Swedish Derogation

As of 6 April 2020, the “Swedish Derogation”, whereby agency workers can be excluded from the equality provisions through relying on their agency paying them between assignments, will be abolished and all agency workers will now have the right to pay parity with comparable workers after 12 weeks’ continuous service within an assignment. It is hoped that this will protect agency workers against the risk of exploitation from contracts preventing them from receiving equal pay treatment. Most education institutions do not engage agency workers who operate under these contracts. However, this presents a good opportunity for institutions to revisit their arrangements with agency workers to ensure that they will be given pay parity with comparable workers after 12 weeks of continuous service within an assignment.

Clarity for employers and workers

New working practices, in particular in the context of the rise in the gig economy, have clouded the distinction between employees, workers and the self-employed. The Government agrees with the Taylor Review that effort should be made to align the employment status frameworks for the purposes of employment rights and tax and has confirmed its intention to clarify employment status test in statute, to be supplemented by legal guidance and an online employment status test. No timescale has been provided for any such change. Given the complexity of ensuring legislation is fit for purpose and able to adapt to future changes in evolving business models, we would not imagine that change will happen any time soon and indeed the Government has commissioned research to help it understand how best to support those with uncertain employment status when drafting the legislation. Institutions should, however, keep abreast of any updates and consider the implications of changes to the status of workers who work under a wide range of different contracts or practices.

To stay ahead of the game, institutions may want to consider reviewing their worker and self-employed contracts to ensure they accurately reflect the reality of the working relationship. All too often, self-employed contractors fall within the worker category inadvertently and therefore are not being provided with the rights they are entitled to. Further, arrangements made for workers can result in them being held to be employees. It is important that institutions correctly categorise the individuals they engage given the disparity of rights they are entitled to.

From 6 April 2020, the Government will increase the reference period for determining the calculation of holiday pay for workers with no normal hours of work from 12 to 52 weeks. The Government stated that this change will allow greater flexibility for workers in choosing when to take holiday. However, in many education institutions, such workers are required to take their annual leave during the designated holidays between terms. Calculating holiday pay based on earning in the previous 12 weeks typically resulted in favourable holiday pay for term time workers given that they would have worked proportionately more hours during the 12 weeks before their holiday than they would over the whole year,
as was the case in *Brazel v Harper Trust*. In addition, the Government has also announced that HMRC will be given enforcement powers in respect of holiday pay which will be supplemented and a campaign to raise awareness of rights to holiday pay commenced in March 2019.

From 6 April 2020, written statements of terms and conditions will also have to be given to all workers, and not just employees, from the first day of their employment. Statements of terms will also need to set out whether there is a probationary period, give more detail around hours and days of work and whether variable, provide details of other paid leave (in addition to holidays) and outline any training entitlement.

**Fairer enforcement**

Education institutions should be aware of the potentially more significant consequences of breaching employment law, given the maximum penalty for an “aggravated” breach has as of 6 April 2019 been raised from £5,000 to £20,000.

Education institutions are also reminded of the importance of paying employment tribunal awards made against them. From 18 December 2018, the Department for Business, Energy and Industrial Strategy (BEIS) will name employers on the gov.uk website who fail to pay employment tribunal awards within 14 days of receiving a notification.

**On the horizon**

The Taylor Review has identified deep-rooted issues with current working practices in the context of the type of labour market needed in today’s society. Its recommendations have encompassed a broad range of topics with a holistic approach, rather than identifying quick fixes to isolated problems.

Further consultations by the Government and other organisations, including the Low Pay Commission, have examined how best to tackle problems including late notice cancellation of shifts, the minimum wage for non-guaranteed hours and employment status.

Indeed on 16 July 2019 the Government commenced a consultation exercise (closing on 6 October 2019) on the possible creation of a new single enforcement body for employment rights and on 19 July 2019 it commenced another consultation (closing on 11 October 2019) on measures to address one-sided flexibility. This proposes the introduction of compensation for workers when shifts are cancelled at short notice, entitlement to a reasonable period of notice for their allocated shifts and additional protections for individuals who are penalised if they do not accept shifts at the last minute. It is therefore highly likely that we will see further developments coming out of the report.

For more information please contact:

**Matthew Kelly**
*Partner*
*T: +44 1223 44 3865*
matthewkelly@eversheds-sutherland.com

**Alice Townley Smith**
*Senior Associate*
*T: +44 1223 44 3855*
alicetownleysmith@eversheds-sutherland.com
Eversheds Sutherland has unrivalled experience in the education sector for the provision of legal advice both within the UK and internationally. Details of our offices are set out below but if you do have any questions arising from this issue of InStep, or you would like to talk to us to explore how we can help you with your requirements, please do contact me.

Diane Gilhooley  
Partner, Head of Eversheds Sutherland’s UK and International Education Practice  
T: +44 161 831 8151  
dianegilhooley@eversheds-sutherland.com

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