

Flexi-job apprenticeships

**TUC response to the government
consultation**

Executive summary

Response to consultation question 1, Do you agree with our vision for flexi-job apprenticeship schemes?

The TUC is concerned about the higher risks of exploitation of apprentices on such schemes unless there are clear safeguards in place to secure quality training and decent pay and conditions. Many young people are already deterred from pursuing an apprenticeship by the high incidence of low pay, low quality training and poor employment conditions. The government has committed to review the apprenticeship levy in this parliament and the TUC will be repeating its calls for key reforms, including allowing levy funding to be used for innovative pre-apprenticeship programmes and initiatives to widen access to high quality apprenticeships for under-represented groups. But this review should take a wider perspective on our apprenticeship programme and include new policy actions to address the impact of the pandemic and its economic fallout on apprenticeship numbers. Urgent reforms are also required to strengthen enforcement of employment and training rights of apprentices, boost wage levels, improve equality of access, and guarantee a minimum progression to a level 3 apprenticeship for all young people.

Introducing a new flexi-job apprenticeship scheme will only exacerbate many of the existing concerns with the poor quality of too many of our apprenticeships that are based on a direct employer relationship. The proposed flexi-job apprenticeship model is very likely to promote even more precarious job patterns in sectors like the creative industries and construction. What the government should be prioritising is tackling the root causes of insecure employment directly in these sectors and incentivising employers to recruit apprentices for the long-term rather than promoting even more short-termism. There is also a danger that some employers in these sectors who currently recruit apprentices directly will see this as an opportunity to adopt the flexi-job apprenticeship model to the detriment of their existing apprenticeship programme. Organisations running a flexi-job apprenticeship scheme are likely to face major cost pressures and this risks many apprentices being recruited on the lowest wage possible and facing exploitation.

However, we do acknowledge that in some instances - especially in the creative, cultural and media sectors - the high incidence of freelance work and/or contractual employment for time-limited productions does pose challenges for the recruitment of apprentices. In these limited circumstances, stringent measures must be put in place to ensure that any portable apprenticeship scheme is of a high quality and that this is guaranteed by leading employers and unions in the sector in question. To this end the TUC is calling for a requirement that the design and regulation of any new portable apprenticeship scheme is agreed by employers and trade unions in the relevant sector beforehand and closely monitored on a regular basis. Priorities should be to safeguard high quality training, decent pay and conditions and health and safety standards, and a proactive approach on equality and diversity. This sector sign-off and monitoring would also deliver robust accountability and regulation and ensure that any agencies involved in these schemes are pursuing the

best interests of apprentices and have the clear support of employers and unions in each sector.

This principle of joint employer/union oversight and sign-off underpins existing high quality ATA schemes (e.g. the Cogent Skills ATA) and a new flexible portable scheme that ScreenSkills is currently developing in partnership with Netflix and Warner Bros. Both these approaches are highlighted in the consultation document as examples of best practice when it comes to developing and running flexible high-quality apprenticeships to meet specific sectoral circumstances. What the consultation document fails to highlight is that the two sector bodies leading on these initiatives – Cogent Skills and ScreenSkills – have employer and union representatives on their boards and adopt a partnership approach to their wider work on supporting skills development in their respective sectors.

Responses to further questions in the consultation document

Question 2: How should flexi-job apprenticeships demonstrate that they are meeting the needs of employers?

This question should be wider and be asking how portable apprenticeship schemes demonstrate that they are meeting the needs of employers and prospective apprentices. Simply focusing on meeting the needs of employers in the absence of the needs of individual apprentices will limit the capacity for developing portable apprentices that meet the requirements of both parties. It is likely that many of the proposals of interest will come from sector/industry bodies and it is crucial that government can evidence that any proposed programme genuinely reflects the needs of both employers and apprentices. In most circumstances we believe that this will be evidenced by the organisation showing that employers and unions are directly involved in the development and continuous monitoring of any such scheme.

Question 3: What expectations should we set of flexi-job apprenticeship schemes in providing a high quality experience for apprentices?

The expectations that should be set should be no different to those that are currently set for any mainstream apprentice. This means that all the regulations applying to employers recruiting and employing apprentices and colleges/training providers delivering the training must equally apply to any new portable apprenticeships. The agencies involved in monitoring apprenticeship training standards and pay and the register of approved training providers should equally apply.

Trade unions have a long tradition of supporting apprentices and it is no coincidence that many of the programmes where demand is greatest are those where unions have negotiated a high-quality apprenticeship offer that is open to all. And in many of our workplaces union reps are supporting apprentices on a day-to-day basis to ensure that they are treated fairly and gain the necessary skills and certification to progress to sustainable well-paid employment. However, there is widespread evidence that too many apprentices are not experiencing high quality training and employment and that there are other outstanding challenges, including a need to widen access to under-represented groups and give unions a strategic voice.

The TUC has called for a number of measures to improve the quality of apprenticeships, including much stricter enforcement of the regulations governing minimum duration, time off-the-job for training, statutory minimum pay rates, health & safety, equality & diversity, and wider employment conditions. We have highlighted that in many other European countries it is the norm for employers to grow their businesses by recruiting and training apprentices and this ethos is fortified by a "social partnership" approach on apprenticeships and skills. This involves employers and unions collaborating to agree training standards and other key aspects of the apprenticeship programme.

The combined impact of a strengthened enforcement regime and joint oversight by employers and unions would go far to addressing some of the deficiencies in our apprenticeship system. Due to the higher risks of exploitation on any new portable apprenticeship programme, we believe that a dual approach along these lines would do much to safeguard quality and prevent exploitation. This is a key reason why we are calling for a requirement that the design and regulation of any new flexible portable apprenticeship scheme is agreed by employers and trade unions in the relevant sector beforehand and closely monitored on a regular basis.

Question 4: What challenges and opportunities are relevant to flexi-job apprenticeship schemes achieving financial sustainability? How might they balance a fee-based model with other income streams?

There will be major challenges to the financial sustainability of organisations running portable apprenticeship schemes under the framework set out in the consultation document. As the organisation will be liable to pay the wages of the apprentices, whether or not they are on a placement and generating revenue from employers, there is a major risk that some agencies may hedge their bets and impose the minimum statutory wage for people on portable apprenticeships. There are also additional risks of contravention of the NMW regulations and apprentices being paid below the statutory minimum, which remains a widespread problem in the mainstream apprenticeship programme. Even if organisations can add to their employer fee-based revenue with other income streams, we are of the view that it will be challenging to generate significant income streams of this form in the immediate future.

Since ATAs were established there have been reports of some unscrupulous agencies paying all their apprentices the statutory minima to maximise profit margins and it is crucial that this is not repeated in the development of portable apprenticeships. The central means of addressing this inherent danger is for the wages, employment conditions and training of portable apprenticeship schemes to be part of an agreement by employers and unions that have the remit for developing and monitoring portable apprenticeship schemes. There will of course also be a need for government agencies to pay close attention to these new apprenticeship schemes, especially the agencies that enforce the national minimum wage and inspect the quality of apprenticeship training.

Question 5: Does the name flexi-job apprenticeship scheme accurately describe our vision for these organisations and the role they will play? Would you propose any alternative names?

In our view, the name flexi-job apprenticeship scheme is not helpful. The term “flexi-job” has clear connotations with insecure precarious employment and potential exploitation, which will be off-putting to many young people. The pandemic has had a disproportionate impact on the job prospects of young people and the vast majority of them are understandably pursuing secure sustainable employment where at all possible. Young people will be wary of a scheme described as “flexi-job” and this branding will deter many of them from pursuing apprenticeships described as such.

We also believe that there could be a great deal of confusion between the so-called flexi-job schemes and wider measures that the government are taking forward to promote

portable apprenticeships. Our understanding is that the flexi-job schemes that are being proposed are in fact portable apprenticeships that are to be tested out in certain sectors, initially the creative industries and construction sector. It may therefore make more sense to associate these new organisations with branding linked to the concept of portable apprenticeships rather than the “flexi-job” branding.

There are further issues to do with branding associated with the decision to close the existing register of ATAs and to require all current ATAs to re-apply for a new register of flexi-job apprenticeship schemes. For some ATAs currently supporting high-quality apprenticeships this could be damaging on two fronts. First, they may have built a good reputation as an ATA that has the full support of employers and unions in the sector in question. Having to rebrand such organisations as flexi-job apprenticeship schemes will risk damaging their reputation. Secondly, many existing ATAs will be supporting the placement of apprentices on an entirely different basis to the flexi-job approach with a focus on a “single-employer model”.

For example, the flexi-job model is very different to the ATA scheme run by Cogent Skills which acts on behalf of one employer, where the apprentice works and trains, usually moving into sustainable well-paid employment on completion. This ATA is delivering this service for employers in the science industries who, for a range of legitimate reasons, are not in a position to be the direct employer but are committed to supporting high-quality apprenticeships leading to sustainable well-paid employment. We return to these particular issues relating to ATAs in our response to question 11.

Question 6: Do you have any views on our proposals for portable apprenticeships, including on how portable apprenticeships and flexi-job apprenticeships schemes can complement each other?

The TUC has welcomed measures to improve the position of apprentices who require portability in certain circumstances. One crucial example is the commitment the government gives to trying to find another employer for apprentices who are made redundant. However, the number of apprentices made redundant during the pandemic has increased significantly and many of them have not been found an alternative employer to enable them to complete their apprenticeship. The TUC has called on the government to establish a new form of guarantee for all existing apprentices made redundant to empower them to complete their training. This new “right to complete an apprenticeship” would create a cast-iron commitment by government to make arrangements to this end. It is helpful that regulations currently allow people in the final phase of their apprenticeship to progress to completion without an employer, but this does not apply to the vast majority of apprentices who find themselves in a redundancy situation.

The consultation document also refers to other initiatives set out in the “Skills for Jobs” white paper, including initiatives to “front-load” training at the beginning of an apprenticeship and enabling apprentices with relevant skills and experience to have this taken into account so they are not unnecessarily repeating this during their apprenticeship. These measures could be helpful in certain circumstances, but it is essential that they are discussed and agreed by employers and unions in the sector to ensure that they are not being wrongly used to reduce the duration of an apprenticeship to the detriment of the apprentice.

The white paper also refers to proposals by government to improve pathways to apprenticeships from other education and training programmes, including traineeships and T Levels. The TUC has consistently made the case for innovative pre-apprenticeship programmes to help young people to progress to a full apprenticeship. In many cases this will involve tailored pre-apprenticeship programmes devised by employers and unions, sometimes in partnership with other organisations with expertise in this area (e.g. Movement to Work and Prince's Trust). There is a strong case to reform the apprenticeship levy to allow employers to be able to use their levy funding for innovative pre-apprenticeship programmes along these lines to support transition to a full apprenticeship.

As we indicated in our response to question 5, we believe that it is confusing to try and separate out government policies aiming to improve portability of apprentices with the proposed flexi-job apprenticeship schemes. While the latter are a specific and discreet new policy measure, they are part and parcel of the wider policy thrust of developing portable apprenticeships. Our view is that all the measures to boost portability should be designed and delivered in a way that they can complement each other and ultimately boost the number of people empowered to start and complete a high-quality apprenticeship leading to sustainable well-paid employment.

Question 7: Do you agree that we should create a register of approved flexi-job apprenticeship schemes?

We agree that it is essential that a register of approved schemes is put in place to ensure that portable apprenticeships coming under the remit of such schemes are properly regulated. There must also be clear mechanisms in place to enforce all the regulations that apply to the minimum wage, employment conditions and access to off-the-job-training for apprentices. However, there are some complications arising out of the proposal to close the existing ATA register and establish a new register that need to be given further consideration (see our responses to questions 5 and 11).

Question 8: What entry criteria do you think we should establish for admission to this register in order to ensure that approved flexi-job apprenticeship schemes meet our vision set out in section 2?

As we have indicated throughout our response, a central criteria should be that the design and regulation of any new portable apprenticeship scheme is agreed by employers and trade unions in the relevant sector beforehand and closely monitored on a regular basis. In addition, admission to the register should require a clear and credible plan that the proposed portable apprenticeship model will guarantee that high-quality training and fair wages can be delivered and sustained for every apprentice through to completion. It will also be crucial for organisations to demonstrate that they will be able to source an adequate supply of high-quality employer placements to sustain all apprentices to be paid a fair wage and to complete their training within a reasonable time frame.

Question 9: How do you think the performance and quality of approved flexi-job apprenticeship schemes should be monitored and assured after admission to the register?

As we indicated in our responses to earlier questions, the wages, employment conditions and training of portable apprenticeship schemes should be part of an agreement by

employers and unions that have the remit for developing and monitoring portable apprenticeship schemes. There will also of course be a need for government agencies to pay even closer attention to these new apprenticeship programmes due to the risks of exploitation. This will be particularly important regarding enforcement of the national minimum wage and assessment that the quality of training is meeting the standards required of all apprenticeship training providers.

Question 10: To assure the quality of flexi-job apprenticeship schemes, should schemes entry to the register set out the standards they can offer to apprentices? What process should we develop to enable schemes to change the standards they offer?

Information about the apprenticeship standards that will be delivered through any new portable schemes should be publicly available. Access to this information at an early stage would benefit the existing workforce and young people looking to pursue or further develop a career in these sectors. Presumably government will also need to ensure availability of a range of apprenticeship standards covering the major occupations in these sectors when making decisions about the coverage of portable schemes. There may need to be a focus on opening up access to standards that are currently in short supply due to a shortage of places on mainstream apprenticeship programmes in the sectors. We cannot see a problem with the register being amended regularly to indicate additional apprenticeship standards that schemes are going to cover. However, we would have concerns if some standards were withdrawn during a period when some apprentices were yet to complete a portable apprenticeship on that standard. There must never be a situation where any apprentice is prevented from completing their apprenticeship because the scheme no longer has the capacity to support that specific standard.

Question 11: Do you have any concerns about the closure and withdrawal of the dormant register of ATAs?

First, it is of concern that the register of ATAs was closed for new applicants in 2018 and that since then new and existing ATAs have been able to operate without any monitoring or oversight arrangements imposed by the ESFA. It is important to recognise the origins of the ATA model, which drew on an Australian initiative where apprentices were employed by a recruitment agency and hired out to host businesses. In the early days of ATAs the TUC and affiliated unions expressed concerns that apprentices were losing their direct employment link with an employer through the operation of ATAs. (See TUC policy brief, www.tuc.org.uk/research-analysis/reports/group-training-associations-and-apprenticeship-training-agencies). The TUC contended that the ATA model effectively turned apprentices into agency workers, with implications for job security, the quality of training, supervision, health and safety and employment prospects. There was also evidence that some ATAs were paying the vast majority of their apprentices on the minimum statutory wage. The TUC also highlighted that there was an impact on the ability of unions to organise and bargain effectively under the ATA model.

The TUC and affiliated unions have given a much greater degree of support to an alternative apprenticeship model called Group Training Associations (GTAs) involving employers and unions collaborating on joint training facilities and training provision to maximise investment in high quality apprentices. GTAs have operated successfully for many years, particularly in the construction and engineering sectors, often with trade union

involvement and support. This is a very different model to ATAs and the proposed flexi-job apprenticeship schemes, including maintaining the direct employer/employee relationship that most apprentices continue to be based on. It is surprising that GTAs get no mention in the consultation document and the government should at least consider what role there could be for these bodies in the current debate on developing portable apprenticeships.

It is however important to note that in some instances unions have backed reputable ATAs where it has been clearly demonstrated that the ATA in question supports high-quality long-term apprenticeships in circumstances where it is very difficult for the employer in question to be the direct employer. One example of this is the ATA developed by the sector body, Cogent Skills, which is supported by the employer and union representatives on its board. The consultation document refers directly to this ATA as an example of best practice and we agree on this. This scheme has been in existence for some time and has supported over 2,000 apprentices across the science industries, including helping many employers progress to employing their apprentices directly. Over 90% of the apprentices supported so far secured a permanent job following their placement and this has been boosted by the extensive support they have received from Cogent Skills, employers and unions.

This flexi-job apprenticeship model that is being proposed is very different to the ATA scheme run by Cogent Skills which acts on behalf of one employer, where the apprentice works and trains, usually moving into sustainable well-paid employment on completion. Our response to question 5 has already set out a number of concerns about the potentially damaging impact on reputable ATAs of closing the existing register and forcing them to apply to become flexi-job apprenticeship schemes, especially in cases where ATAs are supporting high-quality apprenticeship placements with a single employer. The existing ATA register certainly needs to be reviewed and a regulatory approach imposed on all ATAs, as was the case in the past, in order to combat any exploitative practices. However, we are not convinced of the case for closing and withdrawing the register and forcing all ATAs to re-apply for a new flexi-job apprenticeship scheme register. Alternative options should be considered, including two separate registers or an extension of the existing register to incorporate both ATAs and new portable apprenticeship schemes that can demonstrate support for high-quality apprenticeships based on either single- or multi-employer placements.

Question 12: Do you agree with the parameters we have proposed for how any funds awarded should be used?

The funding parameters set out in the consultation document are very general and there will need to be much greater detail and clarity in the final guidance when the £7 million fund is opened for bids. At this stage we welcome the reference to “costs for activities that will improve and assure quality” as a primary concern is that there will be challenges on this front for portable apprenticeships, including increased risks of exploitation. A key criteria for awarding any funding must be a well-evidenced bid that commits to the delivery of high-quality apprenticeships at a fair wage and with decent employment conditions.

While it is understandable that there is reference to prioritising funding that will increase the number of apprenticeship starts, there are risks to awarding funding to bodies promising large numbers of starts with inadequate detail on how this will translate into high-quality apprenticeships and decent employment. The parameter on long-term

financial sustainability must lead to robust analysis of bids to ensure that all proposed portable apprenticeship schemes can be sustainable whilst guaranteeing apprentices a fair wage, without recourse to recruiting apprentices on the lowest NMW pay rate.

In our view there are two major omissions in the funding parameters set out in the consultation document. First, there is no reference to how the fund could be used to tackle the under-representation of certain groups in high-quality apprenticeships, in particular: BME groups, women, disabled people, and LGBT+ people. The fund offers an opportunity to encourage innovative approaches, including outreach activities, to support under-represented groups to access high-quality training and employment. However, it will be important that there are strong safeguards in place to prevent any risks of these groups being exploited when undertaking portable apprenticeships. The second omission is the lack of any reference to bids needing to evidence that schemes will meet the skills needs of employers and improve the prospects for individuals to engage in high-quality apprenticeships leading to sustainable well-paid employment in these sectors. A dual approach along these lines should be part of all bids awarded funding.

Question 13: Are there any capital costs that a new or expanding flexi-job apprenticeship scheme might require funding for?

This may be largely dependent on the capacity of the organisation in question to support apprenticeships, whether through mainstream programmes or developing and launching new portable apprenticeship programmes. Organisations that already have an infrastructure in place will clearly be in less need of capital costs, but this should not be ruled out if it can be demonstrated that it could lead to major benefits (e.g. initiatives to guarantee high quality provision, innovative approaches to support access by under-represented groups etc.). There will be limits to the extent that a £7m fund can support significant capital costs for organisations who are bidding for funding to deliver portable apprenticeships with little or no experience in running apprenticeship programmes previously. Our response to question 14 expands on this.

Question 14: Should there be a difference in how new or existing organisations are permitted to use the fund?

Following on from our response to question 13, there is likely to be significant start-up and capital costs for new organisations and it is probably beyond the capacity of the fund to commit sufficient funding for a large number of entirely new ventures. There will need to be a careful assessment of the balance of funding allocated to new organisations and others that are bidding to extend an existing programme of work on apprenticeships to support the development of portable apprenticeships in the preferred sectors. There are likely to be some ATAs and other existing apprenticeship organisations considering applying for funding to extend their current range of services to support for portable apprenticeships. It is important that in these cases the fund is not used to pay for general infrastructure costs that these organisations should be investing for their overall apprenticeship programme. A key principle that should be applied to funding bids from new and existing organisations is to apply a rigorous test of whether the funding will generate high quality portable apprenticeships that lead to sustainable employment.

Question 15: Should any additional parameters to the fund be added to encourage employer engagement – for example, pledged levy funds or matched co-funding for set up or expansion costs?

It makes sense to develop co-investment strategies with employers, in particular employers that will benefit from the development of portable apprenticeships in these sectors. On this basis, pledged levy funds, matched co-funding and other joint investment strategies should be considered to boost the fund that government will be providing.

Question 16: Do you have any views about the implications of the proposals set out in this consultation on people with protected characteristics, as defined in section 149 of the Equalities Act 2010? What evidence do you have on these matters? Is there anything that could be done to mitigate any impacts identified?

Wide-ranging research shows that certain groups - including BME communities, women, disabled people and LGBT+ people - continue to face major barriers when it comes to accessing the best apprenticeships. In some cases it is not so much the numbers of individuals accessing apprenticeships from these groups that is the central issue. For example, while women are just as likely to take up an apprenticeship, a wide range of research shows that they are much more likely to be working in sectors synonymous with low pay and do not have as much opportunity to access apprenticeships which would lead to increased career opportunities and higher pay. This is a major contributor to the gender pay gap.

For BME groups there is a double whammy as research shows that in addition to occupational segregation and low pay, they are much less likely to access any kind of apprenticeship. For example, a study by the EHRC highlights research showing that in one year 38% of the applicants for apprentices were from BME groups but they made up just 17% of apprentices taken on in that year. These twin barriers also reflect the experiences of many disabled people who engage with the apprenticeship programme. Trade union reps can make a real difference on this front by negotiating with employers to adapt their apprenticeship recruitment practices and also by providing direct support to apprentices in the workplace. TUC unionlearn has produced four guides for union reps aimed at supporting BME, women, disabled and LGBT+ apprentices – these are available on the unionlearn website, www.unionlearn.org.uk.

Our responses to earlier questions have highlighted concerns about the increased risk of the exploitation of apprentices on portable apprenticeship programmes compared to mainstream apprenticeship programmes. The above trends strongly suggest that apprentices with protected characteristics are already more likely to face exploitation and that this is likely to be reflected in the rollout of a portable apprenticeship scheme. Many of the recommendations set out in our responses to earlier questions could go some way to combatting this, including our central call for the design and regulation of any new portable apprenticeship scheme to be agreed by employers and trade unions in the relevant sector beforehand and closely monitored on a regular basis. Where possible, trade unions could also play a crucial role in the workplace to address these challenges, including through collective bargaining channels with employers and the direct support that union reps can give to apprentices with protected characteristics.

As we also highlighted in our responses to earlier questions, there is an opportunity to use the bidding process to encourage innovative approaches, including outreach activities, to support under-represented groups to access high-quality portable apprenticeships