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Flexi-Job Apprenticeships: Reshaping the role of Apprenticeship Training Agencies

Response from the Employment Lawyers Association

27 May 2021

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INTRODUCTION

1. The Employment Lawyers Association (“ELA”) is an unaffiliated and non-political group of specialists in the field of employment law. We are made up of about 6,000 lawyers who practice in the field of employment law. We include those who represent Claimants and Respondents/Defendants in the Courts and Employment Tribunals and who advise both employees and employers. ELA’s role is not to comment on the political merits or otherwise of proposed legislation or calls for evidence. We make observations from a legal standpoint. ELA’s Legislative and Policy Committee is made up of both Barristers and Solicitors who meet regularly for a number of purposes, including to consider and respond to proposed new legislation and regulation or calls for evidence.
2. A Working Party, co-chaired by Robert Davies and Jennifer Sole was set up by the Legislative and Policy Committee of ELA to respond to the Department for Education consultation “Flexi-Job Apprenticeships: Reshaping the role of Apprenticeship Training Agencies”. Members of the Working Party are listed at the end of this paper.
3. References in this paper to the views of ELA are intended to be inclusive of the views of the minority as well as the majority of ELA members. Whilst not exhaustive of every possible viewpoint of every ELA member on the matters dealt with in this paper, the members of the Working Party have striven to reflect in a proportionate manner the diverse views of the ELA membership.
4. Many of the questions posed in this document relate to matters of policy or seek feedback directly from employers, existing Apprenticeship Training Agencies, sector bodies and representative organisation, and apprenticeship training providers. We have confined our comments/responses to those questions or aspects of questions which have a legal dimension.
5. Although the subject matter of the consultation is such that we have not been able to respond substantively on many legal issues we have made some

observations where we have felt able to do so within our remit. We have also noted those questions which raise issues which are beyond our element/area of expertise and have therefore not commented substantively.

EXECUTIVE SUMMARY

6. We support the principle of seeking to expand the range of apprenticeships available and accept that this may benefit individuals and employers alike in sectors that might otherwise struggle to attract sufficient numbers of apprentices. We would encourage further work to be done to investigate and assess why the existing ATA model has not been able to develop outcomes of this nature in the targeted sectors because that may well help inform the effective introduction of the new regime.

QUESTION 1

Do you agree with our vision for flexi-job apprenticeship schemes?

7. We note the ambition expressed at page 7 of the Consultation Document “to develop flexi-job apprenticeship schemes that overcome the structural challenges in certain sectors or professions to greater use of apprenticeships”. We consider that the achievement of such an aim is likely to be beneficial to employers and apprentices.

QUESTION 2

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

8. We consider that this is a question which relates ultimately to matters of policy; both in respect of the potential metrics and whether such metrics should be qualitative, quantitative or a mixture of both. The Consultation Document does not refer to any empirical studies of the performance of Apprenticeship Training Agencies (ATAs) nor does it suggest why the ATA model has not addressed the identified need for portable/flexi-job apprenticeships to date. We agree with the implication within the question that merely assessing the number of such apprenticeships at any given time will be too blunt a tool and that more relevant appropriate qualitative assessment of the skills which are being developed would be better.
9. It is unclear to which “employers” the question is directed. The Consultation Document does not set out the anticipated structures of a flexi-job apprenticeship scheme. For example, it is unclear whether it is expected that large employers within the identified sectors will cooperate and initiate a scheme, *in addition to* their existing arrangements for the recruitment and training of apprentices. Is it expected that there will be a new employer of the apprentice. Is it expected that the host businesses (potentially SMEs) at which the apprentice may spend part of her or his apprenticeship, is the employer, or both? Is there any scope/proposal for a hybrid arrangement? This would need to be clarified in order for the relevant metrics to be proposed and applied.

QUESTION 3

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

10. We consider that this is a question that relates to matters of policy. We would anticipate, however, that there is unlikely to be the level of traction and

engagement that the government is seeking if there is a perception from the outset that the standards and anticipated outputs of flexi-job apprenticeship schemes are materially lower than those of existing arrangements. Likewise, care needs to be taken to avoid a suggestion that the flexi-job schemes are being introduced because there is an inherent problem or lack of quality in existing apprenticeship arrangements. We anticipate that all both employers and apprentices will expect the provision of valuable, practical and recognised skills and qualifications such that continuation within the sector following successful completion of the apprenticeship is a natural potential outcome depending on vacancies and not on the variability of quality of training.

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?

11. This question relates to matters outside our remit.

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?

12. We agree that the name is an important consideration given the profound changes that have taken place in recent years with regard to the structure of the labour market, the gig economy and issues of employment status which have been the subject of the Taylor Review (to which ELA has responded [here](#)) and much recent and on-going case law with respect to employment status and its attendant rights and obligations. “Flexi” might connote personal flexibility which may be perceived as a positive advantage by some potential apprentices. That said, it might at the same time imply a degree of “flexibility” with regard to a candidate’s ability to pick and choose roles, activities and hours of work that is not ultimately justified; and that may create a mis-match of expectations from the outset. If the intention is to replicate the ATA model to secure a single underlying employer and allocation of apprentices to different host businesses in need of an apprentice for a specific period of time, an alternative description might be “Multi-job” apprenticeship scheme.

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?

13. On the presumption that “portable apprenticeships” is a term for the flexi-job apprenticeships about which we have been consulted, please refer to our comments regarding Question 1.

QUESTION 7

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

14. Yes, in the interests of transparency and accountability.

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?

15. Please refer to our response to Question 8. We note further that the Consultation Document refers at Page 9 to the qualities of certain organisations which are perceived to have been successful to date. We anticipate that those could be drawn upon in formulating the criteria.

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?

16. We consider that this question relates to a matter of policy and is beyond our remit. We agree with the underlying implication that it is advisable to conduct performance and quality monitoring.

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?

17. We consider that this question relates to a matter of policy but in general terms we consider that it would be important, in order to establish credibility and to enable there to be consistency and accountability, and to encourage applicants, for the standards to be set out expressly before admission to the register.

QUESTION 11

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

18. No, provided that there is suitable monitoring and oversight of any ATA that continues to engage apprentices whether pursuant to the new flexi-job scheme or otherwise.

QUESTION 12

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

19. This is a question relating to policy and beyond our remit.

QUESTION 13

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

20. This is a question relating to policy and beyond our remit.

QUESTION 14

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

21. We consider that this question relates to a matter of policy. We anticipate that the funding decisions will determine indicative levels of potential awards to accompany application criteria.

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?

22. We consider that this question relates to matters of policy and is beyond our remit.

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?

23. We assume that the question is focused on whether a flexi-job apprenticeship scheme may address aspects of the barriers to (a) entry to and (b) progression within the labour market for individuals who possess protected characteristics that have been the subject of recent consultations and calls for evidence. We refer to the recently submitted ELA Response to the [DWP Call for Evidence and Good Practice on in-work Progression](#) and the ELA response to the [Call for Evidence for Disability employment gap enquiry](#).
24. A consistent feature in those responses (and several others) is that a one-size fits all approach is unlikely to meet the needs and aims of a modern, diverse workforce whether from the perspective of employees/workers or employers or the market more widely. Therefore, we consider that the availability of an apprenticeship option/pathway that adds to the number of available apprenticeships is likely to be helpful to address elements of those two Calls for Evidence. But in order to have a meaningful and sustained impact it will require coordination within government to ensure that an apprenticeship can be a viable opportunity irrespective of protected characteristics.
25. Whilst we support the ambition expressed at Page 8 of the Consultation Document such that flexi-job apprenticeship schemes might: “seek to increase the diversity of people undertaking apprenticeships in the industries and regions they serve....” it is clear that there will continue to need to be concerted and

extensive government support for much wider activities to address inequalities within the labour market.

Members of ELA Working Party

Robert Davies Walbrook Law LLP Co Chair

Jennifer Sole Curzon Green Solicitors Co Chair