



House of Commons
Scottish Affairs Committee

Zero hours contracts in Scotland: Interim Report

Tenth Report of Session 2013–14

Report, together with formal minutes

*Ordered by the House of Commons
to be printed 9 April 2014*

The Scottish Affairs Committee

The Scottish Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Scotland Office (including (i) relations with the Scottish Parliament and (ii) administration and expenditure of the offices of the Advocate General for Scotland (but excluding individual cases and advice given within government by the Advocate General)).

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The Reports of the Committee, the formal minutes relating to that report, oral evidence taken and some or all written evidence are available in a printed volume. Additional written evidence may be published on the internet only.

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Summary

Zero hours contracts and other forms of casual labour can benefit workers and employers in Scotland but our inquiry has shown that, too often, the relationship is unbalanced, leaving the employer with all of the flexibility and few costs and the worker in fear of dismissal, denied access to due rights of employment and, in some cases, earning less than the minimum wage.

The Government recognises that poor practice exists and needs to be addressed but we feel that the UK Government's consultation on zero hours contracts was too narrow. It focused on the issues of exclusivity and transparency which are concerns but addressing them will do little to help workers who are exploited by unscrupulous employers. The Government must do more to protect workers who wish to challenge unfair, unsafe or unlawful conditions of employment.

Workers should be told from the outset of their employment what type of contract they are on and a written contract setting out the terms and conditions must follow within two months. There should be a minimum notice period of work and workers should not be punished for turning down offers of work made within that period. Where workers arrive for work but find none available then the employer should compensate them for the inconvenience. Travel time between appointments should be paid and pay for zero hours workers should accurately reflect the number of hours that are worked to fulfil contracted duties.

Our recommendations will improve the working conditions of people on zero hours contracts but our overriding conclusion is that, in the majority of cases, zero hours contracts need not and should not be used at all. Organisations in the public and private sector should look first to contracts of employment that offer guaranteed hours and full employment rights. The UK and Scottish Governments must use every lever at their disposal to effect this change in culture.

We accept there are circumstances where workers will be happy to be on zero hours contracts and if both parties are satisfied then those arrangements should continue. Our report focuses on those for whom the arrangements are unsatisfactory, who are suffering from a lack of certainty of employment and who wish to have the security of guaranteed hours of work and the attendant benefits.

This report is an interim one, as it has been timed to contribute to the UK Government's consultation. We now intend to raise these matters with a number of employers, both individually and collectively.

Conclusions and recommendations

Conclusions are in plain text, recommendations are in italics.

Employment rights: confusion and abuse

1. *Denying workers rights that are legally due to them, whether it is through confusion, abuse or even a failure to determine an individual's employment status, is unacceptable. Employers must make clear from the outset an individual's employment status. In addition, all workers should be legally entitled to a written contract setting out the terms and conditions of their employment. In many circumstances it would be unrealistic for such a contract to be produced from the beginning of employment, particularly if the work was for a very brief period, but such a contract must be agreed within a specific timeframe. The CIPD suggest not later than two months; this proposal has our support. (Paragraph 24)*
2. *While abuses of employment rights might be resolved via an employment tribunal, it is unrealistic to assume zero hours workers, who are vulnerable to sudden changes in their working hours and are often poorly paid, would mount such a challenge against their employer. The Government must come forward with a robust means of protecting workers in insecure employment that enables them to claim the rights to which they are entitled without suffering detriment. Such a system must be enforceable and employers who abuse it appropriately penalised. (Paragraph 25)*
3. *We welcome the Government's concern about a lack of transparency around zero hours contracts, but we fail to see how an unenforceable Code of Practice, aiming to curb abuse by unscrupulous employers, can be 'employer-led' and still be effective. Improving the information available to employers may help address problems of confusion over rights and entitlements but model clauses and a Code of Practice may also serve to embed in the workplace a status of employment that is often unfair and unjust. Such proposals should only be implemented as a stepping stone to, or following, legislative change aimed at reducing the use of zero hours contracts and protecting those who are on them. (Paragraph 28)*
4. Exploiting low-paid workers through non-payment of the minimum wage is a disgrace. We welcome HMRC's investigation into the care sector. Care workers are expected to look after the vulnerable in society and treat them with dignity yet HMRC have found that almost half of those employers investigated have shown no such duty of care to their workforce. The Government's efforts in enforcing this area of legislation have been severely lacking. (Paragraph 32)
5. *As part of its investigations into payment of the minimum wage, the Government should make sure that workers are being paid for time spent travelling between appointments and that the associated expenses are reimbursed. We are concerned that zero hours workers who report bad employers might be 'punished' through a reduction in the number of hours of work made available. In calling for individuals to come forward the Government must ensure that they are not disadvantaged in doing so. (Paragraph 33)*

6. *We are alarmed by the extent to which zero hours contracts are used by Scotland's higher education sector. In some cases universities are being kept going by a staff who earn less than the minimum wage. The system of employment appears to us one of unashamed exploitation. This is unfair to dedicated teaching staff and may also compromise the quality of teaching that students receive. Scottish higher education institutions must review the terms of employment of their teaching staff and make sure that levels of pay accurately reflect the number of hours that must be worked to fulfil contracted duties. In addition, we recommend that HMRC investigate the use of zero hours contracts in the higher education sector in Scotland in order to determine whether employers have broken minimum wage legislation. (Paragraph 38)*
7. *We expect to scrutinise compliance with National Minimum Wage legislation in Scotland in more detail as part of our future work. (Paragraph 39)*

Uncertainty

8. *In most circumstances employers are able to give reasonable notice of work yet over half of the zero hours workers surveyed by the CIPD received less than a day's notice. We find this lack of notice to be unacceptable and a symptom of lazy workforce planning. (Paragraph 46)*
9. *We recommend that zero hours contracts contain a minimum period of notice, both for work and the cancellation of it, which would apply unless there were mitigating circumstances which fell within specific criteria set out in the contract, such as the requirement to provide cover for unexpected absence. It should also be made clear that a worker is free to turn down work offered within the notice period without suffering any detriment. If work is cancelled at such short notice that travel expenses have been incurred then those expenses should be reimbursed by the employer plus an element of compensation for the worker's time. (Paragraph 46)*
10. *We accept that zero hours contracts may be justified in a limited number of circumstances which genuinely require flexibility (on either side). We do not believe that the level of flexibility demanded by employers such as Network Rail and some Scottish universities is matched by their business need. If large organisations such as most major supermarkets and local authorities can cope without zero hours contracts then so can many others. Reducing HR costs or improving administrative efficiency are not acceptable reasons to deny workers the stability that comes with being an employee with guaranteed, contracted hours. Organisations must reduce their use of zero hours contracts and Governments should use every lever they have to encourage this change in behaviour. (Paragraph 58)*

Exclusivity

11. *We have already made clear that zero hours workers, in need of work but with no guarantee of income, are unlikely to challenge their employer and seek redress, even if the terms and conditions of their employment might be considered illegal. Half of all zero hours workers earn less than £15,000 per year and one in three are under 25. It is fanciful to assume that individuals in these circumstances would opt to challenge an exclusivity clause through an expensive and complex legal process. (Paragraph 63)*

12. A Code of Practice that provided greater clarity of the rights and entitlements of workers on zero hours contracts may be of some benefit, particularly if it follows legislative change, but on its own is not enough to achieve the Government's stated aim of protecting vulnerable workers. (Paragraph 64)
13. *If employers want to prevent workers from taking up employment with somebody else then they should pay for that privilege. Employers who do not provide a zero hours worker with sufficient work should not be able to prevent that individual from seeking employment or additional employment elsewhere. We recommend that the Government legislate to ban the inclusion of exclusivity clauses in all employment contracts that do not guarantee work.* (Paragraph 67)

A threat to health and safety

14. *We welcome Network Rail's acknowledgement of the risks of using zero hours contracts in safety-critical roles. Zero hours contracts have been shown to be incompatible with running a safe railway and Network Rail must demonstrably reduce their dependence on them, both in its role as a direct employer and indirectly through its use of contractors.* (Paragraph 73)
15. *We believe that the stability of work and funding offered by a five-year control period means that Network Rail does not have a business need for the flexibility that zero hours contracts provide. Its only justification in using them must therefore be to reduce costs. This is not sufficient reason to put the safety of workers in jeopardy and to deny them the opportunity to be an employee and receive the employment rights that go with that status. Network Rail should take more work in-house and make greater use of fixed-term and part-time contracts.* (Paragraph 74)
16. *Zero hours workers have a right to work in a safe environment and must be able to raise concerns without fear of losing their job. Despite a number of reports detailing the risks of zero hours contracts in safety-critical industries, the Government's consultation on zero hours proposes nothing to protect workers who speak out. In response to this Report, the Government must set out the steps it will take to ensure that individuals who question the conditions in which they are expected to work and the quality of service they are able to provide, are protected from the actions of unscrupulous employers.* (Paragraph 79)

Engaging with the State

17. *The Government must do more to ensure that Jobcentre Plus staff are aware of, and follow, the rules regarding zero hours contracts. The employment terms of a vacancy must be made clear to a Job Seeker and, if the vacancy is an offer of insecure employment, the individual must be allowed to reject it without facing sanction. Individuals must also be allowed to leave zero hours contracts which do not provide sufficient work without facing sanction for doing so. Jobcentre Plus staff should be putting people into permanent employment not pushing them into exploitative working conditions.* (Paragraph 85)
18. *We are concerned that Universal Credit might not be as beneficial to zero hours workers as the Government suggests. In response to this Report, the Government must*

set out the advantages and disadvantages of Universal Credit to workers with a fluctuating income. (Paragraph 89)

19. *The Government must make sure that staff who are responsible for administering benefits are aware of the specific problems faced by zero hours workers. Staff in Jobcentre Plus, HMRC and local authorities must be able to respond quickly to reported changes in earnings so that individuals can receive their benefit payments at the time when they need them most. (Paragraph 90)*

Other types of casual labour

20. *The Swedish Derogation, if operated properly, can offer sufficient benefit to workers to justify its continued use, but the UK Government must tighten up the implementing Regulations to ensure that the Derogation can only be used in the spirit in which it was intended and not deliberately to reduce the pay and conditions of workers and increase the margins of employers. (Paragraph 97)*
21. *We recommend that, where the provision of certain employee benefits can vary, the calculation of those benefits should reflect the number of hours regularly worked rather than a minimum number stipulated in a contract. The Government should explore means to make this clear. (Paragraph 101)*
22. *We welcome the Government's announcement of plans to clamp down on the use of employment intermediaries to avoid employment taxes. It is disappointing that the clampdown does not extend to the use of these intermediaries to deny employment rights to workers as was suggested in the 2013 Autumn Statement. In response to this Report the Government should set out what other steps it is taking to prevent workers from being pushed into bogus self-employment. (Paragraph 108)*

Public and private sector contracts

23. *The Government should monitor whether the introduction of the National Employment Savings Trust (NEST) prompts employers to take steps to avoid it and in doing so cause detriment to workers. (Paragraph 114)*
24. *We welcome the commitment of many major retailers not to employ workers on zero hours contracts. We call upon them to extend that commitment to their supply and distribution chain. We do not believe that major retailers who are against zero hours contracts within their organisations would be happy to be seen to profit from their use elsewhere. (Paragraph 117)*
25. *Not all workers on zero hours contracts are exploited or dissatisfied, but we believe that where an individual has a regular pattern of work they should be entitled, after a specified period of time, to request a contract of employment that reflects the hours they work. This would provide individuals with the reassurance of guaranteed work which a zero hours contract cannot offer. There should be a presumption that such requests are treated favourably unless there is a clear reason to do otherwise. The Government should explore how such a system might be set up and monitored for abuse. (Paragraph 118)*

26. *We recommend that the UK and Scottish Governments should have procurement policies that guarantee minimum standards for workers and which reduce the use of insecure employment practices such as zero hours contracts. We call on both Governments to set out what steps they will take to achieve this.* (Paragraph 120)
27. We recognise the financial pressures that local authorities are under but it is disappointing that the reduction in funding has prompted some to oversee a diminution in the terms and conditions of workers in the social care sector. Commissioners of care services should make good conditions of service for care workers part of their selection criteria. An improved procurement policy from the Scottish Government would send a clear message to local authorities to reduce their reliance on zero hours workers to meet their need for social care provision. (Paragraph 122)

Conclusion

28. The UK Government has recognised that poor practice exists and needs to be addressed. It announced its intention to address concerns surrounding zero hours contracts in August 2013 but the consultation that followed was too narrow. It focused on measures to combat the problems of exclusivity and a lack of transparency which are concerns but addressing them on their own will do little to tackle the problems of exploitation we have highlighted in this Report. (Paragraph 125)

1 Introduction

1. Over the last 18 months a perceived rise in the use and misuse of zero hours contracts and other forms of insecure employment have seen them become a focus of much attention and concern in Scotland and across the UK. Zero hours contracts are not defined in law but have come to refer to contracts of employment which do not guarantee the provision of work to the individual and generally place no obligation on the individual to accept any work offered by the employer.¹ Zero hours contracts can offer flexibility to both parties but with that flexibility can come drawbacks for the worker in the form of a lack of guaranteed income and working pattern, as well as reduced access to basic employment entitlements such as maternity, holiday and sick pay and redundancy rights.

Our inquiry

2. Our inquiry into zero hours contracts arose from concerns raised in our previous investigations into blacklisting and health and safety. We began our hearings with compelling evidence from Unite, and their research partner Mass1, on the extent of the use of zero hours contracts and their impact on workers. Since that first session we have taken evidence from the Scotland representatives of a number of other trade unions and the consumer body, Citizens Advice Scotland. We held sessions in Westminster, Dundee and Falkirk and we are grateful to all those who assisted us with this inquiry.²

3. The legal aspects of zero hours contracts are entirely reserved. Thus most of our recommendations are addressed to the UK Government. However, the decision about what does, or does not, go into employment contracts is often a matter of choice for the employers, be they in the public or private sectors. In addition, the ultimate funder in the public sector in Scotland will regularly be the Scottish Government and thus it has a responsibility for what it permits.

4. This report is an interim one, as it has been timed to feed into the UK Government's consultation on zero hours.³ We feel that we have now collected sufficient information to highlight the main problems caused by the use of zero hours and other types of contracts which can be used in an exploitative way and we will next want to raise these matters with a number of employers, both individually and collectively. We also intend to raise with the various arms of the State the difficulties caused to those on zero hours and similar contracts when interacting with various government agencies. Accordingly, our conclusions and recommendations are interim ones and we welcome observations and comments upon all of them. We also welcome further relevant evidence which highlights

1 The Employment Lawyers Association states that not all zero hours contracts will be drafted so that the worker is entitled to turn down work. Some will oblige the worker to accept work when offered, or will only provide limited scope for refusal (such as a set number of consecutive occasions, or a set number of occasions per year) with provision for termination of the relationship if the limit is exceeded.

2 A list of those who gave oral and written evidence is at the back of this report.

3 Department for Business, Innovation and Skills, [Consultation: zero hours employment contracts](#), December 2013

good and bad practice or which identifies issues of which we have not previously been aware.

Prevalence of zero hours contracts

5. Data released by the Office for National Statistics (ONS) in July 2013 stated there were 250,000 people on zero-hours contracts in the UK (0.8% of the total workforce and an increase of 116,000 from 2006).⁴ This figure was quickly challenged, first by a CIPD survey which suggested close to a million people (3.1% of the workforce) were on zero hours contracts⁵ and then by Unite the Union who, using its own survey of 5,000 Unite members, found that 22% of those responding were either on a zero/short hours contract or knew someone who was.⁶ Unite's survey showed the proportion of the working population on zero hours contracts was broadly similar in Scotland and the UK as a whole. Of the 1,829 Scottish respondents, 331 (18%) were on a zero hours contract.⁷ In total, an estimated 90,000 workers in Scotland are on zero hours contracts.⁸

6. According to a 2011 UK Government survey of businesses, the proportion of workplaces that have some employees on zero hours contracts increased from 4% in 2004 to 8% in 2011.⁹ The CIPD's survey suggests this is a significant underestimate: of the businesses that replied to the CIPD survey, 23% reported that they used zero hours contracts with, on average, 19% of their workforce engaged in such arrangements.¹⁰ In October 2013, the Business Secretary, Rt Hon Vince Cable MP, raised concern over "the lack of reliable statistics that are available on zero-hours contracts" and wrote to the ONS requesting they improve their collection of data on zero hours workers.¹¹

7. The ONS had acknowledged the need for better statistics and pledged to review the way it collected data on zero hours contracts.¹² In October 2013 the ONS published a consultation document on proposals for a pilot phone survey in the autumn of 2013 which would be followed by a full-scale survey in February 2014. The results of the latter survey were published at the beginning of March and showed 583,000 workers were on zero hours contracts—still short of the CIPD's estimate but far in excess of the official estimate published six months earlier. Data released by the ONS also shows that the average hours worked by zero hours workers is falling. This is illustrated in the figure below. The

4 Office for National Statistics, [Zero hours contract levels and percent 2000-2012](#), ad hoc analysis, 31 July 2013

5 Chartered Institute of Personnel Development (CIPD) Press release, [One million workers on zero hours contracts, finds CIPD study](#), 5 August 2013

6 Unite the Union ([ZHC005](#))

7 Q4 [Mark Epstein]

8 Q239 [Dave Watson]; the 90,000 figure derived by breaking down the CIPD's one million estimate by population share.

9 Department for Business, Innovation and Skills, [Workplace Employment Relations Study \(WERS\)](#), 23 January 2013

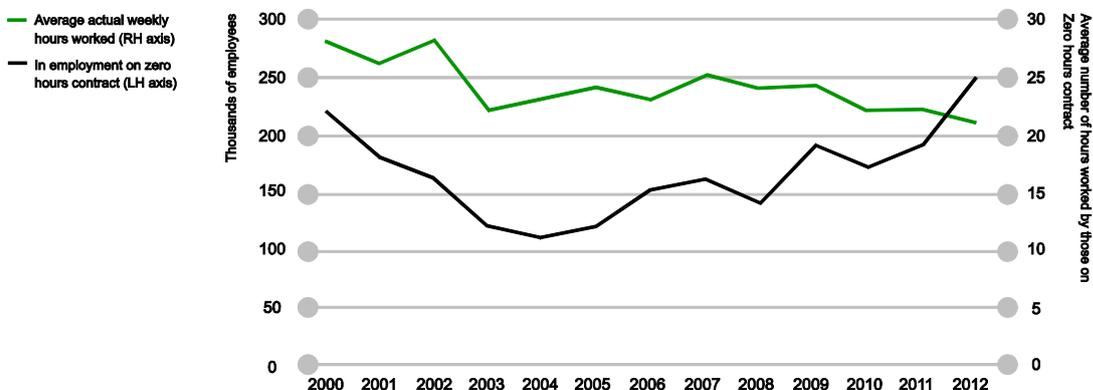
10 CIPD, [Zero hours contracts: myth and reality](#), Research Report, November 2013

11 [Zero hours contracts to be reviewed by the Office for National Statistics](#), *The Guardian*, 23 October 2013; One reason for the unreliability of official data on the number of zero hours workers is that workers may themselves not know that they are on a zero hours contract.

12 Office for National Statistics, [ONS announces additional estimate of zero hours contracts](#), 22 August 2013

Government consultation states that, “though the number of individuals on zero hours has increased, the total employment hours worked under such contracts may not have.”¹³

Figure 1: Average actual weekly hours worked by people on zero-hours contracts and total number of people employed on zero hours contracts

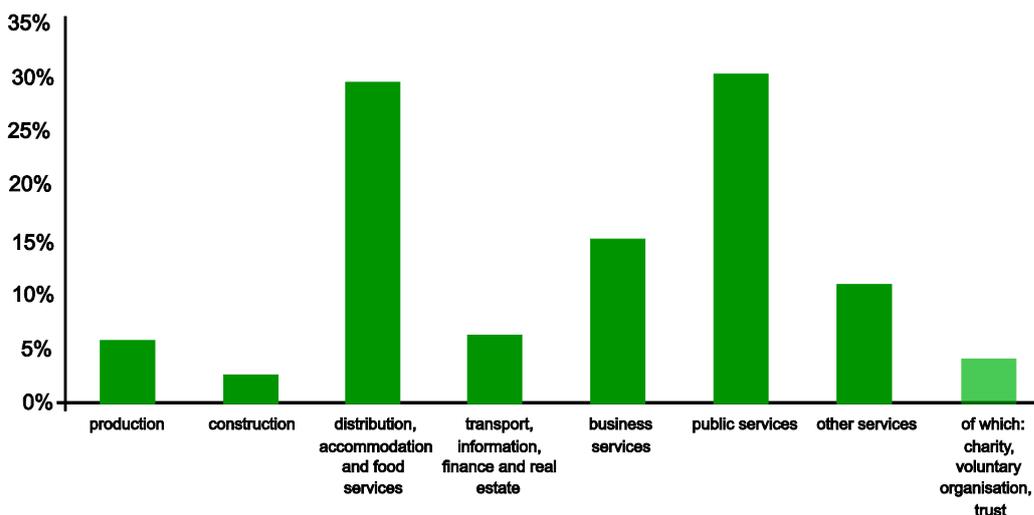


Source: Joseph Rowntree Foundation, *Monitoring poverty and social exclusion 2013 14*—graph based on data released by the ONS but does not include the revised estimate of total numbers of zero hours workers announced in March 2014.¹⁵

Breakdown of use

8. Zero hours contracts are used by employers across the economy. As the chart below shows, they are most prevalent in the ‘public services’ and ‘distribution, accommodation and food services’ sectors.

Figure 2: Estimates from Labour Force Survey of the proportion of those on zero hours contracts by broad sector



Source: Department of Business, Innovation and Skills consultation, *Zero hours employment contracts*, chart 2, December 2013

13 Department for Business, Innovation and Skills, [Consultation: zero hours employment contracts](#), December 2013

14 Joseph Rowntree Foundation, [Monitoring poverty and social exclusion 2013](#)

15 Graph based on [statistical data released by the ONS](#)

9. During our first evidence session for this inquiry, we heard that, across the UK, approximately 83,800 McDonalds staff, 20,000 Burger King staff, 20,000 Sports Direct staff, 24,000 JD Wetherspoon staff, 4,000 Boots the chemist staff, 16,000 Spirit staff, 20,000 Domino's Pizza staff, 200 Tate staff, 600 Subway sandwich staff and 3,600 Cineworld staff were all on zero hours contracts.¹⁶ The University and College Union reports that of those who responded to its requests for information, 53% of universities and 61% of further education colleges across the UK used zero hours contracts—in Scotland the figure rises to 79% of universities.¹⁷ The University of Edinburgh employed more people on zero hours contracts, around 2,400, than any other university in the UK.¹⁸ These figures alone are enough to cast doubt on the revised official estimate of 583,000.

10. Data from the 2011 *Workplace, Employment Relations Study* shows large increases in the use of zero hours contracts between 2004 and 2011 in the 'hotel and restaurant', 'education' and 'health' sectors. The increase in the health sector is supported by figures from Skills for Care (the partner in the sector skills council for social care) which estimated 307,000 adult social workers in England were employed on zero hours contracts in May 2013,¹⁹ and a report in the *Financial Times* which noted that there were almost 100,000 zero hours workers across NHS hospitals—a 24% increase over two years since 2011.²⁰

11. Zero hours contracts are used throughout the income distribution. The Government's December 2013 consultation on zero hours states: "the available evidence suggests: around 31% [...] worked in elementary occupations (for example construction or cleaning) and around 20% worked in professional or associate professional or technical occupations".²¹ The Resolution Foundation and the Work Foundation both report that those employed on zero hours contracts receive lower gross weekly pay and that workplaces that utilise the contracts tended to have a higher proportion of staff on low pay.²² Research by the CIPD found that half of all zero hours contracts workers earn less than £15,000 per year compared with 6% of all employees.²³ In the areas that have seen the most widespread use of zero hours contracts, women have been disproportionately affected, and one in three employees affected are under 25.²⁴

Satisfaction

12. Surveys suggest varying levels of satisfaction for workers on zero hours contracts. 72% of zero hours workers in Unite's survey said if they had a choice, they would prefer not to remain on a zero hours contract, while the CIPD found that that zero hours workers "were

16 Unite the Union briefing paper, September 2013

17 University and College Union ([ZHC002](#))

18 Employment Lawyers Association ([ZHC006](#))

19 Skills for Care, [The State of the Adult Social Care Sector and Workforce in England](#), 2012, October 2012

20 [Employers increase zero hours contracts](#), *Financial Times*, 7 April 2013

21 Department for Business, Innovation and Skills, [Consultation: zero hours employment contracts](#), December 2013, p10

22 Unite the Union ([ZHC005](#))

23 CIPD, [Zero hours contracts: myth and reality](#), Research Report, November 2013

24 Unison, [Fact sheet: Zero hours](#), March 2014

just as satisfied with their job as the average UK employee (60% and 59% respectively), and more likely to be happy with their work-life balance than other workers (65% versus 58%)”.²⁵ Both surveys found that around four out of ten zero hours workers wanted to work more hours though the UK Commission for Education and Skills (UKCES) puts this figure at over half.²⁶ According to UKCES’s survey, 33% of zero hours workers could not find a job with fixed regular hours, the figure rising to 54% for 16-24 year olds.

13. Zero hours contracts have benefits for employers: they offer the flexibility to manage fluctuations in demand, avoid recruitment costs and can allow companies to expand services whilst limiting the risk of over-recruiting permanent staff.²⁷ They are also used as an entry point into the jobs market for young people and can allow businesses to retain the skills of staff who have partially retired but wish to continue working on an ad-hoc basis.

14. Alongside the benefits, the use of zero hours contracts also raises significant areas of concern. These include a lack of employment rights for zero hours workers, financial and job insecurity and a culture where workers are afraid to question the terms and conditions of their employment. In this Interim Report we focus primarily on those areas where zero hours contracts are used to the detriment of the worker and we highlight particular areas of abuse that we think need to be addressed.

25 Unite the Union ([ZHC005](#)), CIPD, [Zero hours workers ‘happier than other employees’](#), 26 November 2013

26 UK Commission for Employment and Skills, [Flexible contracts: behind the headlines](#), February 2014

27 CIPD, [Zero hours contracts: myth and reality](#), Research Report, November 2013; Department for Business, Innovation and Skills ([ZHC0012](#))

2 Employment rights: confusion and abuse

15. Workers on zero hours contracts are not defined as ‘employees’ and as a result can lose out on employment rights such as:

- Statutory redundancy pay;
- Statutory notice periods;
- Unfair dismissal rights;
- TUPE rights;
- Collective redundancy consultation;
- Family friendly rights.²⁸

Workers on zero hours contracts may also have reduced entitlement to rights such as maternity, sick and holiday pay.²⁹ Citizens Advice Scotland told us:

often workers lose out on their entitlement to holiday pay, or the holiday pay gets added on to their hourly rate, which can leave workers underpaid. Conversely, a client might not be paid for an enforced break in their usual hours.³⁰

Adding holiday pay on to the hourly rate disincentivises workers from taking leave, which is against the rationale behind the Working Time Regulations and is unlawful unless it is clear that the payment is on top of the basic rate and the calculation of the holiday pay is transparent.³¹ The Government website makes clear that “an employer cannot include an amount for holiday pay in the hourly rate (known as ‘rolled-up holiday pay’).”

16. Statutory sick pay is available to ‘qualifying employees’, with the definition of ‘employees’ being wider than under normal employment law. The Employment Lawyers Association state that, given the conditions for receipt of statutory sick pay:

it is likely that some zero hours workers will not qualify during periods of sickness: for example (i) where the pattern involves only short periods of work of perhaps 1 or 2 days; (ii) if an employer is aware of employee’s

28 Union of Shop, Distributive and Allied Workers (Usdaw) ([ZHC0014](#)); family friendly rights include parental leave, time off for dependents and paternity and adoption leave.

29 Citizens Advice Scotland ([ZHC003](#))

30 Citizens Advice Scotland ([ZHC003](#))

31 HM Government, holiday entitlement, <https://www.gov.uk/holiday-entitlement-rights/holiday-pay-the-basics>

sickness, they will not ‘offer’ a period of work, meaning that the individual will not be ‘absent’.³²

Jake Molloy from the RMT gave the example of a worker in the offshore industry who survived a helicopter crash but, because he is not currently available for work, has been left without access to sick pay or any other form of support and now worries about paying his mortgage: “He was recovered from the sea, taken to hospital and given the support and counselling of the various companies on site at the time, but once he got back home no contact; nothing at all, despite repeated efforts to speak to the company that engaged [him].”³³

Box 1: Pregnant worker

Our client has worked on a zero hours contract, working 40 hours per week, for 14 months. She informed her employer that she was pregnant, and her hours have been reduced in stages until she now works only 11 hours per week. The employer has taken on two other staff but hours were not offered to our client. She believes this is so that the employer does not have to pay Statutory Maternity Pay as her pay will be below the lower earning limit.

Source: Anonymous (Citizens Advice warns on zero hours contracts, 9 July 2013)

Confusion

17. Not only do zero hours workers have fewer rights than employees but there is also confusion about what exactly those rights are. The CIPD’s report, *Zero hours contracts: myth and reality*, states “there is significant confusion among both employers and zero-hours contract staff over which employment rights people on zero-hours contracts are eligible for”.³⁴ Some organisations do use zero hours contracts in a way in which they accept from the outset that the individual is an ‘employee’, employed on a continuous basis and therefore allowed to accrue employment rights.³⁵ However, classifying individuals on zero hours contracts as employees does not necessarily mean the individuals are automatically granted the attendant rights. Almost two-thirds (64%) of employers who responded to the CIPD survey said they classed their zero hours workers as ‘employees’ but only:

- 31% of employers reported their zero hours workers were eligible for statutory redundancy pay (all employees are eligible after two years’ service);
- 40% of employers said their zero hours workers were eligible for statutory maternity, paternity and adoption leave and pay (these should be available to all employees);
- Just over 50% of employers reported their zero hours workers had the right not to be unfairly dismissed after two years (this right should be available to all employees);

32 Employment Lawyers Association ([ZHC006](#))

33 Q74; National Union Of Rail, Maritime & Transport Workers (RMT) ([ZHC004](#)); Q273

34 CIPD, [Zero hours contracts: myth and reality](#), Research Report, November 2013

35 Employment Lawyers Association ([ZHC006](#)); For example, McDonalds and JD Wetherspoon – two of the private sector’s biggest zero hours employers – report that they treat their zero hours staff as employees.

- Just under 50% of employers reported their zero hours workers received statutory sick pay (this is payable to employees and workers except under certain circumstances).³⁶

18. It is not just employers who are confused; evidence suggests that workers are also not clear about what rights they are entitled to.

Box 2: Care worker

At the beginning of my employment I was given a piece of paper to sign with not much information on it. I never knew about zero hours contracts. I thought this was a job that guaranteed me work.

Source: Anonymous (Informal meeting of the Committee with zero hours workers)

Of those on zero hours contracts who responded to Unite's survey, 43% said they were not offered employment and redundancy rights and 47% said they did not know, while 73% did not know whether or not they were entitled to sick pay.³⁷ In part, this may be due to individuals not knowing their employment status.³⁸ Mark Epstein, Chief Executive of research specialists Mass1, explained that "people almost do not know that they are on zero hours contracts, because the contract does not say at the top of it 'zero hours'. It looks like a normal contract".³⁹ In the university sector, Mary Senior from the University and College Union (UCU) told us that "some people may have a bit of paper with a contract; other people may not".⁴⁰ In their written evidence Unite give the example of a door steward who, for the first year of employment, was not aware he was eligible for holiday pay.

Box 3: Holiday pay

An East of Scotland Citizens Advice Bureau reports of a client who came in and reported that she had been employed for around two years and she had not had any paid holidays. She spoke to her manager about this and was told that as she was on a "zero" hours contract she was not entitled to any paid holidays. The bureau assisted the client in writing a grievance letter

Source: Anonymous (Citizens Advice Scotland written evidence)

Inability to challenge

19. Some organisations will construct zero hours contracts to expressly state that an individual is not an employee.⁴¹ But, while employers may draft contracts to imply a particular state of employment, case law indicates that, if the day-to-day reality of the work suggests a relationship of employment - for example, a pattern of regular work which is regularly accepted - then an employment tribunal may deem the contract to be one of employment. The House of Commons Library notes:

36 CIPD, [Zero hours contracts: myth and reality](#), Research Report, November 2013; See also Employment Lawyers Association ([ZHC006](#)) para 6.4.5 for an explanation of entitlement to sick pay.

37 Q52

38 RMT ([ZHC004](#))

39 Q66; Mass1 worked with Unite in their investigation of zero hours contracts.

40 Q382

41 Employment Lawyers Association ([ZHC006](#))

One effect of this is that many employers, who proceed on the basis that staff working under zero-hours contracts have limited employment rights, may discover the existence of additional rights only when these are asserted against them.⁴²

However, zero hours workers are unlikely to challenge their employer over employment rights because doing so risks a reduction in work offered.

20. With no guarantee of work, zero hours workers can effectively be dismissed - by not being offered any more hours - without the employer having to follow any formal redundancy procedure.

Box 4: Meat-processing industry

Within the meat processing industry, we've got a huge casualisation of labour, with very vulnerable workers and migrant workers. They don't challenge employers, because if they put their head above the parapet they don't get the tap on the shoulder—they don't get the work.
Source: Scot Walker, Unite (Q205)

21. James Bevan, Campaigns and Communications Officer, Unite, spoke of a fear factor amongst zero hours workers:

there is high youth unemployment ... [zero hours workers] realise that, even if they do put their hands up, there can be quite a subtle punishment in effect. I have spoken to people who have had it. You will either stop getting calls for work the next week, or you will be punished by getting shifts that are impossible to fill.⁴³

The evidence from the trade union representatives is supported by cases seen by Citizens Advice Scotland. Rob Gowans, Policy Officer at Citizens Advice Scotland, described to us a case where a client refused to do additional work for no pay and then found their hours were cut from 27 to 6 per week.⁴⁴

Box 5: Security worker

A North of Scotland Citizens Advice Bureau reports of a client who is a security worker with a zero hours contract. He and several other workers are perturbed that their wages are not paid on the due date, and that they are paid into the bank by cheque which then takes several days to clear. Also, there are always deductions for unspecified reasons so that the actual wages are at least £30 less than the payment for the hours worked. They do not receive itemised payslips and if they do ask for them they are many weeks behind. The client queried why his money was not in the bank. He was then taken off the job he was on and put on standby. The client is finding these inconsistencies both stressful and distressing.⁴⁵
Source: Anonymous (Citizens Advice Scotland written evidence)

22. 'Punishment' for challenging an employer is not necessarily limited to a reduction in hours. Unite's survey found that 46% of respondents who had spoken out about their

42 Zero hours contracts, Standard Note [SN/BT/6553](#), House of Commons Library, 20 December 2013

43 Q31

44 Q278; Citizens Advice Scotland ([ZHC003](#))

45 Citizens Advice Scotland ([ZHC003](#))

contract had experienced bullying or harassment as a result.⁴⁶ Justine Seran, a PhD student from the University of Edinburgh, told us that it wasn't just about the potential repercussions but also the lack of transparency that accompanied it:

the whole issue is that, being on a zero-hours contract, we could be withdrawn work and never be told why. If they say, "We just don't have hours for you," we will never know whether it is just because we have been here or there can be deeper reasons, because they don't have to tell us because it is a zero-hours contract.⁴⁷

23. In their response to the Government's consultation, the CIPD highlight the problem of confusion over employment status and recommend a change to the law. The CIPD "believes all workers should be legally entitled to a written copy of their terms and conditions not later than two months in employment (currently under the Employment Rights Act 1996 only employees are entitled to this)".⁴⁸ They suggest this change would help provide greater clarity to workers and employers on the issue of employment status and associated employment rights.

24. Denying workers rights that are legally due to them, whether it is through confusion, abuse or even a failure to determine an individual's employment status, is unacceptable. Employers must make clear from the outset an individual's employment status. In addition, all workers should be legally entitled to a written contract setting out the terms and conditions of their employment. In many circumstances it would be unrealistic for such a contract to be produced from the beginning of employment, particularly if the work was for a very brief period, but such a contract must be agreed within a specific timeframe. The CIPD suggest not later than two months; this proposal has our support.

25. While abuses of employment rights might be resolved via an employment tribunal, it is unrealistic to assume zero hours workers, who are vulnerable to sudden changes in their working hours and are often poorly paid, would mount such a challenge against their employer. The Government must come forward with a robust means of protecting workers in insecure employment that enables them to claim the rights to which they are entitled without suffering detriment. Such a system must be enforceable and employers who abuse it appropriately penalised.

Government proposals

26. The Government agrees that a lack of transparency around zero hours contracts is a problem. In its December 2013 consultation on zero hours, the Government stated: "individuals are not always clear on the terms, conditions and consequences of a zero

46 Unite, [Submission to the Pickavance consultation on the abuse of zero-hours contracts](#), January 2014

47 Q466

48 CIPD, [Policy Response: Zero hours employment contracts](#), March 2014

hours contract, and employers do not always fulfil or understand their responsibilities.”⁴⁹ The Government is considering several options aimed at improving zero hours contracts:

- Improving the content and accessibility of information, advice and guidance on (a) employment contracts and rights, and (b) entitlement of zero hours workers to benefits;
- Encouraging an employer-led Code of Practice on the fair use of zero hours contracts; and,
- Government providing model clauses for zero hours contracts.

27. Witnesses to this inquiry were sceptical about the Government’s proposals to increase transparency. Dave Watson, Scottish Organiser, UNISON Scotland, agreed that more effort on education and understanding would be a good thing but suggested that an employer-led code of practice would be “be next to useless in terms of defending and protecting people in this area.”⁵⁰ Representatives from the University and College Union questioned how increased transparency would address the key problem of zero hours contracts—that workers on them are exploited.⁵¹ Dr Rachel Shanks, from the University of Aberdeen, explained:

you have a two-tier work force. You have the work force with their permanent contracts and all the benefits and protection, and then you have the people who don’t know how much work they are going to get and are working many more hours than they are being paid for. I don’t think having the best zero-hours contract you can possibly have helps that.⁵²

Karen Whitefield, Campaigns Officer, Union of Shop, Distribution and Allied Workers (Usdaw), was slightly more positive:

if, as a stepping stone towards getting to a position [of no zero hours contracts], there was a code of conduct around the use of zero hours contracts we would not be against that, but it is not ultimately where we would want to get to, so it would not be a preference.⁵³

28. We welcome the Government’s concern about a lack of transparency around zero hours contracts, but we fail to see how an unenforceable Code of Practice, aiming to curb abuse by unscrupulous employers, can be ‘employer-led’ and still be effective. Improving the information available to employers may help address problems of confusion over rights and entitlements but model clauses and a Code of Practice may also serve to embed in the workplace a status of employment that is often unfair and unjust. Such proposals

49 Department for Business, Innovation and Skills, [Consultation: zero hours employment contracts](#), December 2013

50 Q266 and Q298

51 Qq423-4

52 Q425

53 Q125

should only be implemented as a stepping stone to, or following, legislative change aimed at reducing the use of zero hours contracts and protecting those who are on them.

National Minimum Wage

Care workers

29. Before the Government launched its December 2013 consultation into zero hours it conducted an informal information-gathering exercise. In response to the exercise the Government received representations from the care sector around the non-payment of travel time between appointments. Carers argued that non-payment of travel time was causing them to be paid less than the National Minimum Wage.⁵⁴ Under National Minimum Wage rules, “travelling in connection with work, including travelling from one assignment to another” counts as working time.⁵⁵ In addition:

where travelling time is time for which the minimum wage should be paid, any associated expenditure incurred by a worker by that travelling is classified as being in connection with the employment. These expenses reduce a worker’s pay for minimum wage purposes. A worker paid at minimum wage rates would therefore need to be reimbursed such expenses in order to be paid the minimum wage.⁵⁶

30. HMRC enforces the National Minimum Wage on behalf of the Department for Business, Innovation and Skills. In November 2013, HMRC found that out of 183 employers of care workers that were investigated, 88 (48%) had failed to pay their workers the National Minimum Wage; over 2,400 care workers were affected and £340,000 owed. The main reasons were non-payment of travel time, and deductions for uniform costs.⁵⁷ Dave Watson told us that in the past care workers would have had a contract for a set number of hours and travel time would have been part of those working hours: “with zero hours contracts we are seeing the opposite”.⁵⁸ He explained that, while the rules were fairly clear,

a lot of these workers do not understand their rights, are not as well organised as they might be and a number of employers are taking advantage of zero hours contracts. For example, if you challenged your wage rate and challenged the issue [...] with your employer you probably would not get asked back to work.⁵⁹

31. The Parliamentary Under-Secretary of State for Business, Innovation and Skills, Jenny Willott MP, confirmed during a Westminster Hall debate on zero hours that the Government was trying to improve compliance with the minimum wage, particularly in

54 Department for Business, Innovation and Skills, [Consultation: zero hours employment contracts](#), December 2013, p14

55 HM Government, Minimum wages for different types of work, <https://www.gov.uk/minimum-wage-different-types-work>

56 Department for Business, Innovation and Skills, [Consultation: zero hours employment contracts](#), December 2013

57 HM Government News Story, [Care sector abuse of minimum wage rules](#), 25 November 2013

58 Q242

59 Q243

the care sector. Penalties for non-compliance had been significantly increased and the scheme for naming and shaming employers that break minimum wage rules had been revised.

32. Exploiting low-paid workers through non-payment of the minimum wage is a disgrace. We welcome HMRC’s investigation into the care sector. Care workers are expected to look after the vulnerable in society and treat them with dignity yet HMRC have found that almost half of those employers investigated have shown no such duty of care to their workforce. The Government’s efforts in enforcing this area of legislation have been severely lacking.

33. As part of its investigations into payment of the minimum wage, the Government should make sure that workers are being paid for time spent travelling between appointments and that the associated expenses are reimbursed. We are concerned that zero hours workers who report bad employers might be ‘punished’ through a reduction in the number of hours of work made available. In calling for individuals to come forward the Government must ensure that they are not disadvantaged in doing so.

Higher education teaching staff

34. During our inquiry we heard that teaching staff in Scotland’s higher education institutions (HEIs) were also particularly vulnerable to earning below the minimum wage. Research by the University and College Union found that 49% of all teaching staff of Scottish HEIs—approximately 4,500 people - were on zero hours contracts.⁶⁰ While the terms and conditions varied across the HEIs, the overwhelming conclusion of the UCU representatives who gave evidence to us was that teaching staff on zero hours contracts worked far more hours than they were paid for; as a consequence their level of pay fell below the minimum wage. We were told that the hourly rate, often between £10 and £15, might be comparable to the wage of permanent colleagues but it was generally only payable for the hours of teaching. Dr Rachel Shanks explained that:

for teaching, you might only get paid for the contact hour that you are in front of the students, but to be in front of the students you have put in many, many hours of preparation, especially if it is the first time you have taught it, so it ends up that you are way below the national minimum wage. You are talking maybe £1 or £2 an hour once you have put in all that preparation time.⁶¹

Justine Seran told us that the University of Edinburgh have a ‘multiplier-by-two’ so she was paid for one’s hour preparation for every hour she taught, “you are paid £13 plus £13, but when you teach subjects such as literature, when you are being asked to teach one book a week ... [the preparation] is much more than one hour per week”.⁶²

60 University and College Union ([ZHC002](#))

61 Q339

62 Q343

35. The interaction with students is not limited to lectures and tutorials and preparation for them. Teaching staff are also expected to reply to emails, check for student posts in the virtual learning environment, mark papers and provide feedback.⁶³ We heard that marking was a particular problem; teaching staff were expected to mark papers but were not always paid for it.⁶⁴ Where staff were paid, the level of pay was based on the quantity of work completed rather than the time required to do the work.⁶⁵ Justine Seran suggested that while her department did pay for marking, it was “being paid way below what we actually do,” and that students were being let down by the arrangements:

When you have two classes of 16 students, that is 32 essays. It is a pile like *that*, which you spend hours going through without being paid for.

Obviously, that impacts student learning; that impacts on the ratings of the university. They have really bad ratings every year at the National Student Survey because we don’t have time. We are not being paid to give proper feedback. We would love to give proper feedback, but we need to be paid for it, or else the extra time that we can’t spend on the feedback we will be spending on doing our other jobs—the ones that are paid—because rent and bills still need to be paid.⁶⁶

36. Junior staff, such as PhD students, are the most vulnerable to exploitation because they depend on being given teaching experience to further their careers. Dr Shanks explained that they are less likely to challenge their pay and conditions as a result:

you may be thinking eventually that you will be asking for references or even a job in that department, and so you don’t like to complain that you are not getting paid for all the work that you are doing, because it looks good on your CV, you are getting experience, and you are becoming a valued member of the staff. So you don’t want to rock the boat.⁶⁷

We were told that teaching contracts were not always advertised.⁶⁸ One of the benefits of zero hours contracts to employers is that they do not have to advertise positions and incur the costs of a proper recruitment process. The lack of transparency can lead to accusations of nepotism, a lack of equal opportunities and people not being aware that opportunities exist.⁶⁹ It also keeps people vulnerable and ensures that they are unlikely to ‘rock the boat’.

63 Q342

64 Qq343-4

65 Q343

66 Q343

67 Q341

68 Q341

69 Q339 and Q352

37. The disconnect between the hours worked and the hours for which payment is made raises a further concern—that teaching posts may only be accessible to those who have family, other work or a bursary to subsidise them.⁷⁰ In Dr Shanks ‘s view:

it is skewing the work force. It is a bit like unpaid internships, where it is only the people who can afford to keep on waiting for that permanent, more secure employment who can do all those little bits of work. That is my worry as well. Then, obviously, it can—very likely—compound any inherent discrimination.⁷¹

38. We are alarmed by the extent to which zero hours contracts are used by Scotland’s higher education sector. In some cases universities are being kept going by a staff who earn less than the minimum wage. The system of employment appears to us one of unashamed exploitation. This is unfair to dedicated teaching staff and may also compromise the quality of teaching that students receive. Scottish higher education institutions must review the terms of employment of their teaching staff and make sure that levels of pay accurately reflect the number of hours that must be worked to fulfil contracted duties. In addition, we recommend that HMRC investigate the use of zero hours contracts in the higher education sector in Scotland in order to determine whether employers have broken minimum wage legislation.

39. We expect to scrutinise compliance with National Minimum Wage legislation in Scotland in more detail as part of our future work.

70 Q341

71 Q341

3 Uncertainty

Flexibility: an uneven relationship?

40. Workers on zero hours contracts have no guaranteed hours and, as a result, may have little job security. Supporters of zero hours contracts claim that the contracts provide flexibility for employers and workers but all too often the choice rests with the employer, leaving the individual waiting for a call which, if it comes, can be at very short notice with hours that are not ideal.⁷² This lack of certainty and choice can put a great deal of pressure on individuals. As UNISON state in their evidence, “the need to respond to calls to attend work, frequently at short notice, disrupts life outside of work and places a particular strain on families and arranging care for dependants.”⁷³ One in four zero hours workers who responded to Unite’s survey reported not being able to find childcare that suited their irregular hours.⁷⁴

41. Despite the strain, we heard that individuals in need of work are unlikely to turn down opportunities for work, no matter how disruptive they might be, for fear of seeing their hours reduced or stopped.⁷⁵ According to Unite, “there is clear evidence that workers are afraid that if they turn down shifts then they may not get others”.⁷⁶ The CIPD found that 17% of individuals were sometimes penalised and 3% always penalised if they were not available for work when required.⁷⁷

Box 6: PhD student - non-academic job

If you are needed, for example, and they call you up and say, ‘Actually, we don’t need you on that day of the week. We need you tomorrow,’ and you can’t do it, then maybe you will have no shift that week and you will not be paid. The thing is that, even as non-academic staff, it makes you rely heavily on management, whether they think that that service should be cut down and you should be sent home without further warning, or your line management—the person who gives you the hours. If they are not sympathetic, if you do not get on well with them, they can just not give you any hours or give you hours that you can’t do.

Source: Justine Seran (Q409)

42. The threat, real or perceived, of the potential for a reduction in hours can also cause individuals to accept work when they are unfit to do so. Dave Watson explained that this was particularly worrying in the care sector: “you ask workers in that area and they will say, ‘I have a cold. I will probably still go out because I am worried that they will not ask me back next week’, and frankly you do not want your social care worker turning up at your house with your granny, blowing her nose and passing on the cold.”⁷⁸ Justine Seran told us that in the university sector, if a tutor cannot do a class, “they will get another tutor on the

72 CIPD, [Zero hours contracts: myth and reality](#), Research Report, November 2013; and TUC, [Ending the abuse of zero hours contracts: TUC response to BIS consultation](#), March 2014

73 UNISON ([ZHC0015](#))

74 Unite the Union ([ZHC005](#))

75 Unite the Union ([ZHC005](#)); Educational Institute of Scotland ([ZHC007](#))

76 Unite the Union ([ZHC005](#))

77 CIPD, [Zero hours contracts: myth and reality](#), Research Report, November 2013

78 Q275

same course to take your hours and they will log your hours and they will get the pay ... Some people have been teaching the same course, Post-Docs, for six years, and yet they don't have access to sick pay; they don't have access to all that.”⁷⁹

Box 7: Former pizza worker

The zero hours contracts are used as a management tool to manage staff, i.e. staff they want rid of simply get their hours whittled away so they walk out. People are afraid to become sick or have other issues as they know the management often 'payback' through cutting of hours, or giving out shifts that don't suit.

Source: Anonymous (Unite the Union written evidence)

43. The Government believes that greater transparency and improved guidance for individuals and employers will correct the imbalance in the worker/employer relationship.⁸⁰ We fail to see how such steps will prevent workers being penalised if they decline work.

44. Some companies who use zero hours contracts do arrange shift patterns weeks in advance in order to ensure cover and provide a degree of certainty of work to the individual, but many do not. The CIPD's survey found that 42% of workers received less than 12 hours' notice of work and 10% between 12-24 hours' notice.

Box 8: University worker

I can be kept waiting until as late as Thursday night before finding out whether I have work the next week. There is no way to predict whether I will get nothing, or 5 days' work, meaning all other things have to put on hold until the last minute.⁸¹

Source: Anonymous (Unite the Union written evidence)

Lawrence Wason, Divisional Officer at Usdaw, told us he was aware of situations where groups of people receive a text in the morning telling them to turn up for work, only to find when they get there that there is not enough work for all of them: “A percentage of them who do not secure any work that day are then basically just told to go home. They will have to cover the travel costs themselves at that point in time, and, equally, they are not earning for that particular day.”⁸²

Box 9: Offshore worker

Sometimes you can turn up for your ticket and be turned away. You can actually turn up at the airport and the decision has been taken that you are no longer required because the job has been delayed or there has been a delay, so they just terminate the job completely.

Source: Jake Molloy, RMT (Q256)

45. The lack of guaranteed hours may suit some individuals, such as students who appreciate the flexibility to structure their work around study arrangements, or those for whom income from a zero hours contract is supplementary to a more permanent source of

79 Q408

80 Department for Business, Innovation and Skills, [Consultation: zero hours employment contracts](#), December 2013

81 Unite the Union ([ZHC005](#))

82 Q103

earnings.⁸³ Almost half of the zero hours workers who responded to the CIPD's survey reported they were satisfied with having no minimum contracted hours, while 28% of zero hours workers who replied to Unite's survey said that if they had a choice they would want to be on a zero hours contract. Unite explained that the 28% figure was similar to the proportion of workers who said they were eligible for sick pay, drawing a link between levels of satisfaction and access to employment rights although there is no direct evidence to link the two groups of respondents.⁸⁴

46. In most circumstances employers are able to give reasonable notice of work yet over half of the zero hours workers surveyed by the CIPD received less than a day's notice. We find this lack of notice to be unacceptable and a symptom of lazy workforce planning. We recommend that zero hours contracts contain a minimum period of notice, both for work and the cancellation of it, which would apply unless there were mitigating circumstances which fell within specific criteria set out in the contract, such as the requirement to provide cover for unexpected absence. It should also be made clear that a worker is free to turn down work offered within the notice period without suffering any detriment. If work is cancelled at such short notice that travel expenses have been incurred then those expenses should be reimbursed by the employer plus an element of compensation for the worker's time.

Finance

47. Zero hours workers tend to be low paid and have little disposable income. This leaves them more susceptible to shocks to their income.⁸⁵ Over two-thirds of the zero hours workers who responded to Unite's survey said being on a zero hours contract made them feel anxious that there may be nothing or hardly anything next week.⁸⁶ Mark Epstein explained, "a lot of people have fixed outgoings and do not have significant fixed work, that creates a lot of anxiety".⁸⁷

Box 10: carer

A West of Scotland CAB reports of a client who has been working under a zero hours contract since April 2012 as a carer in the community. She has received 30 hours per week until approximately 2 months ago when the hours dropped significantly. Her employers are awaiting the outcome of a contract bid to the Council and are taking on many more staff. The new staff are jobseekers and the company receives government payments for taking them on. As a consequence all of the additional hours are being passed on to them, leaving existing workers with hardly anything. Some weeks the client works 4 hours, some she works 10, last month she had to borrow money to get petrol so she could drive to work. Today she spoke to her employer and asked to be paid off but the employer refused saying they would need to keep her on and hopefully the hours situation would get better in two months' time. The client cannot afford to carry on working there, but she is afraid that if she leaves her job voluntarily she will be sanctioned by the Job Centre.

Source: Anonymous (Citizens Advice Scotland written evidence)

83 Citizens Advice Scotland ([ZHC003](#)); UNISON ([ZHC0015](#))

84 Q56

85 Citizens Advice Scotland ([ZHC003](#))

86 Q46

87 Q46

48. The varying hours and pay which zero hours workers experience can make it difficult for them to budget and manage household costs. Citizens Advice Scotland told us they had seen numerous cases in which clients on zero hours contracts had experienced a sudden drop in their hours, making it difficult for them to meet their basic living costs. This can lead to debt and an inability to keep to debt repayment plans which, according to Citizens Advice Scotland, can leave workers with “little choice but to access high interest credit such as pay-day loans.”⁸⁸

49. Workers on zero hours contracts are also very restricted in what they can do to improve their lifestyle, as Pat Rafferty explained to us:

If a young couple on zero-hours contracts goes to a bank to try to get a mortgage for their first house, they won't get it. The banks won't grant you a mortgage on a zero-hours contract. You will not get a bank loan or credit for a car. That builds into the anxiety as well. You are caught in a bubble, and it does little for the economy in that sense.⁸⁹

Normalising zero hours contracts through model clauses and a Code of Practice will do nothing to help people who need financial certainty in order to secure themselves a home. The Government must pursue measures that will encourage organisations to reduce their use of zero hours contracts and instead offer contracts of employment that will provide workers with the security they need.

Box 11: PhD student

Being enrolled as a post-graduate student and my partner not having a wage or income available to support both of us, it has been really difficult to get a lease for a flat because on my contract it doesn't say how many hours, how much I earn every month, and it's going to change every month.

Source: Justine Seran (Q425)

No need for uncertainty?

50. Zero hours contracts are often explained as a means of granting employers the flexibility to cope with fluctuations in demand for staffing or to provide cover for staff absence. In reality, their use is not restricted to these purposes. The CIPD's study of zero hours contracts shows that 20% of zero hours workers are on broadly the same hours each week. The use of zero hours contracts in these circumstances cannot be explained by a need for flexibility. Dave Watson suggested that, for individuals working regular hours, “there was no need for zero hours contracts at all. Even with the 50% where there were fluctuations, I would say that that is just lazy workforce planning.”⁹⁰ Many organisations are able to manage without using zero hours contracts: local authorities have moved away from using them directly and most major supermarkets are able to respond to business

88 Citizens Advice Scotland ([ZHC003](#))

89 Q52

90 Q323

fluctuations without them.⁹¹ We discuss below some areas where zero hours are used extensively.

Higher education sector

51. While some higher education institutions classify zero hours staff as ‘workers’ with the attendant minimum level of benefits, most Scottish HEIs seek to give zero hours contract holders ‘employee’ type conditions. But, even with parity in terms of employment benefits, zero hours workers still lack the guarantee of future work.⁹² According to the UCU, teaching staff on zero hours contracts will often be without an income during holiday periods, including the long summer break, without knowing if they will be allocated work in the new academic year. Justine Seran explained that:

it is also mentally distressing because you never know if you are going to be teaching next semester. I have just finished classes last week, and I have no idea whether I will be able to have an income in September. It will depend on student enrolment; it seems as if the whims of other people will determine whether I will be able to do a job, to be able to work, so also mentally it takes a toll.⁹³

52. The UCU argue that, because teaching work is planned over a long period, at least a semester or a year, it is difficult to understand the need for flexibility in the provision of academic and related services.⁹⁴ Mary Senior told us that there didn’t appear to be any “justifiable reason” why universities were using zero hours contracts rather than permanent or fixed-term contracts: “it is just lazy and too easy for them to give a zero hours contract”.⁹⁵ The Universities and Colleges Employers Association (UCEA) contest this view:

HEIs have legitimate and longstanding needs for a measure of flexibility in the workforce. Unpredictable and changing patterns of student demand, the need for specialist subject input and the practical need to provide cover for absences or occasional peak activities all call for some flexibility in staffing, both in teaching and in a range of support services (such as catering, accommodation, library services, security, exam invigilation, etc.). In many cases, those who do this work are themselves students, while many others have a primary source of employment outside of higher education.⁹⁶

The UCEA assert that “variable hours contracts” offer mutual benefits for employer and employee while ensuring efficient HR procedures: “In addition, where the small number of variable hours repeats from time to time, this is an efficient administrative approach,

91 Usdaw ([ZHC0014](#))

92 Educational Institute of Scotland ([ZHC007](#))

93 Q380

94 University and College Union ([ZHC002](#))

95 Q402

96 Universities and Colleges Employers Association ([ZHC0010](#))

avoiding the need for repeated issuing of low hours contracts and all that goes with that in respect of HR and payroll administration”. Zero hours contracts also allow universities to cancel courses at short notice without incurring significant costs, as Justine Seran explained:

there have been cases in our university of people on a zero-hours contract being asked to design and deliver a semester-long course and the course being cancelled one week into it because there had been seven student enrolments, which was below the eight-student limit; therefore, the course was cancelled and that person got paid for one week, although they had been preparing a semester-long course.⁹⁷

53. The evidence from the UCEA shows that, as well as allowing both parties flexibility, employers also use zero hours contracts to minimise their HR costs. But a reliance on zero hours workers can have potentially damaging consequences for employers. The UCU set out examples in their evidence:

- No guaranteed staff for whole areas of the institution’s service provision;
- The use of such contracts will affect the employers ability to attract and retain high quality staff;
- Potential reduction in continuity and quality of services provided;
- The exclusion of such staff from robust recruitment, training, induction, and CPD appraisals has the potential to affect the quality of service provision.⁹⁸

Mary Senior told us that she knew of no one who was on a zero hours contract through choice.⁹⁹

Box 12: PhD student

Rarely is our work treated by others as work, as a job with a contract attending, with rights attending to it. It is a shame, because it is not a hobby for us. A large majority of PhD candidates today are self-funded. We do not receive money from anyone, not even parents or research councils, so we count on it also as an income in parallel to our studies. Most of the time it is not how it is being presented or treated by the university.

Source: Justine Seran (Q382)

54. The UCU told us that it had been difficult to get universities to see that zero hours contracts are a problem and engage on the issue.¹⁰⁰ Nonetheless, the University of Edinburgh has agreed to review its policy on zero hours contracts with a view to ceasing their use; the University of Glasgow has agreed, in principle, to review its own ‘atypical workers’ policy; and the University of Aberdeen has set up a working group to review its use of zero hours contracts. While we welcome the universities’ recognition of concerns

97 Q359

98 University and College Union ([ZHC002](#))

99 Q404

100 Q390 and Q445

surrounding the use of zero hours contracts, their reviews must not be used as a delaying tactic. Universities are in receipt of large sums of public money, the Scottish Government should use its influence to see that Scottish HEIs commit to action and reduce their use of zero hours contracts.

Rail

55. The use of casualised labour is commonplace within the rail industry. Zero hours contracts and other forms of casual labour are used by Network Rail to help develop and maintain the rail infrastructure.¹⁰¹ According to the National Union of Rail, Maritime and Transport Workers (RMT), out of 88-90,000 Personal Track Safety (PTS) workers¹⁰² only 20-22,000 are directly employed by Network Rail, and just 10% of the remainder are directly employed by a contractor. Approximately 60,000 PTS workers are therefore casual labour employed through agencies, on zero hours contracts or as ‘bogus’ self-employed.¹⁰³ Irrespective of the contractual arrangements of employment, Network Rail remains the ultimate paymaster for these workers.¹⁰⁴

56. Network Rail is publicly funded through a series of five-year ‘control periods’. Mick Cash, Senior Assistant General Secretary at the RMT, told us that a control period represents five years of money and five years of work: “In the five years from April of this year, [Network Rail] are going to spend on operating, maintaining, enhancing and renewing the railway somewhere in the region of £38 billion.”¹⁰⁵ Control periods allow Network Rail to plan their spend and work over a long timeframe yet, despite the steady workstream, Network Rail uses a casualised work force who have little job security. In their January 2013 Strategic Business Plan Network Rail committed to increase further the use of contractors:

Overall, headcount is projected to reduce over CP5 (Control Period 5 2014–2019) by around 1,050, which is equivalent to a reduction of 8% in total workforce. [...] Track direct employees have the greatest absolute reduction of around 800.

We will achieve efficiencies of 18% by the end of CP5 by making greater use of Tier 2 contractors [...] ¹⁰⁶

Mick Cash explained that Network Rail carried a lot of vacancies in Scotland:

there is a 12% vacancy gap and they have the funding arrangements. In one particular department—the overhead line department—they have to renew

101 Q137

102 PTS workers are those permitted to work on the track.

103 Q146; ‘Bogus’ or ‘false’ self-employment is often used to describe the use of employment intermediaries such as payroll companies to disguise employment as self-employment and thus avoid employment taxes and deny employment rights to their workforce. In the 2013 Autumn Statement the Government promised to clamp down on companies disguising employment as false self-employment.

104 Q146

105 Q145

106 Network Rail, [Strategic Business Plan for England and Wales](#), January 2013, p35

certain parts of the network, and in that department they are carrying 25% vacancies because they won't fund up the vacancies. For that reason, they don't have the staff—they've got the money—to do the work. Therefore, they've got to use agency workers [...].¹⁰⁷

57. Network Rail is reviewing the use of zero hours workers in the rail industry including its own contracting arrangements and how they influence behaviour throughout the supply chain:

This review is still being carried out with a view that, in 2014, Network Rail will implement a new approach to how it uses labour-only agencies which will positively influence the way that the wider industry contracts with its workers.¹⁰⁸

The RMT union contend that the steady flow of funding means that work could and should be taken in-house by Network Rail. Doing so would bring a degree of stability to the worker and allow them to benefit from the rights accorded to employees.

58. We accept that zero hours contracts may be justified in a limited number of circumstances which genuinely require flexibility (on either side). We do not believe that the level of flexibility demanded by employers such as Network Rail and some Scottish universities is matched by their business need. If large organisations such as most major supermarkets and local authorities can cope without zero hours contracts then so can many others. Reducing HR costs or improving administrative efficiency are not acceptable reasons to deny workers the stability that comes with being an employee with guaranteed, contracted hours. Organisations must reduce their use of zero hours contracts and Governments should use every lever they have to encourage this change in behaviour.

107 Q188

108 BBC News, [Zero hours concerns over rail safety](#), 10 March 2014

4 Exclusivity

59. The use of exclusivity clauses was identified as a concern by the Government's information gathering exercise on zero hours contracts. An exclusivity clause prevents a worker from working for another employer. In the consultation paper the Government stated that:

exclusivity acts as a limitation upon the flexibility of the employee and, if no work is forthcoming, means they have no other means of employment.¹⁰⁹

60. The CIPD survey found that 1 in 4 zero hours workers were affected by exclusivity clauses (see table below).¹¹⁰ Dave Watson from UNISON estimated this represented approximately 25,000 workers in Scotland.

Table 1: Proportion of zero-hours workers that report they are allowed to work for another employer when their primary employer has no work available for them (%)

	All	Men	Women	Private	Public	Non-profit*
Yes - always	59	59	59	54	73	49
Yes sometimes	15	16	15	15	13	23
No-never	9	10	9	10	7	13
Don't know	17	15	18	21	7	16

Source: CIPD, *Zero-hours contracts: myth and reality*, November 2013, table 18

*Care needs to be taken when analysing figures in this column because of the small number of respondents in this category.

The Government noted that in some circumstances exclusivity clauses are useful and justifiable, for example to prevent individuals with access to confidential commercial information from working with a competitor. However, the Government also noted that “there is no clear or obvious reason” why an exclusivity clause relating to commercially sensitive information should be part of an employment contract.¹¹¹ The Employment Lawyers' Association go further and suggest that the use of restrictive covenants in a zero hours contract situation may be unenforceable under current law as an unreasonable restraint of trade.¹¹²

61. In Dave Watson's view, there is no place for exclusivity clauses in zero hours contracts:

in feudal days there was at least mutuality of obligation. Here, there is no mutuality of obligation and it is simply outrageous that you are in a situation where you are not being offered work but you cannot go and work for somebody else because of your exclusivity.¹¹³

109 Department for Business, Innovation and Skills, [Consultation: zero hours employment contracts](#), December 2013

110 CIPD, [Zero hours contracts: myth and reality](#), Research Report, November 2013

111 Department for Business, Innovation and Skills, [Consultation: zero hours employment contracts](#), December 2013

112 Employment Lawyers Association ([ZHC006](#))

113 Q266

62. The Government has consulted on four options to address the misuse of exclusivity clauses:

- Legislating to ban the use of exclusivity clauses in contracts that offer no guarantee of work;
- Government issuing guidance on the fair use of exclusivity clauses in employment contracts;
- An employer-led Code of Practice on the use of exclusivity clauses, with an option of government sponsorship of the Code;
- Rely on existing redress available through common law which allows individuals to challenge exclusivity clauses.

63. We have already made clear that zero hours workers, in need of work but with no guarantee of income, are unlikely to challenge their employer and seek redress, even if the terms and conditions of their employment might be considered illegal. Half of all zero hours workers earn less than £15,000 per year and one in three are under 25. It is fanciful to assume that individuals in these circumstances would opt to challenge an exclusivity clause through an expensive and complex legal process.

64. As we stated in an earlier recommendation, we do not believe that an unenforceable employer-led Code of Practice would be sufficient to prevent unscrupulous employers abusing the rights of zero hours workers. **A Code of Practice that provided greater clarity of the rights and entitlements of workers on zero hours contracts may be of some benefit, particularly if it follows legislative change, but on its own is not enough to achieve the Government's stated aim of protecting vulnerable workers.**

65. As part of its response to the Government's consultation the CIPD undertook an internal consultation with 178 members. The internal consultation had a particular focus on exclusivity. Of those 178 CIPD members, 81% stated there were no circumstances in which exclusivity clauses are justified in zero hours contracts and 77% said they should be banned.¹¹⁴ The CIPD's internal survey also found little support for the notion that a ban on exclusivity clauses would reduce job creation.¹¹⁵

66. The TUC believes that it would be difficult for the Government to limit a legislative ban on exclusivity clauses to zero hours contracts because this type of contract is not recognised in UK labour law. Furthermore, any ban that applied solely to zero hours contracts might easily be circumvented by employers switching to one-hour contracts or similar short-hour contracts.¹¹⁶

67. If employers want to prevent workers from taking up employment with somebody else then they should pay for that privilege. Employers who do not provide a zero hours

114 CIPD, [Policy Response: Zero hours employment contracts](#), March 2014

115 CIPD, [Policy Response: Zero hours employment contracts](#), March 2014

116 TUC, [Ending the abuse of zero hours contracts: TUC response to BIS consultation](#), March 2014

worker with sufficient work should not be able to prevent that individual from seeking employment or additional employment elsewhere. We recommend that the Government legislate to ban the inclusion of exclusivity clauses in all employment contracts that do not guarantee work.

5 A threat to health and safety

68. We have already described how zero hours workers have no protection against dismissal which, when combined with a need to work, we believe makes them less likely to challenge their employer. Zero hours workers are also less likely to receive the same level of training and professional support as permanent employees.¹¹⁷ These factors have clear implications for health and safety as we discuss in the examples below.

69. We heard how employers can ‘benefit’ from a compliant workforce that is too afraid of the consequences to raise any concerns including those relating to health and safety.¹¹⁸ The RMT told us that for both rail and the offshore industry:

there is a clear safety implication for both the workers on zero-hours contracts other employees. This manifests itself through bad practice, insufficient reporting mechanisms in the event of an accident or an instruction to undertake unsafe work, insufficient protection from victimisation for the zero-hours worker, a lack of familiarity with colleagues in a safety critical industry and often gang working, all of which are compounded by a two-tier workforce.¹¹⁹

Rail

70. In 2011, the Rail Safety and Standards Board reported that between 2005 and 2010 up to 600 accidents at Network Rail were not notified to the company, mainly because of a conscious decision by workers and employees. The reasons given include:

- Staff were "fearful" of reporting accidents and incidents in case they were marked out as trouble makers and lost their jobs;
- Staff were discouraged by the prospect of being named and shamed on internal lists;
- Section managers were "fearful" of travelling to London for a discussion with a company director;
- Contractors were under pressure to meet accident targets set by Network Rail;
- Contract staff on zero-hour contracts believed they would not be re-employed.¹²⁰

117 UNISON ([ZHC0015](#))

118 University and College Union ([ZHC002](#))

119 RMT ([ZHC004](#))

120 BBC News, [Network Rail staff ‘fear’ led to false safety records](#), 25 January 2011

Box 13: Offshore worker

A worker who was bogus self-employed raised serious safety concerns and was stopped from working because the agency felt under pressure not to employ him. It took intervention from the RMT for worker be able to work for the agency again.

Source: Mick Cash, RMT (Q174)

71. Concerns about the use of zero hours contracts within the rail infrastructure sector led the Office of Rail Regulation (ORR) to carry out targeted inspection work in 2011-12. The ORR looked in particular at staff competence, fatigue management and provision of safety equipment. According to Ian Prosser, chief inspector of railways and director of railway safety at the ORR:

One of the specific findings of the Labour Only Supply Companies investigation carried out by ORR was that, although the widespread use of notionally ‘self-employed’ staff on zero hours contracts has some immediate and short term benefits with regard to staff flexibility and costs, it has a generally negative effect on the attitudes and behaviour of those involved, which is not conducive to the development of a safe railway.¹²¹

72. The RMT state that Network Rail Scotland staff have raised concerns about the skill levels of the workers provided by labour suppliers and the use of these workers on zero hours contracts to replace full-time Network Rail staff.¹²² The Rail Accident Investigation Branch inquiry into a fatal accident in December 2012 recommended that Network Rail address the safety risk arising from using agency staff in safety critical roles.¹²³ The inquiry found that the agency did not have the competence to assess the performance of anyone acting in key safety roles and that there was “no legal or contractual requirement from Network Rail for agencies to develop a training and development strategy or to engage in close monitoring of the performance of the staff that they hire for work”. It concluded that a contractual employer/employee relationship might have prevented the incident.

73. Network Rail are reviewing their use of zero hours workers. Following the incident in December 2012, Network Rail stated that it would introduce a system whereby staff undertaking safety-critical roles would be employed directly by the main contractor or Network Rail, and would not be on a zero-hours contract.¹²⁴ *We welcome Network Rail’s acknowledgement of the risks of using zero hours contracts in safety-critical roles. Zero hours contracts have been shown to be incompatible with running a safe railway and Network Rail must demonstrably reduce their dependence on them, both in its role as a direct employer and indirectly through its use of contractors.*

74. *We believe that the stability of work and funding offered by a five-year control period means that Network Rail does not have a business need for the flexibility that zero hours contracts provide. Its only justification in using them must therefore be to reduce costs.*

121 Letter to the General Secretary of the RMT from the Director of Rail Safety at the Office of Rail Regulation, 3 May 2013

122 RMT ([ZHC0018](#))

123 RMT ([ZHC0018](#)); [Rail Accident Investigation Board, Rail Accident Report: Fatal accident involving a track worker at Saxilby](#), 4 December 2012

124 University and College Union ([ZHC002](#)); Q183

This is not sufficient reason to put the safety of workers in jeopardy and to deny them the opportunity to be an employee and receive the employment rights that go with that status. Network Rail should take more work in-house and make greater use of fixed-term and part-time contracts.

Offshore

75. The offshore industry is a major part of the Scottish economy. Jake Molloy, Regional Organiser at the RMT, described how “we came very, very close to a major, major incident west of Shetland in the last month”. The incident concerned occurred in February 2014 and had the potential to capsize a link putting 150 people at risk:

The workforce tried to stop the job the but management pushed on and pushed ahead [...] where you have a culture of fear and concern, especially among a group of agency or zero hours people, they are more likely to go ahead and do the job under that instruction whereas permanent staff, well trained staff, well-educated staff are more likely to try to stop a job. [...] I have the testimony of the elected safety rep on the day for that incident I talked about. He tried to the best of his ability to stop the job but management just went ahead and did it anyway and the rest of the crew complied.¹²⁵

Mr Molloy explained that people in insecure employment can be so desperate for work that they are willing to work at any cost: “we have to educate workers to challenge and to say no in those circumstances”.¹²⁶

Care

76. Zero hours contracts are used extensively in the care sector, particularly by third and private sector employers. Across the UK 307,000 care workers (one in five) are on zero hours contracts, 20,000 of whom work in Scotland. Scotland has an aging population which, together with cuts in local authorities’ budgets, is putting pressure on those tasked with delivering care to the people who need it. UNISON argue that the rise in the use of zero hours contracts in the care sector is leading to worse services for the elderly and some of the most vulnerable people in society.¹²⁷ Research undertaken by UNISON has indicated that zero hours contracts are linked to falling standards of care and disquiet amongst the workforce at their capacity to deliver care to a necessary standard.¹²⁸

125 Qq282-4

126 Q284

127 UNISON press release, [UNISON responds to CIPD report](#), 26 November 2013

128 UNISON ([ZHC0015](#))

Box 14: Private sector care provider

I enjoy the job I do. I am a support worker for people with mental health problems. I am very experienced and worked as a registered learning disabilities nurse in various settings before taking time out. I feel that I don't get the opportunity to offer continuity of care to the people I am caring for, I have a lot of good ideas but can't get a proper run at it because continuity and consistency is an important part of care work. I very often get phoned at 7am to go in at 8am that day for a shift. This makes it very difficult to plan activities with service users because I am just popping in and out randomly as far as they are concerned. Many people with mental health problems need predictability and future planning with plenty of time to do very simple things that we all take for granted and I cannot commit to a day that I would like to do something such as going on an outing or preparing a meal from scratch or going for a cycle. It is quite frustrating.

Source: Anonymous (Unite the Union written evidence)

77. Care staff are expected to deal with complex needs but UNISON report that staff on zero hours contracts are seldom considered a priority for training.¹²⁹ Dave Watson told us he believed that zero hours contracts were also responsible for a high turnover of staff within the care sector which, together with more variable hours for workers and last-minute scheduling, undermined the provision of continuous care to patients.¹³⁰ He said:

If you are an elderly person and you have people essentially providing very intimate care for you: bathing you, changing, all sorts of things, to have a different person traipsing through the door two or three times a week is absolutely appalling. What you want is the same person on that basis.¹³¹

Allied Healthcare, who employ 1,300 healthcare workers in Scotland and 15,000 across the UK, confirmed that part of raising standards across the care sector “has to be care providers committing to their staff.”¹³² Allied Healthcare are now in the process of abolishing compulsory zero hours contracts within their business.

78. As with the rail and offshore sectors described above, UNISON explained how zero hours contracts can impact on the safety and wellbeing of workers in the care industry and their clients.¹³³ Zero hours contracts can work against maintaining standards as staff feel unable to raise issues relating to quality of care, and even abuse, for fear of repercussions against them from the employer.¹³⁴ Dave Watson described to us the reactions of a focus group held by UNISON to questions on safety and abuse:

In the focus groups I asked them, “What if you saw health and safety abuses or health and safety risks, would you report them?” The general answer from people was, “We wouldn't be thanked for doing that so generally we don't do it”, which I was obviously pretty appalled at.

129 UNISON ([ZHC0015](#))

130 Q310

131 Q310

132 Allied Healthcare ([ZHC0016](#))

133 UNISON ([ZHC0015](#))

134 UNISON ([ZHC0015](#))

“What if you saw elder abuse, for example, if you saw abuse by a member of the family or by another care worker or anybody else involved with the family on that basis?” The answer from the same group, I asked several of them, they all nodded and they said, “We probably wouldn’t raise that either, Dave, unless it was very, very serious. The reason is if we went back to the base and reported this we wouldn’t be thanked by the company or the organisation involved.”¹³⁵

79. Zero hours workers have a right to work in a safe environment and must be able to raise concerns without fear of losing their job. Despite a number of reports detailing the risks of zero hours contracts in safety-critical industries, the Government’s consultation on zero hours proposes nothing to protect workers who speak out. In response to this Report, the Government must set out the steps it will take to ensure that individuals who question the conditions in which they are expected to work and the quality of service they are able to provide, are protected from the actions of unscrupulous employers.

6 Engaging with the State

80. Zero hours contracts can result in an individual having irregular hours of work. The consequent fluctuation in earnings can create uncertainty for workers, both in terms of their future earnings and benefit entitlement.¹³⁶ Zero hours workers often have difficulty claiming in-work and out-of work benefits. Citizens Advice Scotland explained how “they may have to submit information about changes of circumstances on a weekly basis, and manage Jobseeker’s Allowance and Working Tax Credit claims interchangeably”.¹³⁷ Unite’s survey found that one in four people on zero hours contracts had difficulty claiming benefits–this figure was higher for women, with one in three affected.¹³⁸

Working Tax Credit

81. Working Tax Credit for a single person can only be claimed if an individual is in paid work of at least 16 or 30 hours depending on their circumstances.¹³⁹ To be eligible for Jobseeker’s Allowance an individual must work less than 16 hours per week. Having fluctuating hours and income can make it difficult to calculate Working Tax Credit entitlement and can also mean claimants shifting frequently between Jobseeker’s Allowance and Working Tax Credit–that these benefits are administered by different departments (DWP and HMRC respectively) adds to the administrative complexity faced by zero hours workers.

82. Working Tax Credit is paid retrospectively; this can lead to individuals receiving benefit at its highest when they earn the most and at its lowest when they earn very little.¹⁴⁰ In weeks of no income, zero hours workers can find it is several weeks before they receive a benefit payment (if they are permitted to claim). Citizens Advice Scotland also point out that,

if one works between 16 and 20 hours, and those hours fluctuate, it is likely that one’s income will be very low–potentially lower than those in receipt of out of work benefits.¹⁴¹

Zero hours contracts particularly affect young people - one in three zero hours workers is under 25. Working Tax Credit is only payable to individuals over 25 years, meaning a large number of zero hours workers, who will likely be on low incomes, are unable to top-up their income with tax credits.¹⁴²

136 Department for Business, Innovation and Skills, [Consultation: zero hours employment contracts](#), December 2013

137 Citizens Advice Scotland ([ZHC003](#))

138 Unite the Union ([ZHC005](#))

139 For an explanation of eligibility criteria see <https://www.gov.uk/working-tax-credit/eligibility>

140 Citizens Advice Press Release, [Citizens Advice warns on zero hours](#), 9 July 2013

141 Citizens Advice Scotland ([ZHC003](#))

142 Citizens Advice Scotland ([ZHC003](#))

Jobseeker's Allowance

83. A Freedom of Information request by *The Guardian* in April 2013 revealed that, for the six months leading up to April, 27% of Jobcentre Plus advertised vacancies had no guaranteed income.¹⁴³ Citizens Advice Scotland report that job seekers “may be pressurised into taking zero hours contracts, despite the working hours, pay, and instability of the contract being inappropriate for their situation.”¹⁴⁴ They also state that some clients have been told by Jobcentre Plus staff that, if a zero hours contract does not provide any work, they are unable to claim Jobseeker's Allowance because “having a contract of employment implies they are not available for work or actively seeking it, despite the lack of any income”.¹⁴⁵ If an individual wishes to leave their zero hours contract, for example if that contract is not providing any work, they can be at risk of being sanctioned when trying to claim Jobseeker's Allowance.¹⁴⁶

Box 15: Retail worker

A West of Scotland CAB reports of a client who came in with several mobile phone debts. However, early in the conversation it transpired he had no income. The client has a zero hours contract working in a department store. However, he has had no work and thus no income for some time. He had been to Job Centre Plus to ask about Jobseeker's Allowance for the weeks he did not get any work. They informed him that he was not eligible for Jobseeker's Allowance - as he had a contract for work and it would not be possible to give him Jobseeker's Allowance for the times he was not earning. The client was advised that there was a possibility that if he withdrew voluntarily from his contract and then applied for Jobseeker's Allowance he could be sanctioned for 13 weeks.

Source: Anonymous (Citizens Advice Scotland written evidence)

84. In response to challenge by Citizens Advice, the Department for Work and Pensions confirmed that job seekers will not be required to accept work which does not offer a secure contract with a defined minimum number of hours per week and that individuals would not be sanctioned for leaving a zero hours contract.¹⁴⁷ The confirmation is welcome, but evidence from Citizens Advice suggests that not all Jobcentre Plus staff are aware of the Government policy in this area.¹⁴⁸ It is also not always clear to the job seeker what the contractual obligations of a position might be until they accept the offer of work, as Rob Gowans, Policy Officer at Citizens Advice Scotland explained:

We have seen a couple of cases where people have not found out until they are working that they are on a zero hours contract. There is one client that was told at interview that he was guaranteed 30 hours a week but when his contract came for him to sign it was a zero hours contract, which did not come until three weeks after he had started.¹⁴⁹

143 Q98

144 Citizens Advice Scotland ([ZHC003](#))

145 Citizens Advice Scotland ([ZHC003](#))

146 Citizens Advice Scotland ([ZHC003](#)).

147 Citizens Advice Scotland ([ZHC003](#)); [DWP response to Fol request](#), 10 July 2013

148 Citizens Advice Scotland ([ZHC003](#))

149 Q269

85. The Government must do more to ensure that Jobcentre Plus staff are aware of, and follow, the rules regarding zero hours contracts. The employment terms of a vacancy must be made clear to a Job Seeker and, if the vacancy is an offer of insecure employment, the individual must be allowed to reject it without facing sanction. Individuals must also be allowed to leave zero hours contracts which do not provide sufficient work without facing sanction for doing so. Jobcentre Plus staff should be putting people into permanent employment not pushing them into exploitative working conditions.

Housing

86. We have already discussed the difficulties zero hours workers may face in trying to budget for the present and plan for the future. Housing can be a particular problem; zero hours workers may find it difficult to rent in the private sector because landlords may regard them as at risk of rent default if they have no guaranteed income.¹⁵⁰ Rapidly signing on and off Jobseeker's Allowance can also affect claims for Housing Benefit and Council Tax Reductions as it takes time for changes of circumstances to be passed between the DWP and local authorities.

87. Justine Seran explained that in order to receive a reduction in council tax she had to inform Edinburgh Council of every change of earnings, "this means that every month I will have to go back to Edinburgh Council and give my new payslip for the month because it is going to be different every month."¹⁵¹ Citizens Advice Scotland told us:

Delays in Housing Benefit payments, coupled with the Local Housing Allowance and under-occupancy changes, mean that tenants are at risk of accumulating rent arrears, or having to choose between paying rent, buying food and heating their homes.¹⁵²

Universal Credit

88. Universal Credit will see six separate benefits rolled into a single payment. The Government claims that its introduction will help people with a fluctuating income such as workers on zero hours contracts:

Regarding benefits, the introduction of Universal Credit will help to address uncertainty. It is an integrated in-and out-of work benefit, so people who move into work will continue to be entitled, until they earn enough to come off benefits completely. Universal Credit will be based on real-time information about how much people earn, so there is a much lower risk of any over- or under- payment.¹⁵³

150 Citizens Advice Press Release, [Citizens Advice warns on zero hours](#), 9 July 2013; Q380

151 Q416

152 Citizens Advice Scotland ([ZHC003](#))

153 Department for Business, Innovation and Skills, [Consultation: zero hours employment contracts](#), December 2013, p17

Under Universal Credit workers will not have to claim different benefits as their hours fluctuate and they will not have to re-sign on. However, the Government's view of the benefit of Universal Credit to zero hours workers is contested. BECTU¹⁵⁴ suggest the difficulties in calculating benefits “will become much worse with the roll out of Universal Credit, with its four-week reference period, and conditionality that obliges claimants on low hours to seek, and accept, more work.”¹⁵⁵ The move from fortnightly to monthly payment in arrears could impact disproportionately on low-paid zero hours workers who already have difficulty budgeting. The TUC also point out that:

With the introduction of universal credit, zero hours workers on low incomes may be placed under increased pressure to look for additional work, even though they have no control over the number of working hours they are allocated by employers.¹⁵⁶

89. We are concerned that Universal Credit might not be as beneficial to zero hours workers as the Government suggests. In response to this Report, the Government must set out the advantages and disadvantages of Universal Credit to workers with a fluctuating income.

Administering benefits

90. Jobcentre Plus are responsible for administering Jobseeker's Allowance, HMRC for Working Tax Credits and local authorities for housing benefit and council tax reductions. The amount of benefit that an individual may be eligible for depends on their level of income over a specified period—this is particularly complicated for zero hours workers whose hours of work may change from one week to another. Zero hours workers can find themselves regularly having to report changes in their income to a number of different government bodies and their benefit payments can be delayed as a result.¹⁵⁷ ***The Government must make sure that staff who are responsible for administering benefits are aware of the specific problems faced by zero hours workers. Staff in Jobcentre Plus, HMRC and local authorities must be able to respond quickly to reported changes in earnings so that individuals can receive their benefit payments at the time when they need them most.***

154 The Broadcasting Entertainment Cinematograph and Theatre Union (BECTU)

155 BECTU, [Response to government zero hours consultation](#), 14 March 2014

156 TUC, [Ending the abuse of zero hours contracts: TUC response to BIS consultation](#), March 2014

157 Citizens Advice Scotland ([ZHC003](#))

7 Other types of casual labour

91. So far in this Report we have focused mainly on zero hours contracts, but there are a range of other forms of insecure employment that can also allow vulnerable workers to be exploited. We discuss a number of them below.

Agency workers and the Swedish Derogation

92. In 2011, the Agency Workers Regulations were introduced to increase the employment rights of agency workers. The Regulations implement the EU's 2008 Temporary and Agency Workers Directive. Under the Regulations, agency workers are entitled to the same 'basic working conditions' as equivalent permanent staff after a 12-week qualifying period. The Regulations do not confer on workers the same rights as employees, such as protection against unfair dismissal and redundancy pay, but the equal treatment can be measured against comparable employees in terms of pay, the duration of working time, holiday pay and pay for bank holidays, overtime rates and unsociable hours premiums. We heard that the increase in rights for agency workers as a result of the Regulations was causing some employers to shift from using agencies to employing workers directly on zero hours contracts and thereby avoiding the additional responsibilities and costs.¹⁵⁸

93. The Agency Workers Regulations include a derogation that allows agency workers to become employees of the agency; in doing so individuals cease to be entitled to equal pay, but instead are entitled to receive at least four weeks' pay between contracts (albeit at a reduced level). Known as the Swedish Derogation, it was included to cover agency workers who would be worse off if they were given pay equal to permanent employees, but evidence suggests that agencies and companies are using it to pay workers less than equal pay. The Communication Workers Union report that when the Regulations were introduced, 90% of 3,000 members employed by an agency to work on a BT contract were placed on a 'pay between assignment' contract which meant the agency could pay them less than permanent employees doing the same job.¹⁵⁹ Agencies can also avoid paying workers between assignments by offering a minimum of one hour's paid work per week.

94. The TUC are campaigning against the use of the Swedish Derogation:

In Sweden, where these contracts originate, workers still receive equal pay once in post and 90% of normal pay between assignments. However in the UK workers have no equal pay rights and are paid half as much as they received in their last assignment, or minimum wage rates, between assignments. Agencies can also cut their hours, so they may receive as little as one hour of paid work a week.¹⁶⁰

158 Employment Lawyers Association ([ZHC006](#)); Educational Institute of Scotland ([ZHC007](#)); RMT ([ZHC004](#)); A survey of 143 end-users conducted by Eversheds found that 17% put their temps on Swedish Derogation contracts – see <http://www.contractoruk.com>.

159 CWU Press Release, [CWU Agency Campaign – Securing a fair deal for agency workers](#), 14 February 2014

160 TUC Press release, [TUC lodges complaint against government for failing to give equal pay to agency workers](#), 2 September 2013

95. The TUC points to evidence from UK workplaces where agency staff are paid up to £135 a week less than permanent staff, despite working in the same place and doing the same job. Scot Walker, from Unite, told us that such practices were commonplace in the meat processing industry where agency workers, typically from a migrant background, were working alongside permanent employees but for less pay and on poorer terms and conditions.¹⁶¹ As well as food production, the TUC found that Swedish Derogation contracts were used regularly in UK call centres and logistics firms. The Recruitment and Employment Confederation estimates around one in six agency workers to be on Swedish Derogation contracts.¹⁶² In the construction industry, despite a falling number of workers, the number on these types of contracts increased by 30,000 over the last year.¹⁶³

96. The TUC has lodged a formal complaint with the European Commission against the UK Government for failing to implement the Temporary Agency Workers Directive properly - the Agency Workers' Directive states that countries must prevent misuse of the Swedish Derogation. The TUC wish to see the use of the Swedish Derogation banned; however, if implemented fairly, the derogation can give workers greater security and all the benefits that come with permanent work such as protection from unfair dismissal, maternity leave and statutory redundancy pay.

97. The Swedish Derogation, if operated properly, can offer sufficient benefit to workers to justify its continued use, but the UK Government must tighten up the implementing Regulations to ensure that the Derogation can only be used in the spirit in which it was intended and not deliberately to reduce the pay and conditions of workers and increase the margins of employers.

Short hours

98. Under a short hours contract a worker is guaranteed a small number of hours of work each week, typically less than eight hours. Short hours contracts provide individuals with a degree of certainty while allowing them the opportunity to combine work with other commitments such as studying or caring. Short hours contracts can work well for many people but, as with zero hours contracts, they are also open to abuse.¹⁶⁴ According to Usdaw:

A significant number of workers on short hours contracts are regularly and consistently working additional hours. This can be a problem for several reasons:

- there is no guaranteed level of regular earnings and this can create uncertainty regarding bills and planning for the future;

161 Q180

162 Usdaw ([ZHC0014](#))

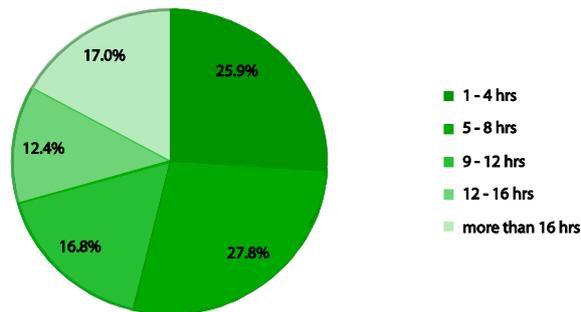
163 UCATT, [Rise in construction self-employment reinforces need for urgent action](#), 7 February 2013

164 Q29

- many employee benefits are based on contractual earnings/hours therefore employees who consistently work additional hours may lose out on holiday pay/entitlement, maternity pay and sick pay and pension provisions;
- they have no guarantee of any additional hours they regularly work.¹⁶⁵

99. Out of 2,135 respondents to Usdaw’s survey of short hours and zero hours contracts, 1,168 (54.7%) said they regularly worked additional hours each week and, of those, 75% said they wanted their additional hours guaranteed.

Figure 3: Additional hours regularly worked per week by workers on short hours contracts



Source: Usdaw survey of zero hours and short hours contracts (figure based on 1,146 responses to this question)

Dave Watson from UNISON told us that, as lead negotiator for the biggest pension scheme in Scotland, “we tackled this issue about council staff [...] where the current rules basically say that if you have a 20-hour contract your pension contributions and your pension payment is based on 20 hours a week, even if you work 30 hours a week regularly.”¹⁶⁶

100. Usdaw propose that workers who regularly exceed their contracted hours should, after a period of 12 weeks, have their contracts changed to reflect their regular working pattern. Karen Whitefield explained “that is important because there are rights that come from that contract around holidays, holiday pay and sickness entitlement. Those are important rights that people have worked hard for and should be given.”¹⁶⁷ The case law in this area is, according to BECTU, “somewhat ambiguous and contradictory”.¹⁶⁸

101. Usdaw’s proposal has much to recommend it and they have our support in principle. But the introduction of such a measure would require care to prevent the unintended consequences of unscrupulous employers finding means to avoid or manipulate it to the detriment of the worker. For example, following the introduction of the Agency Workers Regulations, Eversheds surveyed 143 end-users of agency staff and 40% reported that they had cut agency roles to less than 12 weeks or had only engaged workers who were self-employed to avoid the impact of the Regulations.¹⁶⁹ *We recommend that, where the provision of certain employee benefits can vary, the calculation of those benefits should*

165 Usdaw ([ZHC0014](#))

166 Q309

167 Q129

168 BECTU, [Response to government zero hours consultation](#), 14 March 2014

169 [www.contractoruk.com](#), [Most end-uses avoid agency worker rules](#), 11 April 2012

reflect the number of hours regularly worked rather than a minimum number stipulated in a contract. The Government should explore means to make this clear.

'Bogus self-employment'

102. 'Bogus' or 'false' self-employment refers to the use of employment intermediaries such as payroll companies to disguise employment as self-employment. This practice allows employers to avoid paying Employer's National Insurance contributions of 13.8% and enables them to deny employment rights to their employees. As a result, the workers are substantially cheaper, improving the margins of subcontractors and main contractors.¹⁷⁰ Out of all the forms of casual labour discussed in this report, workers who are bogus self-employed have the least rights - they are not entitled to receive sick pay, holiday pay or the National Minimum Wage and are responsible for their own taxation.

Box 16: Rail worker

The individual was taken on at £9.50 an hour but ended up getting paid the minimum wage. The individual worker had to pay £22 to the payroll company for their services and had to pay the employer national insurance contributions. Network Rail paid the agency about £15 an hour for that activity. The individual raised some serious safety concerns and was stopped from working because the agency felt under pressure not to employ him.

Source: Mick Cash, RMT (Q174)

Jake Molloy told us that workers were deliberately being forced into self-employment:

It is subcontractors of subcontractors to oil companies. They are not just engineers. They could be any trade from scaffolders through painters to railroad platers to riggers. They are told that the only means of employing them is through self-employment. So they have to set up their own contract. They then provide a service to an agency contractor who provides their services to another contractor who provides a service to the oil company.

We are seeing agencies that have previously retained staff and used them on a regular basis pushing them into self-employment to get round the agency workers directive because if they are providing those guys to service certain contractors beyond a 12-week period then we can try and push for the same protection, same payments and so on.¹⁷¹

103. In the offshore industry 'bogus self-employment' often takes the form of 'daily agreements'. Workers on these types of contract have no employment rights; they are contracted to provide a service, a daily rate is agreed and they are given work as and when required.¹⁷²

104. Figures released by the ONS on 19 March 2014 show a record number of people in self-employment. Since 2010, 40% of new jobs created have been in self-employed roles.¹⁷³

170 www.building.co.uk, Osborne confirms clampdown on bogus self-employment, 19 March 2014

171 Qq260-4

172 RMT ([ZHC004](#)); Q254

173 TUC press release, [Rising job levels since recession driven by surge in self-employment](#), 22 January 2013

The TUC caution against assuming that the rise in numbers of self-employed is a reflection of a surge in entrepreneurial spirit: “rather than running their own businesses, many people could be undertaking false self-employment, doing the same work as contracted employees but on poorer terms and conditions.” According to the Treasury around 300,000 workers in the construction sector are in bogus self-employment, costing HMRC more than £380m.¹⁷⁴ ONS figures show that 44% of all construction workers are self-employed.

105. ONS and HMRC data show that incomes of people who are self-employed have dropped markedly over the last 12 years, from an average of £15,000 to just under £10,400, in 2011 prices.¹⁷⁵ Dave Watson explained that “40% of self-employed people fall into the 20% lowest paid, so again there is a perception that somehow self-employment is something for at least middle earnings for trades people and so on, but increasingly these people are falling into the lowest one”.¹⁷⁶

106. Not only do workers who in bogus self-employment have few employment rights but, as we discussed earlier, a reliance on self-employed workers can have consequences for safety. The Office of Rail Regulation found that “the widespread use of notionally ‘self-employed’ staff [...] has a generally negative effect on the attitudes and behaviour of those involved, which is not conducive to the development of a safe railway.”¹⁷⁷

107. In the 2013 Autumn Statement the Chancellor announced measures to address the problem of ‘bogus’ or ‘false’ self-employment:

the Government is acting now to level the playing field so that companies cannot use employment intermediaries to disguise employment as self-employment and thus avoid employment taxes and deny employment rights to their workforce.¹⁷⁸

Plans to clampdown on companies using bogus self-employment to avoid taxes were confirmed in the 2014 Budget but the reference to employment rights was absent. The Budget document states:

The Government will amend existing legislation to prevent employment intermediaries being used to avoid employment taxes by disguising employment as self-employment.¹⁷⁹

108. The measures are due to take effect from April 2014. **We welcome the Government’s announcement of plans to clamp down on the use of employment intermediaries to avoid employment taxes. It is disappointing that the clampdown does not extend to the use of these intermediaries to deny employment rights to workers as was suggested in**

174 www.building.co.uk, Osborne confirms clampdown on bogus self-employment, 19 March 2014

175 [Self-employed workers’ earnings slump by nearly a third](#), *The Guardian*, 3 December 2013

176 Q311

177 RMT ([ZHC004](#))

178 HM Government, [Autumn Statement 2013](#), Cm8747, p73

179 HM Government, [Budget 2014](#), HC 1004

the 2013 Autumn Statement. In response to this Report the Government should set out what other steps it is taking to prevent workers from being pushed into bogus self-employment.

Long hours

109. During our inquiry we met with workers on zero hours contracts to hear directly how their lives were affected by insecure employment. One worker we spoke to gave us a very different perspective of a zero hours contract. In his case, he was employed on a contract that stipulated he work five days per week but with no set number of hours. As a consequence he regularly worked 70 hours a week (three fifteen hour shifts and two thirteen hour shifts—the maximum allowed) whilst permanent employees worked 40 hours per week and got paid time and a half above that. He told us that individuals on these contracts had little time to spend with their families; the company was also able to make them work public holidays, such as Christmas Day, for no extra money. The worker explained that he and his colleagues were ‘duped’ into the contract, which, because of the benefits to the employer, the company is unwilling to change.

National insurance contributions and pension payments

110. An employer is liable to pay Employer’s National Insurance Contributions of 13.8% on earnings of workers or employees above £136 per week. We heard that companies may deliberately employ zero hours workers for less than the £136 per week threshold in order to avoid the obligation to pay Employer’s NIC, even if this means employing several workers to fill one position.¹⁸⁰ James Bevan from Unite told us that not only does this impact on the exchequer’s tax take but it has an impact on “the competitiveness of those companies, because they could effectively undercut decent employers.”¹⁸¹

Umbrella/Payroll companies

111. An employer can avoid the administrative burden (though not necessarily the cost) of paying NIC if they use an umbrella or ‘payroll’ company. Under this arrangement, the umbrella company employs the worker and then contracts them out to where work is available. The umbrella company is liable for the NIC which is usually deducted from workers’ salaries but, in theory, those salaries should be at least 13.8% higher to accommodate this. Contractor website, *Contractor umbrella*, warns workers:

bear in mind that if you were to accept a contract paying the same rate as when you were a permanent member of staff, you would actually take home less money because of the Employer’s NIC.¹⁸²

180 Q110

181 Unite the Union ([ZHC005](#)); Q26

182 See www.contractoumbrella.com

112. Mick Cash gave us the example of a worker on the railways who was told by the umbrella company that their hourly rate was £9.50, but ended up being paid £6.19—part of the deduction was to cover Employer’s NIC (as well as Employee’s NIC).¹⁸³ Umbrella companies have also been found paying part of a worker’s salary in the form of expenses even if those expenses have not been incurred. This allows the umbrella company to reduce the amount it needs to pay in Employer’s NIC. Where workers cannot provide evidence of the expenses incurred they may be chased for unpaid tax by HMRC.¹⁸⁴

113. The Low Incomes Tax Reform Group warn that changes to the benefits system as part of the introduction of Universal Credit may mean workers face being fined if they are found to have been paid expenses on sums which should have been taxed as earnings:

In the case of Universal Credit, it will be open to the Department for Work and Pensions (DWP) to charge a civil penalty if they think that the overpayment came about as a result of negligence by the claimant.

Not only does the worker face an unexpected tax bill, he or she would also have to reimburse the DWP for overpaid benefit and possibly pay a penalty.¹⁸⁵

Pensions

114. Karen Whitefield from Usdaw cautioned that the introduction of the new automatic enrolment pension scheme, NEST (National Employment Savings Trust) might have an effect similar to NIC on employers:

The new NEST provisions around pensions will have an impact here, and employers may choose to keep somebody’s earnings lower than perhaps necessary. Instead of giving one person more hours, they will keep two or three people on lower hours because if they don’t reach that threshold for NEST, which is £9,440 per year, they don’t need to be auto enrolled into the pension scheme.¹⁸⁶

The Government should monitor whether the introduction of the National Employment Savings Trust (NEST) prompts employers to take steps to avoid it and in doing so cause detriment to workers.

183 Q202

184 BBC News, [‘Abusive tax avoidance’ affects temporary workers](#), 21 October 2012

185 BBC News, [‘Abusive tax avoidance’ affects temporary workers](#), 21 October 2012

186 Q110

8 Public and private sector contracts

115. Zero hours contracts and other forms of casual employment are appropriate in certain circumstances and can work to the advantage of individuals. However, as the evidence we have received makes clear, there is also a large number of people who are forced to undertake casual work when their preference is for full-time permanent employment.

116. Zero hours contracts are often cited as a legitimate response to a need for a flexible labour force that enables employers to respond to peaks and troughs of demand. Too often, however, employers choose to use zero hours contracts when the workflow is regular and there is no need for flexibility. Instead they use the contracts to avoid the costs and responsibilities that come with having a permanent workforce. For the worker this means a lack of certainty over hours and income, reduced employment rights and an unbalanced employment relationship where the employer has all of the power and the worker is vulnerable to arbitrary dismissal. There are downsides for the employer as well. Relying on a casual labour force leaves an employer without a guaranteed pool of specialist labour, it can affect an employer's ability to recruit, train and retain high quality staff and can result in a reduction in the continuity and quality of services provided.¹⁸⁷

Private sector

117. Many retailers, including Tesco, Asda, Sainsbury's, Morrisons, John Lewis, Marks and Spencer, Argos, Homebase, B&Q, Pret a Manger, Waitrose, Next and Greggs, have confirmed that they do not use zero hours contracts. Many of these companies face peaks and troughs in demand yet are able to manage them without zero hours contracts. Greggs chief executive, Roger Whiteside, told *The Guardian*:

To have a flexible workforce to call on for a business is obviously very attractive but we have certain values with our business, especially with looking after our staff and helping in the community. The idea of having zero-hours contracts doesn't fit in with that at all. I can understand why it would be attractive but it's not something we do.¹⁸⁸

Though they may not use zero hours workers directly, or at least on their retail premises, some of the companies listed above may well have suppliers or distributors who use zero hours contracts.¹⁸⁹ Scot Walker explained that, in the meat processing industry, “the retailers, the supermarkets that we provide products to, many of whom claim and purport to be ethical retailers, [...] allow this huge casualisation to take place within their supply chain.”¹⁹⁰ Sainsbury's, Tesco, Waitrose and Marks & Spencer, amongst others, are members of the Ethical Trading Initiative—“a tripartite organisation of employers, trade

187 University and College Union ([ZHC002](#))

188 [Burger King and Domino's Pizza also using zero hours contracts](#), *The Guardian*, 6 August 2013

189 Qq89-90

190 Q180

unions and non-governmental organisations, whose aim is to try and improve the lives of workers across global supply chains”.¹⁹¹ Some members of the Initiative seek to implement the ETI-code in their own direct workplace while others will also try to influence the behaviour of those across their supply chain. Scot Walker suggested that sometimes UK workers were overlooked:

If you are asking me do supermarkets that promote fair trade ensure at home that throughout their supply chains workers get a fair crack of the whip, my experience of that is no.

We welcome the commitment of many major retailers not to employ workers on zero hours contracts. We call upon them to extend that commitment to their supply and distribution chain. We do not believe that major retailers who are against zero hours contracts within their organisations would be happy to be seen to profit from their use elsewhere.

118. The use of zero hours contracts is complex. While we support the commitments made by those companies who do not use them, we must be hesitant about castigating all of those who do not make such a commitment. It has been reported that some companies, such as JD Wetherspoon, McDonalds and Hertz who employ individuals on zero hours contracts offer those workers full employment rights as well as other benefits such as entry into the company pension or bonus scheme.¹⁹² McDonald’s Vice-President for HR, Jez Langhorn, when asked to defend his company’s use of zero hours contracts, pointed out that, “from a response rate of 90%, around 94% of our employees said they were happy with their hours and the flexibility of their contract”.¹⁹³ *Not all workers on zero hours contracts are exploited or dissatisfied, but we believe that where an individual has a regular pattern of work they should be entitled, after a specified period of time, to request a contract of employment that reflects the hours they work. This would provide individuals with the reassurance of guaranteed work which a zero hours contract cannot offer. There should be a presumption that such requests are treated favourably unless there is a clear reason to do otherwise. The Government should explore how such a system might be set up and monitored for abuse.*

Public sector

119. The public sector is one of the biggest users of zero hours contracts. In addition to ensuring that workers who work directly for public sector bodies are not on zero hours contracts, the Government, the Scottish Government and local authorities can use public procurement policy to make insecure working unattractive to other employers. Through procurement legislation and guidance, public sector administrations can insist that any staff that are going to be employed as part of a particular procurement deal must be

¹⁹¹ Q181

¹⁹² Workplace Savings and Benefits, [How JD Wetherspoon utilises zero hours contracts](#), 19 December 2013; CIPD, [Zero hours contracts: myth and reality](#), Research Report, November 2013; and HR magazine, [McDonald's VP HR defends use of zero-hours contracts](#), 3 September 2013

¹⁹³ HR magazine, [McDonald's VP HR defends use of zero-hours contracts](#), 3 September 2013

afforded certain terms and conditions, such as to be paid a living wage or to be on a fixed-term contract with set hours.

120. In our recent Report on Blacklisting we recommended “that direct employment and transparent recruitment practices should be standard for all public sector contracts in the construction industry”.¹⁹⁴ We can see no reason why those principles should not apply to all public sector contracts. The Scottish Government’s Procurement Reform Bill, currently before the Scottish Parliament, is a good example of an opportunity to do this. Dave Watson told us that through the Bill the Scottish Government could “lay down what we could call decent employment standards as part of that arrangement”.¹⁹⁵ ***We recommend that the UK and Scottish Governments should have procurement policies that guarantee minimum standards for workers and which reduce the use of insecure employment practices such as zero hours contracts. We call on both Governments to set out what steps they will take to achieve this.***

121. Local authorities are generally responsible for the purchase of care services from the private and voluntary sectors.¹⁹⁶ We have already discussed the large numbers of care workers who are on zero hours contracts and the impact such arrangements can have, both on the carer and on the quality of care he or she is able to deliver. Local authorities have to meet increasing demand for home care while at the same time their budgets have been significantly cut. The increase in the use of zero hours contracts by private and voluntary sector organisations in the care sector may be a response to this challenge, as local authorities insist they do more with less money. Dave Watson explained that some voluntary sector providers are considering revising their approach to employing carers:

I think that one or two of the bigger ones—I cannot give you a name yet—we have been talking to might be in the situation to be able to hold themselves up as something close to an exemplar and show you how they, in a very difficult time for them in terms of budget cuts and so on, have moved, if not to entirely eliminate zero hours contracts to reduce them quite considerably.¹⁹⁷

122. We recognise the financial pressures that local authorities are under but it is disappointing that the reduction in funding has prompted some to oversee a diminution in the terms and conditions of workers in the social care sector. Commissioners of care services should make good conditions of service for care workers part of their selection criteria. An improved procurement policy from the Scottish Government would send a clear message to local authorities to reduce their reliance on zero hours workers to meet their need for social care provision.

194 Scottish Affairs Committee, Sixth Report of Session 2013-14, [Blacklisting in Employment: addressing the crimes of the past; moving towards best practice](#), HC 543, para 45

195 Q253

196 Q250

197 Q323

9 Conclusion

123. It is clear that zero hours contracts and other forms of casual labour can benefit both employers and workers but our inquiry has shown that, too often, the relationship is unbalanced, leaving the employer with all of the flexibility and few costs and the worker in fear of dismissal and denied access to due rights of employment. During our inquiry into the use of zero hours contracts in Scotland, we heard how workers, without the security of a permanent job, were fearful of questioning the terms of the conditions of their employment even if they knew them to be unfair, were reluctant to challenge unsafe working conditions and felt that they could not turn down work no matter how short the notice or how inconvenient the shift offered, in case doing so jeopardised future offers of work.

124. Zero hours workers are entitled to limited employment rights but, worryingly, a significant proportion of employers are either ignorant of those rights or are wilfully blocking access to them. Five per cent of zero hours workers are paid less than the national minimum wage and thousands of social care workers are illegally denied payment for time spent travelling between appointments. This is clearly unacceptable, but it is not just with employers that there is a problem. We heard examples of Jobcentre Plus staff pressurising job seekers into accepting work with no guaranteed hours and threatening to sanction either the job seeker - if they turned the position down - or the worker - if having accepted it they found insufficient hours were made available and wished to exit the contract and re-sign on.

125. The UK Government has recognised that poor practice exists and needs to be addressed. It announced its intention to address concerns surrounding zero hours contracts in August 2013 but the consultation that followed was too narrow. It focused on measures to combat the problems of exclusivity and a lack of transparency which are concerns but addressing them on their own will do little to tackle the problems of exploitation we have highlighted in this Report. For example, such measures will be of limited help to the 20% of workers paid less than their permanent equivalents doing the same job, the 40% who receive no notice of employment or the 6% who turn up for work to find none available, or the thousands of others whose employers evade the provision of basic employment rights.¹⁹⁸

126. Exclusivity should be banned where there is no guarantee of work and more transparency can only be a good thing, but we doubt a Code of Practice that is employer-led will help workers who are exploited. We are concerned that a Code of Practice may serve to embed a form of employment that in most circumstances is difficult to justify. If a Code is to be produced it should only be as a stepping stone to, or following, legislative change aimed at reducing the use of zero hours contracts and ensuring workers receive the income, rights and protections to which they are entitled.

198 CIPD, [Policy Response: Zero hours employment contracts](#), March 2014

127. The Government argues that workers are able to challenge unscrupulous employers through the courts, but the idea that a low-paid worker can challenge their employer through an expensive legal process is fanciful. The lack of a legal definition of a zero hours contract also hinders any legal challenge. A zero hours worker who embarks on such a challenge may also be penalised by the employer for doing so.

128. The problems with zero hours contracts, as well as other forms of casual labour, are clear, yet it does not have to be this way. Many organisations are able to manage without using zero hours contracts: local authorities have moved away from using them directly and most major supermarkets are able to respond to fluctuations in their sectors without them. The use of zero hours contracts is out of all proportion to what is required and is creating a two-tier workforce. Employers should make much greater use of permanent, part-time, fixed-term or variable hours contracts which guarantee minimum hours and provide workers with a degree of certainty. Zero hours contracts must only be used where the employer can objectively justify their use.

129. The increase in the use of casual labour across the UK, and in Scotland in particular, is alarming. The Government should use all the levers at its disposal, including legislative change, to effect a shift in culture.

Formal Minutes

Tuesday 08 April 2014

Members present:

Mr Ian Davidson, in the Chair

Mike Crockart	Pamela Nash
Jim McGovern	Mr Alan Reid
Graeme Morrice	Lindsay Roy

Draft Report (*Zero hours contracts in Scotland: Interim Report*), proposed by the Chair, brought up and read.

The Committee considered this matter.

[Adjourned till Wednesday 9 April at 12.30 pm]

Wednesday 9 April 2014

Members present:

Mr Ian Davidson, in the Chair

Mike Crockart	Sir Jim Paice
Graeme Morrice	Mr Alan Reid
Pamela Nash	Lindsay Roy

Draft Report (*Zero hours contracts in Scotland: Interim Report*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 129 read and agreed to.

Summary agreed to.

Resolved, That the Report be the Tenth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Tuesday 29 April at 2.00 pm]

Witnesses

The following witnesses gave evidence. The transcripts can be viewed on the Committee's inquiry page at www.parliament.uk/scotaffcom.

Wednesday 11 September 2013

Question number

James Bevan, Campaigns and Communications Officer, and **Pat Rafferty**, Scotland Regional Secretary, Unite the Union, and **Mark Epstein**, and **Daniel Elton**, Mass1

[Q1 - 79](#)

Monday 10 February 2014

Question number

Karen Whitefield, Union of Shop, Distributive and Allied Workers (USDAW), **Jason Wason**, Union of Shop, Distributive and Allied Workers (USDAW).

[Q80 - 134](#)

Tuesday 25 February 2014

Question number

Mick Cash, Senior Assistant General Secretary, National Union of Rail, Maritime and Transport Workers, **Scot Walker**, Chairperson, Unite Scotland.

[Q135 - 237](#)

Monday 10 March 2014

Question number

Dave Watson, Scottish Organiser, UNISON Scotland, **Jake Malloy**, Regional Organiser, National Union of Rail, Maritime and Transport Workers, and **Rob Gowans**, Policy Officer, Citizens Advice

[Q238 - 336](#)

Tuesday 1 April 2014

Question number

Mary Senior, Scotland Official, University and College Union, **Dr Rachel Shanks**, UCU Branch Secretary at the University of Aberdeen, and **Justine Seran**, UCU member at the University of Edinburgh

[Q337 - 466](#)

Published written evidence

The following written evidence was received and can be viewed on the Committee's inquiry web page at www.parliament.uk/scotaffcom.

- 1 [The University and College Union](#)
- 2 [Citizens Advice Scotland](#)
- 3 [The National Union of Rail, Maritime & Transport Workers](#)
- 4 [Unite the Union](#)
- 5 [Employment Lawyers Association](#)
- 6 [Educational Institute of Scotland Eis](#)
- 7 [Universities and Colleges Employers Association](#)
- 8 [Jo Swinson MP, Department for Business Innovation and Skills](#)
- 9 [USDAW](#)
- 10 [UNISON Scotland](#)
- 11 [Allied Healthcare](#)
- 12 [GMB](#)
- 13 [RMT](#)

List of Reports from the Committee during the current Parliament

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2010–12

First Report	Postal Services in Scotland	HC 669 (HC 884)
Second Report	Video Games Industry in Scotland	HC 500 (Cm 8067)
Third Report	UK Border Agency and Glasgow City Council	HC 733
Fourth Report	The Scotland Bill	HC 775
Fifth Report	Student Immigration System in Scotland	HC 912 (Cm 8192)
Sixth Report	The Referendum on Separation for Scotland: Unanswered Questions	HC 1806
Seventh Report	The Crown Estate in Scotland	HC 1117
Eighth Report	The Referendum on Separation for Scotland: Do you agree this is a biased question?	HC 1942

Session 2012–13

First Report	A Robust Grid for 21 st Century Scotland	HC 499
Second Report	The Referendum on Separation for Scotland: making the process legal	HC 542
Third Report	The Referendum on Separation for Scotland: a multi-option question?	HC 543
Fourth Report	The Referendum on Separation for Scotland: Terminating Trident—Days or Decades?	HC 676 (HC 861)
Fifth Report	The Future of HM Coastguard in Scotland	HC 583
Sixth Report	The Referendum on Separation for Scotland: The proposed section 30 Order—Can a player also be the referee?	HC 863
Seventh Report	The Referendum on Separation for Scotland: Separation shuts shipyards	HC 892
Eighth Report	The Referendum on Separation for Scotland: How would Separation affect jobs in the Scottish Defence Industry?	HC 957 (HC 257)

Session 2013–14

First Report	Remploy Marine Fife	HC 454
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