



International
Labour
Office
Geneva



Zero-Hours Work in the United Kingdom

Abi Adams
Jeremias Prassl

CONDITIONS OF WORK AND EMPLOYMENT SERIES No. 101

INWORK

Inclusive Labour Markets, Labour Relations
and Working Conditions Branch

Zero-Hours Work in the United Kingdom

Abi Adams *

Jeremias Prassl **

* Associate Professor in the Department of Economics and Fellow of New College.

** Associate Professor in the Faculty of Law and Fellow of Magdalen College.

Copyright © International Labour Organization 2018

Publications of the International Labour Office enjoy copyright under Protocol 2 of the Universal Copyright Convention. Nevertheless, short excerpts from them may be reproduced without authorization, on condition that the source is indicated. For rights of reproduction or translation, application should be made to ILO Publications (Rights and Licensing), International Labour Office, CH-1211 Geneva 22, Switzerland, or by email: rights@ilo.org. The International Labour Office welcomes such applications.

Libraries, institutions and other users registered with a reproduction rights organization may make copies in accordance with the licences issued to them for this purpose. Visit www.ifro.org to find the reproduction rights organization in your country.

Conditions of work and employment series ; no. 101, ISSN: 2226-8944 (print); 2226-8952 (web pdf)

First published 2018

Cover: DTP/Design Unit, ILO

The designations employed in ILO publications, which are in conformity with United Nations practice, and the presentation of material therein do not imply the expression of any opinion whatsoever on the part of the International Labour Office concerning the legal status of any country, area or territory or of its authorities, or concerning the delimitation of its frontiers.

The responsibility for opinions expressed in signed articles, studies and other contributions rests solely with their authors, and publication does not constitute an endorsement by the International Labour Office of the opinions expressed in them. Reference to names of firms and commercial products and processes does not imply their endorsement by the International Labour Office, and any failure to mention a particular firm, commercial product or process is not a sign of disapproval. Information on ILO publications and digital products can be found at: www.ilo.org/publns.

Printed in Switzerland.

Executive Summary

In this report, we provide a detailed study of zero-hours work in the United Kingdom. An initial section defines zero-hours work, emphasising key characteristics as well as overlaps between zero-hours work and other casual work arrangements, and draws parallels both with historic instances of on-demand work and current experiences of ‘if and when’ contracts in the Republic of Ireland.

Section two presents the most recent available data on the prevalence and key characteristics of zero-hours workers and employers, explaining the evolution of such work arrangements as well as the technical issues which make measuring the phenomenon through official labour market statistics particularly difficult. Section three complements the empirical evidence with an analysis of the effects of zero-hours work for workers, employers, and society more broadly. Our focus is not limited to the legal situation of those working under such arrangements, but also includes questions of social security entitlements, and wider implications such as business flexibility, cost savings, and productivity growth.

As the fourth section explains, a growing awareness of the growth of zero-hours contracts from 2011 onwards brought about a marked increase in public discussion of the phenomenon, leading eventually to (limited) legislative intervention. We explore the positions taken by the social partners, before analysing historical as well as recent legislative responses, and setting out a case study of Parliament’s response to a particularly egregious instance of labour standards violations in warehouses operated by the sports equipment chain *Sports Direct*. A brief concluding section, finally, turns to a series of policy recommendations and broader considerations, with a view to finding a model in which (some of) the flexibility of zero-hours work arrangements might be preserved, without however continuing to pose a real threat to decent working conditions in the United Kingdom’s labour market.

TABLE OF CONTENTS

Executive Summary	iii
1. Defining Zero-Hours Work	1
<i>a. The 'Zero-Hours Contract'</i>	<i>1</i>
i. Common Parlance, Statistical, and Legal Definitions	1
ii. Relationship to other casual work arrangements.....	3
<i>b. Parallels and Precedent</i>	<i>4</i>
i. Historical Development	4
ii. The Irish Experience.....	5
2. Prevalence.....	7
<i>a. Key Statistics.....</i>	<i>7</i>
i. Measurement.....	7
ii. Numbers	9
<i>b. Detailed Characteristics.....</i>	<i>12</i>
i. Earnings on ZHCs.....	12
ii. Hours and Working Patterns.....	13
iii. Worker Characteristics	15
iv. Employer Characteristics.....	18
v. Social Care	20
3. The Impact of Zero-Hours Work	21
<i>a. What's the Counterfactual?.....</i>	<i>21</i>
<i>b. Workers.....</i>	<i>22</i>
i. Flexibility?	22
ii. Income and Social Security	23
iii. Legal Implications	26
iv. Other Factors.....	30
<i>c. Business.....</i>	<i>31</i>
<i>d. Government and Society.....</i>	<i>33</i>
4. Policy Responses	34
<i>a. The Position of the Social Partners.....</i>	<i>34</i>
i. Trade Unions.....	34
ii. Employer Representatives	35
<i>b. Legislative Responses</i>	<i>36</i>
<i>c. Parliamentary Inquiry</i>	<i>37</i>
<i>d. National Minimum Wage Act 1998.....</i>	<i>38</i>
5. Conclusion and Recommendations.....	39
i. Employment Law.....	39
ii. Social Security	40
iii. Government Commissioning.....	40
iv. Broader Outlook.....	40
Conditions of Work and Employment Series.....	41

1. Defining Zero-Hours Work

This section addresses a series of fundamental definitional issues. We turn, first, to the many different definitions of the contractual arrangements underpinning zero-hours work: despite widespread assumptions to the contrary, there is no such thing as ‘the’ zero-hours contract (ZHC). It is important to see zero-hours *work* as a wide spectrum of contractual arrangements, centred on the absence of guaranteed hours for the worker. Having set out different definitions and sample clauses, we situate zero-hours work in the broader context of precarious or casual work arrangements. A second sub-section addresses a further set of misconceptions: that zero-hours work is a relatively novel phenomenon, found exclusively in UK labour markets. In reality, examples of zero-hours work in its current instantiation can be found as early as the 1970s; functionally equivalent short-term hire models reach back several centuries, from the hosiery industry to dock workers in the 19th century. Similar arrangements also exist in the Republic of Ireland, under the label of ‘if and when’ contracts.

a. The ‘Zero-Hours Contract’

As the then Secretary of State for Business, Innovation and Skills, Dr Vince Cable MP noted during a 2013 Opposition Day debate in Parliament, definitional problems are at the heart of any discussion of zero-hours contracts:

There is an issue about what zero-hours contracts actually are; they are not clearly defined. [...] There are a whole lot of contractual arrangements [...] They are enormously varied.¹

In public discourse, the zero-hours label is applied to a wide range of arrangements in which workers are not guaranteed any hours of work in a particular period. At least in theory, workers party to such arrangements are often thought at liberty to reject any offer of work made by their employer. The scope of the term in colloquial usage has expanded in recent years as a result of media attention, not least because of the rise of the “gig economy”.

i. Common Parlance, Statistical, and Legal Definitions

A series of definitions can be found in the academic literature, official government policy documents, statutory enactments, and statistical surveys. While a necessary element of definitions is a lack of guaranteed hours, as we shall see, there is a great deal of heterogeneity in the realities of work that falls under the label “zero-hours contracts”. Simon Deakin and Gillian Morris suggest that zero-hours arrangements encompass all cases ‘where the employer unequivocally refuses to commit itself in advance to make any given quantum of work available.’² Mark Freedland and Nicola Kountouris bring out this diversity even more clearly, when they refer to ‘work arrangements in which the worker is in a personal work relation with an employing entity [...] for which there are no fixed or guaranteed hours of remunerated work. These arrangements are variously described as ‘on-call’, ‘intermittent’, or ‘on-demand’ work, or sometimes referred to as ‘zero-hours contracts’.³

¹ HC Deb 16 October 2013, vol 567, col 756.

² S Deakin and G Morris, *Labour Law* (6th edn Hart 2012) 167.

³ M Freedland and N Kountouris, *The Legal Construction of Personal Work Relations* (OUP, 2012) 318-319.

Parliament intervention in 2015, resulting in section 27A of the Employment Rights Act of 1996 ('ERA 1996'),⁴ stipulates that:

- (1) In this section “zero hours contract” means a contract of employment or other worker’s contract under which—
 - (a) the undertaking to do or perform work or services is an undertaking to do so conditionally on the employer making work or services available to the worker, and
 - (b) there is no certainty that any such work or services will be made available to the worker.
- (2) For this purpose, an employer makes work or services available to a worker if the employer requests or requires the worker to do the work or perform the services.

This definition builds on official consultation documents on the use and regulation of zero-hours arrangements, published by the government in December 2013. There a zero-hours contract was defined as ‘an employment contract in which the employer does not guarantee the individual any work, and the individual is not obliged to accept any work offered.’ The consultation illustrated the technical implementation of such arrangements by means of a specific ‘example of a clause in a zero-hours contract which does not guarantee a fixed number of hours work per week’:

“The Company is under no obligation to provide work to you at any time and you are under no obligation to accept any work offered by the Company at any time.”⁵

While zero-hours contracts do not guarantee a minimum number of hours, there is heterogeneity across contracts in stated expectations of work availability and the degree of notification given of when work will be available. Additional contractual examples to highlight this are given below.⁶ Under some contracts, time when a worker must be available to work if needed must be agreed upon;⁷ under others no such commitment is required. Some contracts state that workers will be notified on a weekly basis about available work; in others, this commitment is missing. The Advisory, Conciliation and Arbitration Service (Acas) documents that many workers are often not aware that their contracts do not guarantee any hours as the reality of their day-to-day work experience suggest otherwise. In their opinion, “many workers experience a false sense of security when it comes to their contractual relationship”.⁸

⁴ For an earlier example of an attempted statutory definition of Zero-Hours Contracts, see the Zero Hours Contracts HC Bill (2013-14) 79 introduced by Andy Sawford MP in the summer of 2013, with a view to making it ‘unlawful to issue a zero hours contract.’ (cl 1(1)). That Bill sought to define such arrangements in its clause 3(1), identifying them through a combination of factors as follows:

- A zero hours contract is a contract or arrangement for the provision of labour which fails to specify guaranteed working hours and has one or more of the following features—
- (a) it requires the worker to be available for work when there is no guarantee the worker will be needed;
 - (b) it requires the worker to work exclusively for one employer;
 - (c) a contract setting out the worker’s regular working hours has not been offered after the worker has been employed for 12 consecutive weeks.

⁵ BIS, *Consultation: Zero Hours Employment Contracts* (London, December 2013) [‘Consultation’] [11] – [12].

⁶ N. Pickavance, *Zeroed Out: the place of zero-hours contracts in a fair and productive economy* (London, 2014), 9 [‘Pickavance’].

⁷ See discussion of contract terms in House of Commons Business, Innovation and Skills Committee, *Employment Practises at Sports Direct: Third Report of Session 2016-17*, 7.

⁸ Acas, ‘Give and take? Unravelling the true nature of zero-hours contracts’ (2014) *Acas Policy Discussion Papers*, 6.

Examples of availability requirements in zero-hours contracts:

You are required to be available from work within the availability agreed with your line manager. The Company is not able to guarantee hours of work in any given week. Your actual hours to be worked each week will be as necessitated by the needs of the business and will be notified to you by your manager. In some weeks you may not be required to work any hours. Payment will only be made for actual hours worked.

Your hours of work will vary according to the needs of the Service User(s). It is a condition of your employment that you work flexibly with the Service User(s). Accordingly you acknowledge that there may be times when no work is available for you and that the Company has no obligation to provide you with work or to provide any minimum number of hours in any period of time. You will be notified weekly of the hours that are available to be worked. You will be paid only for hours actually worked.

Some have responded to this factual complexity by developing more refined categories. Hugh Collins, Keith Ewing and Aileen McColgan, for example, draw a distinction between zero-hours contracts, where ‘the employee promises to be ready and available for work, but the employer merely promises to pay for time actually worked according to the requirements of the employer’ and ‘arrangements for casual work’ where ‘again the employer does not promise to offer any work, but equally in this case the employee does not promise to be available when required.’⁹ This distinction is relevant for comparisons of the UK and Republic of Ireland experiences. In Ireland, a distinction is drawn between zero-hours contracts, which do not guarantee work but an individual is contractually required to make themselves available to work, and ‘if-and-when contracts’, which do not guarantee works and do not require an individual to be available for work at any point.¹⁰

The heterogeneity in work experiences under zero-hours contracts has created significant difficulties in measuring the prevalence and characteristics of ‘the’ phenomenon. The main official data source on information on zero-hours contracts is the *Labour Force Survey* (LFS), which is administered by the Office for National Statistics (ONS). Here, the work arrangement is defined as:

“[A zero hours contract] is where a person is not contracted to work a set number of hours, and is only paid for the number of hours that they actually work”¹¹

However, this definition is only provided to respondents if they ask explicitly for clarification of the term. The precise working definition of a zero-hours contract in the LFS is, therefore, deeply unclear as classification is primarily a matter of respondent self-identification. This has caused deep reservations about the quality of the statistical evidence, to which we return in Section 2.

ii. Relationship to other casual work arrangements

Given the diverse set of work arrangements that the term applies to, the ‘zero-hours contract’ label should not be seen as representing a clear or overarching category or organising principle of precarious work. There is a considerable degree of heterogeneity of temporary work,¹² reflected in ‘a growing nomenclature of ‘atypical’ and ‘non-standard’ work, apart from commonly used categories such as temporary, part-time and self-employed work. Terms include ‘reservist’; ‘on-call’, and ‘as and when’ contracts; ‘regular casuals’; ‘key-time’ workers; ‘min-max’ and ‘zero-hours’ contracts.’¹³ Indeed, the

⁹ H Collins, K Ewing and A McColgan, *Labour Law* (CUP 2012) 243.

¹⁰ M O’Sullivan et al, *A Study on the Prevalence of Zero Hours Contracts among Irish Employers and their Impact on Employees* (University of Limerick, 2015).

¹¹ User Guide: Volume 3 – Details of LFS Variables, Labour Force Survey, February 2014. <http://www.ons.gov.uk/ons/guide-method/method-quality/specific/labour-market/labour-market-statistics/index.html>

¹² D McCann, *Regulating Flexible Work* (OUP 2008) 102.

¹³ L Dickens, ‘Exploring the Atypical: Zero Hours Contracts’ (1997) 26 ILJ 263.

various categories of ‘atypical’ work can frequently overlap, for example where agency work incorporates a ‘zero-hours contract dimension’.¹⁴

Relationship to Self-Employment and “Gig Work”. The distinction between zero-hours work arrangements and self-employment has particular economic and legal significance in the UK. The self-employed are not subject to minimum wage legislation nor working time regulation. Self-employment is also tax advantaged for both workers and firms; National Insurance Contributions (NICs) are 3% lower for the self-employed compared to employees, and employers pay 13.8% NICs on employee income. These differences in tax rates are not met with significant differences in social security entitlements.¹⁵

The distinction between the self-employed and zero-hours workers has acquired greater urgency in the last year with increasing media and policy interest in the rise of the on-demand economy and “gig-work”. Developments in communications technology have supposedly led to the emergence of new forms of employment ‘located in the grey and often uncharted territory between employment contracts and freelance work’.¹⁶ There is a great deal of heterogeneity in the types of working relationships that are labelled as part of this phenomenon. Among the most salient examples in the UK are ‘ride-sharing’ app, Uber, and food delivery company, Deliveroo.¹⁷

Firms in this sector, including Uber and Deliveroo, insist that their workers are independent contractors, while recent UK Employment Tribunal rulings suggest that their workforce should be classified as individuals working on zero-hour contracts. For example, in *Aslam v Uber BV*, the tribunal ruled that Uber drivers are workers within sec 230(3)(b) of the ERA 1996 given the high degree of control exerted by the firm.¹⁸ We return to this point in Section 3.

b. Parallels and Precedent

In defining the zero-hours contract, it is equally important to note what zero-hours work is *not*: the phenomenon is neither a recent labour market development, nor is it unique to the United Kingdom.

i. Historical Development

In exploring the historical development of zero-hours work, two important dimensions should be highlighted. First, that as regards modern labour markets, arrangements akin to zero-hours work have been recorded in the literature and judicial proceedings at least since the 1970s, most recently coming to public consciousness in the 1990s. Second, that historical examples can even be found much further back: a vast number of industries in the 19th century, from hosiery manufacturing to dock labour, were built around an employment model in which workers were not guaranteed any amount of fixed work from one week, or even one day, to the next.

Modern use of zero-hours arrangements should thus not be seen as a new phenomenon but rather part of a much larger ‘tendency toward numerical flexibility [which has been] particularly marked [since] the 1980s’.¹⁹ Litigation arising from the use of zero-hours contracts to allow employers numerical flexibility

¹⁴ J O’Connor, ‘Precarious Employment and EU Employment Regulation’ in G Ramia, K Farnsworth and Z Irving, *Social Policy Review 25: Analysis and Debate in Social Policy* (OUP 2013) 238.

¹⁵ A Adams, J Freedman and J Prassl, *Different Ways of Working* (Oxford, 2016).

¹⁶ J. Prassl and M. Risak, ‘Uber, Taskrabbit & Co: Platforms as Employers? Rethinking the Legal Analysis of Crowdwork’ (2017), 37 *Comparative Law and Policy Journal* 619.

¹⁷ J Prassl, *Humans as a Service* (OUP 2018).

¹⁸ *Aslam, Farrar and Ors v Uber* (Case No 2202550/2015; decision of 28 October 2016). See also R Hunter and J Prassl, *Worker Status for App-Drivers: Uber-rated?*, Oxford Human Rights Hub Blog 21st November 2016.

¹⁹ S Fredman, ‘Labour Law in Flux: The Changing Composition of the Workforce’ (1997) 26 ILJ 337, 339. The effects were originally particularly marked in the case of female workers (339-340) and industries such as construction and dock-working (340), or trawler working. See also P Leighton and R Painter, “Task” and “Global” Contracts of Employment’ (1986) 15 ILJ 127; A McColgan, *Just Wages for Women* (OUP 1997) 391.

and attempt to avoid the application of statutory protection can be traced back nearly forty years.²⁰ In the 1978 decision of *Mailway*,²¹ for example, the claimant postal packer ‘could and would only attend for work in accordance with the need expressed by the employers.’²²

Discussion of zero-hours contracts can also be found in the academic literature prior to their recent rise to notoriety.²³ A study by Katherine Cave in the 1990s showed the already widespread use of ‘something that could be classified as zero hours contracts’;²⁴ with a strong growth trend as an area where there has been abuse²⁵ continuing in the subsequent decade.²⁶ The work arrangement even merited an explicit mention in New Labour’s 1998 White Paper on ‘Fairness at Work’;²⁷ perhaps in response to one of the earliest examples of public controversy, when Burger King’s practice to pay staff only for time spent actually serving customers was exposed in the mid-1990s.²⁸ The (then) government there welcomed ‘views on whether further action should be taken to address the potential abuse of zero hours contracts and, if so, how to take this forward without undermining labour market flexibility.’²⁹

ii. The Irish Experience

Parallels can also be drawn with other contemporary labour markets, notably in the Republic of Ireland. There, a distinction is drawn between zero-hours and ‘if and when’ contracts, as referenced in Section 1(a). The key difference between the use of the two terms in Ireland is whether individuals are contractually required to make themselves available for work with an employer: zero-hours contracts require individuals to be available for work while if-and-when contracts do not.³⁰ A recent study the University of Limerick, commissioned by the Irish government’s Department of Jobs, Enterprise and Innovation, provides a detailed examination of contracts with no guaranteed hours in the context of the Irish economy.³¹ Similar issues regarding definition, measurement, legal status, and policy arise in the UK and Irish contexts. As we shall explore in later sections, the debate in the Irish context is similarly skewed by a focus on the benefits of flexibility by ‘employers’ organisation and on income insecurity by trade unions.

In the UK, if-and-when work arrangements would be classified as zero-hours arrangements. It is unclear how many of the zero-hours arrangements in the UK would be classified as if-and-when contracts if the Irish definitions were applied. However, the recent UK ban on so-called ‘exclusivity clauses’, which prevent workers on zero-hours arrangements from accepting work from another employer, might have limited the prevalence of zero-hours contracts in the Irish sense of the term.

Policy recommendations arising from the University of Limerick report are more substantive than those arising from the UK consultation, aiming to provide mechanisms to regularise work patterns to provide stability for workers whilst retaining flexibility for employers. The proposals include legislative provisions for guaranteeing hours and providing notice of work and its cancellation. It is suggested that employers provide a written statement of terms and conditions of employment on the first day of work,

²⁰ In the instance cited, the employer’s minimum guarantee payment for employees within the meaning of s 22(1) of the Employment Protection Act 1975.

²¹ *Mailway (Southern) Ltd v Willsher* [1978] ICR 511 (EAT).

²² *ibid* 513G. See H Collins, K Ewing and A McColgan, *Labour Law* (CUP 2012) 163.

²³ The earliest mention of the label in the leading specialist journal appears to be in L Watson, ‘Employees and the Unfair Contract Terms Act’ (1995) 24 ILJ 323, 323.

²⁴ K Graven, *Zero Hours Contracts: a Report into the Incidence and Implications of Such Contracts* (University of Huddersfield, 1997); as discussed in L Dickens, ‘Exploring the Atypical: Zero Hours Contracts’ (1997) 26 ILJ 262, 263.

²⁵ J Lourie, *Fairness at Work – Research Paper 98/99* (HC Library, London 1998) 26-27.

²⁶ B Kersley et al, *Inside the Workplace: First Findings from the 2004 Workplace Employment Relations Survey* (DTI, London 2005).

²⁷ DTI, *Fairness at Work* (White Paper, Cm 3968, 1998) [3.14]ff. For a critical analysis on point, see B Simpson, ‘Research and Reports’ (1998) 27 ILJ 245, 251; D McCann, *Regulating Flexible Work* (OUP 2008) 167ff.

²⁸ see eg B Clement, ‘Burger King pays £ 106,000 to Staff Forced to “Clock Off”’ *The Independent* (London, 19 December 1995). Today this practice would no longer be possible under the Minimum Wage Act 1998.

²⁹ *Fairness at Work* (n 27) [3.16].

³⁰ M O’Sullivan et al, *A Study on the Prevalence of Zero Hours Contracts among Irish Employers and their Impact on Employees* (University of Limerick, 2015).

³¹ *Ibid*.

including a statement of working hours that are a “true reflection” of the hours required. We will return to these themes in Section 4.

Finally, the UK and Republic of Ireland are not alone in their use of zero-hours arrangements. They can be found in varying forms across other European and Commonwealth countries, subject to varying degrees of regulation as summarised in Table 1.³²

Table 1. Zero Hours Contracts in Europe

Allowed	Allowed, heavily regulated	Not generally allowed	Not used/rare
Cyprus Finland Ireland Malta Norway Sweden United Kingdom	Germany Italy Netherlands Slovakia	Austria Belgium Czech Republic Estonia France Lithuania Luxembourg	Bulgaria Croatia Denmark Hungary Poland Romania Slovenia Spain

Source: *A Study on the Prevalence of Zero Hours Contracts among Irish Employers and their Impact on Employees* (University of Limerick, 2015); *Flexible Forms of Work: 'very atypical' contractual arrangements* (European Observatory of Working Life, 2010); Full Fact, *Zero hours contracts: is the UK "the odd one out"?*

³² Note that some caution is required in cross-country studies of zero-hours arrangements. As noted, their heterogeneity creates issues of definition and measurement within countries, let alone between. Further, zero-hours contracts may be rarely used in some labour markets if employers rely on self-employment or substitute forms of casual labour to a greater degree.

2. Prevalence

This section presents the most recent available data from the Labour Force Survey, ONS Business Survey, and National Minimum Data Set for Social Care among others, on the prevalence and key characteristics of zero-hours work in the United Kingdom. A first sub-section sets out the key statistics, explaining the evolution of zero-hours work and focussing on some of the technical issues which make measuring the phenomenon through official labour market statistics particularly difficult. A second sub-section then turns to the specific characteristics of those involved in zero-hours work arrangements, whether as employees or employers.

In summary, our calculations show that approximately 6% of contracts on which work is performed in the UK do not guarantee minimum hours and 10% of employers make some use of zero hours work arrangements. Wage rates and hours worked are significantly lower on average under zero-hours arrangements compared to alternative work arrangements. Zero-hours contracts are associated with a 35% lower median hourly wage and ten fewer hours worked per week on average when compared to other types of contracts. Controlling for worker and job characteristics still leaves a 10% zero-hours pay gap on top of that usually associated with part-time work. Zero-hours work is particularly concentrated amongst younger workers and students. Women, migrants, non-white workers, and workers with disabilities are also disproportionately employed under zero hours work arrangements.

a. Key Statistics

Before setting out the most recent headline figures available in official government statistics and from private data sources, it is important to sound a note of caution as regards the reliability of key indicators.

i. Measurement

The following paragraphs first address a series of historical problems with the recording of zero-hours work in the official Labour Force Survey. They highlight, in particular, the impact that an increased awareness through public dialogue has had on key indicators, and explain recent changes in ONS methodology enacted to provide reliable estimates of the number of zero-hours workers in the UK economy.

The LFS is the largest regular social survey of private households in the UK administered by the Office for National Statistics (ONS). It samples around 40,000 individuals each quarter and collects information on their employment status. Estimates of the prevalence of zero-hours arrangements come from a question that relates to work arrangements that might vary weekly or daily. A zero-hours contract is defined as “where a person is not contracted to work a set number of hours, and is only paid for the number of hours that they actually work”³³

³³ User Guide: Volume 3 – Details of LFS Variables, Labour Force Survey, February 2014. <http://www.ons.gov.uk/ons/guide-method/method-quality/specific/labour-market/labour-market-statistics/index.html>

Some people have special working hours arrangements that vary daily or weekly. In your (main) job is your agreed working arrangement any of the following... (*up to 3 coded*)

- a. flexitime
- b. annualised hours contract
- c. term-time working
- d. job sharing
- e. nine-day fortnight
- f. 4.5 day week
- g. zero hours contract
- h. on call working
- i. none of these

FLEX10 (Applies if in work during reference week.)

2014 Measurement Controversy. Given the aforementioned definitional issues, it should not be surprising that accurate measurement of zero-hours work is a key challenge for statistical agencies. In 2014, these measurement issues became salient enough to warrant media attention in their own right as empirical evidence in the Department for Business, Innovation and Skills' ('BIS') official consultation document came under attack.

Until 2012 the empirical evidence on zero-hours contracts (ZHC) in the UK did not suggest significant cause for concern. Statistics concerning the prevalence and characteristics of ZHCs were instead suggestive of a relatively benign labour market phenomena; the prevalence of zero-hours contracts appeared relatively low,³⁴ with majority apparently content with the number of hours worked in an average week.³⁵ In the final quarter of 2012, responses to the Labour Force Survey suggested that a negligible percentage of the workforce, a mere 0.8%, were employed on a ZHC.³⁶ Indeed, the historical evidence presented in the consultation document suggested that the percentage of workers on a ZHC had not exceeded 0.9% of total employment since the early 2000s.³⁷

However, the consensus is now that previous LFS methodology resulted in a gross underestimate of the prevalence of zero-hours contracts. The LFS estimate in the fourth quarter of 2012 suggested that 250,000 people were on zero-hours contracts.³⁸ However, this figure was recognised as incredible in the face of evidence from other sources. For example, Skills for Care, the partner in the sector skills council for social care, estimates that 307,000 individuals were employed on zero-hours contracts in the social care sector alone in May 2013.³⁹

Under the instruction of Sir Andrew Dilnot, the Office for National Statistics revised its estimates of the prevalence of ZHCs in 2013 to reflect the evidence presented in independent estimates.⁴⁰ This, alongside rising public awareness of the term, led to a substantial increase in estimates of the prevalence of zero hour contracts. In 2013, the ONS estimated that 582,935 workers were on ZHC contracts,⁴¹ a three-fold increase in the numbers of individuals working under such arrangements since 2008 (as estimated by the LFS).⁴²

³⁴ Consultation 12.

³⁵ Consultation 12.

³⁶ ONS, Zero hours contract levels and percent 2000 to 2012, ad hoc analysis, 31 July 2013

³⁷ Consultation 9.

³⁸ Note that these numbers were revised upwards from 200,000 to 250,000 in late 2013. See for example, Office for National Statistics, Corporate Information: Zero hour contract levels and percent 2000-2012, July 2013.

³⁹ Sir Andrew Dilnot, *Zero-hours employment statistics*, Correspondence to Chuka Umunna MP, 7 August 2013.

⁴⁰ Office for National Statistics, Statement: ONS urges caution on zero-hours estimates, March 2014.

⁴¹ *Ibid.*

⁴² Authors' calculation from ONS.

Measurement Challenges. A number of factors contributed to the under-recording of ZHCs in the LFS. First, the survey prevented individuals from simultaneously identifying themselves as, e.g., working shift work and being employed on a ZHC. This issue has now been resolved, with certain ‘check and box’ questions. Further, the question on ZHCs is not asked in all quarters, excluding the recording of seasonal workers on ZHCs.

More fundamentally, the LFS is based upon the responses of individuals, who frequently do not have the necessary information about, or understanding of, their contractual situation to provide reliable evidence in this regard. For example, in an interview given to the Resolution Foundation, a further education lecturer in Bradford suggested that he:

‘had no idea [that he] had signed a zero-hours contract. When I applied for the job it was advertised a being for between three and twenty-one hours work a week.’⁴³

This problem is compounded by the fact that awareness of the term has been increasing in recent years, increasing the likelihood that individuals will self-identify with the ‘zero-hours’ label. This makes an analysis of trends in the prevalence of ZHCs particularly problematic.

Finally, only respondents who work a positive number of hours or who are ‘temporarily away from their job’ in the reference week are asked about the nature of their work contract. This is not a problem for individuals who worked a positive number of paid hours during the reference week: they can be unambiguously classed as having been in employment. However, it appears that the ‘in employment’ criterion might be of issue for those who were not assigned any work during the survey reference week, a phenomenon that we shall see is very common in the next section.

In response to these difficulties, the ONS now also includes questions on zero-hours work in their survey of businesses because firms are thought to be better placed to respond to questions about the contractual arrangements of their workers.⁴⁴ Rather than ask about zero-hours contracts explicitly, the ONS came to the conclusion that the most useful definition for purposes of this survey was “contracts that do not guarantee a minimum number of hours”.⁴⁵ This has been justified by reference to the fact that it is the lack of guaranteed hours that is the salient common feature of all current definitions of zero-hours contracts.⁴⁶ This survey records contracts rather than workers, even if no hours were worked on those contracts in the survey reference period.

ii. Numbers

Through a series of graphs, tables, and brief explanatory paragraphs, this section sets out the most recent numbers of zero-hours workers and contracts, as well as the number of business users of such employment arrangements. While the precise figure varies across surveys, the best evidence suggests that approximately 6% of contracts on which work is performed do not guarantee minimum hours. Approximately 2.8% of the UK workforce was employed on a zero-hours contracts for their ‘main job’ in 2016.

Labour Force Survey. The latest estimate from the LFS for October to December 2016 suggests that 905,000 individuals, or 2.8% of the workforce, were employed on a ZHC for their main job. This is 13% higher than the figure for the same period in 2015 in which 804,000 individuals were thought to be employed on ZHCs. A naïve analysis of Figure 1 might suggest that there has been fast growth in the prevalence of zero hours work since 2011. We would like to caution against this interpretation, however, given the aforementioned measurement issues.

⁴³ M Pennycook, G Cory, and V Alakeson, *A Matter of Time: The rise of zero-hours contracts* (Resolution Foundation, London 2013) [‘Matter of Time’].

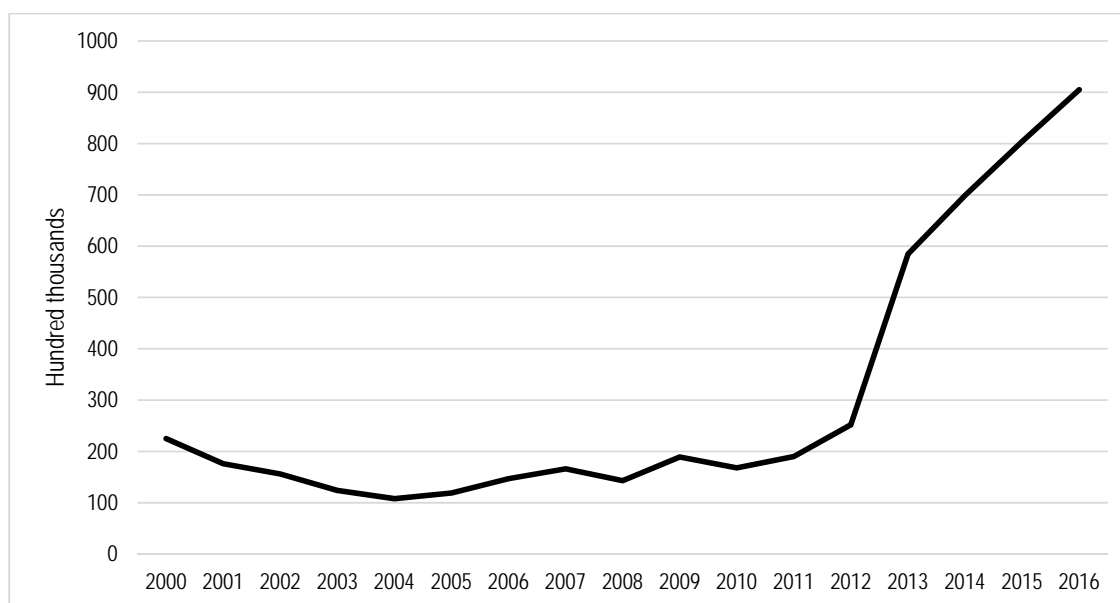
⁴⁴ Office for National Statistics, Press Release: ONS announces additional estimate of zero-hours contracts, 22 August 2013.

⁴⁵ Analysis of Contracts that Do Not Guarantee a Minimum Number of Hours, Office for National Statistics, April 2014.

⁴⁶ M Chandler (2016), Measurement of zero-hours contracts, ONS Presentation.

<https://www.ukdataservice.ac.uk/media/604638/chandler.pdf>

Figure 1. Main Job as Zero Hours Contract, Q4 2000-2016, LFS



Source: Author Calculations from Labour Force Survey

Business Survey. To overcome reporting biases associated with surveying individuals about the terms of their employment contract (see above), data on the prevalence of ‘contracts that do not guarantee a minimum number of hours’ (NGHCs) is now collected annually in the ONS Business Survey. Table 2 gives the currently available statistics on the number of NGHCs in the UK. Approximately 6% of all contracts on which work was carried out in the reference period did not guarantee any hours of work. The survey estimates that 10% of businesses make use of this work arrangement. In addition to the 1.7million contracts on which work was carried out in November 2015, there were an additional 2 million contracts on which no work was performed. It is unclear whether no work was performed because individuals did not accept work offered or because an employer offered no work.

Table 2. Contracts with no guaranteed hours, ONS Business Survey

Reference Period	Number NGHCs in which work carried out	% Contracts that are NGHCs	% Business making use of NGHCs
Jan 2014	1.4	5	13
Aug 2014	1.8	6	11
Jan 2015	1.5	6	11
May 2015	2.1	7	11
Nov 2015	1.7	6	10

Source: Office for National Statistics Business Survey ⁴⁷

The Business Survey suggests a higher prevalence of ZHCs than the LFS. It is unclear which is the ‘best’ measure to use. Employer surveys record contracts that cover a variety of arrangements, as opposed to a single individual’s ‘main employment’. This measure thus includes contracts for those who work on an irregular basis. Employers are also more likely to be aware of their employees formal contractual arrangements. This may differ from the perception of employees if their normal working hours are relatively stable or if changes in hours are mainly as a result of personal choice.

⁴⁷ Office for National Statistics, Contracts that do not guarantee a minimum number of hours: March 2016.

Social Care. Given the difficulties in assessing trends over time from the LFS, we present data from the social care sector in which the prevalence of ZHCs has, arguably, been better measured since 2012. Indeed, administrative data on the prevalence of ZHCs in the social care sector was used in 2014 as evidence of the limitations of previous LFS estimates. The National Minimum Data Set for Social Care is a workforce planning tool managed by Skills for Care which is used to analyse employment practises and workforce composition in the sector. There were 315,000 people employed on ZHCs in March 2016, or 24% of the workforce. The percentage of workers on zero hours contracts in social care grew by 3 percentage points between 2012/13 and 2015/16 due to increases in the proportion of care workers and registered nurses working under these arrangements.

Table 3. % Social Care Workforce on ZHC, NMDS-SC

Job Role	2012/13	2013/14	2014/15	2015/16
All	21	23	25	24
Senior Management	4	4	4	4
Registered Manager	3	2	2	3
Social Worker	3	3	3	3
Occ. Therapist	3	3	2	3
Registered Nurse	16	18	19	18
Senior Care Worker	9	9	9	10
Care Worker	30	33	35	33
Support	15	15	14	15

Source: NMDS-SC⁴⁸

Prevalence Across Industries. The prevalence of zero-hours work arrangements varies markedly across industries. Figure 2 shows the percentage of people in each industry employed on a zero-hours contract and the distribution of those on zero-hours contracts across industries. Responses to the Labour Force Survey show that the over two-fifths of workers on zero-hours contracts for their main job are located in Social Care, Health, Accommodation and Food Services. Zero-hours contract workers make up 11% of total employment in Accommodation and Food Services, 9% of employment in the Arts sector and just over 4% of employment in Health and Social Care.

Figure 2. Zero-hours work across Sectors, Oct-Dec 2016



Source: Author Calculations from Labour Force Survey October-December 2016

⁴⁸ Skills for Care, The state of the adult social care sector and workforce in England, September 2016.

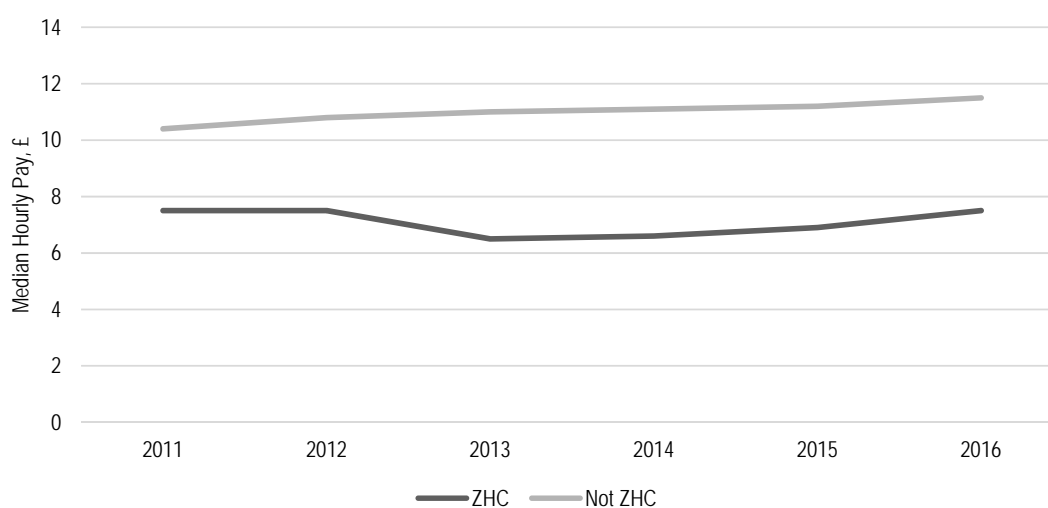
b. Detailed Characteristics

Discussion now turns to an analysis of the key features of work and remuneration, the characteristics workers engaged, and employers offering work, under zero-hours arrangements.

i. Earnings on ZHCs

Hourly wage rates on zero hours work arrangements are significantly lower than average. The median wage rate for ZHC work is approximately 35% less than that for all workers. In real terms (adjusting for CPIH inflation), wages on ZHC fell by 13.8% between 2011 and 2015, while real wages for non-ZHC workers stayed approximately flat. Zero hours work is thus likely to be highly affected by increases in the national minimum wage which was increased to £7.50 on 1st April 2017.

Figure 2. Median Hourly Wage, ZHCs and All Workers



Source: Author calculations from Labour Force Survey

There are many reasons why remuneration might be lower on ZHC contracts. Zero hours work might be relatively concentrated in lower paying sectors, workers employed on ZHCs might have less experience or be less productive, or the nature of the contracts could provide opportunities for value extraction by employers or render the nature of work less productive.

The Resolution Foundation have previously estimated that approximately four-fifths of the overall hourly pay gap between ZHC and full time work can be accounted for by the characteristics of the workers doing them and the lower average pay in the occupations that the contracts are concentrated in.⁴⁹ We repeat this analysis for the most recent data finding that a 10% ‘precarity pay gap’ remains after controlling for observable differences between those working on zero-hours contracts and those working on other types of contrast. Our analysis is robust to whether one considers the mean or median hourly pay. While it is of course possible that this pay gap could be driven by other worker or job characteristics not measured in the data, the analysis does provide relatively compelling evidence that there is a pay penalty associated with zero hours work beyond that associated with part-time work more broadly.

⁴⁹ Resolution Foundation, Zero hours contract workers face a ‘precarious pay penalty’ of £1,000 per year, December 2016 <http://www.resolutionfoundation.org/media/press-releases/zero-hours-contract-workers-face-a-precarious-pay-penalty-of-1000-a-year/>

Table 4. Hourly Wage Regression Analysis, LFS Q4 2016

<i>Log hourly wage</i>				
<i>Mean Regression</i>	(1)	(2)	(3)	(4)
ZHC	-.449***	-.243***	-.102***	-.09***
	(0.04)	(0.03)	(0.03)	(0.03)
<i>Controls:</i>				
Worker Characteristics	✘	✓	✓	✓
Industry & Occupation Characteristics	✘	✘	✓	✓
Part-Time	✘	✘	✘	✓
N	10,244	9,676	9,594	9,591
R ²	0.0160	0.2778	0.4476	0.4484
Adj R ²	0.0159	0.2769	0.4459	0.4466

ii. Hours and Working Patterns

Here, we focus on working time data, including average working hours of workers under zero-hours contracts and, to the extent that such data is available, on the variability of their work schedules. We also link to the broader debates and statistics on underemployment in recent years.

The LFS records actual hours worked during the survey reference week. Figures below are again the latest available from the LFS October-December 2016 unless otherwise stated. Note that to appear in the statistics, respondents must have done at least one hour of paid work in the week before they were interviewed or to have reported that they were temporarily away from their job. Therefore, this source is likely to miss those who did no work on under a zero hours work arrangement.

Actual Hours. The majority of people on ZHCs (65%) report that they worked part-time, compared with 26% of other workers. Average actual weekly hours in zero hours work are thus unsurprisingly lower at 22.0 hours per week compared with the average actual weekly hours for all workers at 31.8 hours. This shows a similar pattern to usual hours worked, that is, the weekly hours usually worked throughout the year, which were 25.2 and 36.4 for people on “zero-hours contracts” and all workers respectively. Table 5 shows that this hours gap closes slightly but remains significant when controlling for observed worker and job characteristics (e.g. female, have children, age).

Table 5. Hours Worked Regression Analysis, LFS Q4 2016

<i>Hours in Reference Week</i>	(1)	(2)	(3)
ZHC	-10.2***	-8.2***	-7.4***
	(0.59)	(0.57)	(0.59)
Worker Characteristics	✘	✓	✓
Industry & Occupation Characteristics	✘	✘	✓
N	34,623	32,845	28,222
R ²	0.0086	0.1222	0.1568
Adj R ²	0.0086	0.1219	0.1559

Hours Variability. Zero hours work is associated with greater weekly hours variation when compared to all work as shown in Figure 3. For October to December 2016: 43% ZHC workers worked their usual hours compared with 58% of other workers, while 35% of ZHC workers worked less than their usual

hours compared with 30% of other workers. Note again however that the LFS might under-record those who work zero hours when they might usually work a positive number. Those on zero-hours contracts are also much less likely to work 5-day weeks, the norm amongst those on other types of contracts. This pattern is depicted in Figure 4.

Figure 3. Variability in Actual Hours versus Usual, Oct-Dec 2016

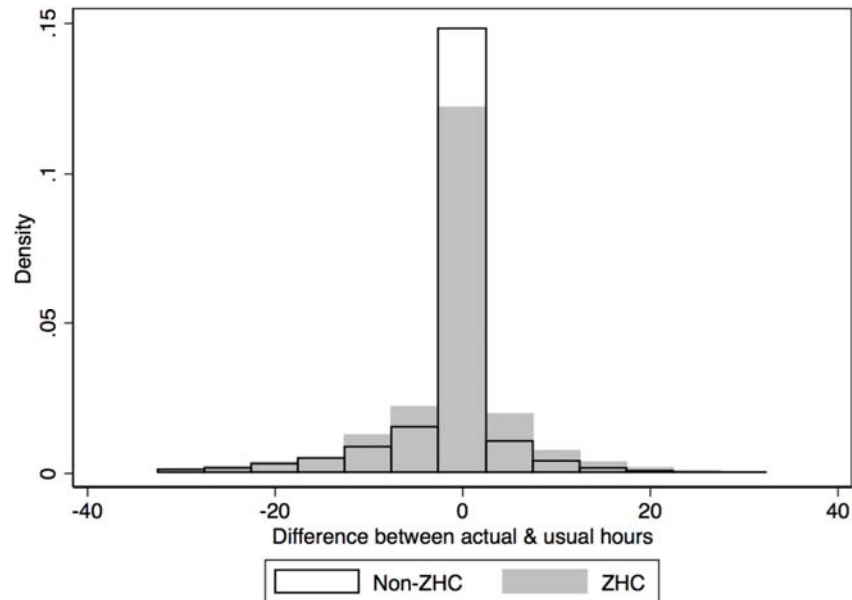
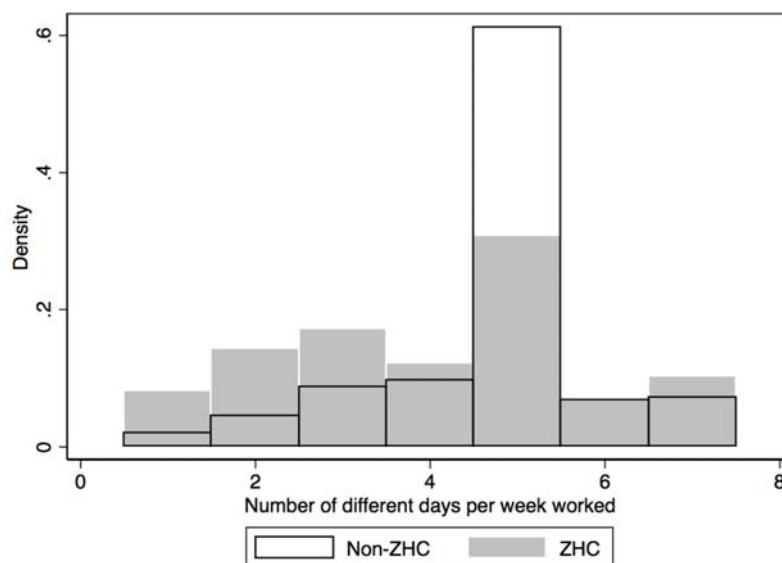


Figure 4. Number of Days per Week Worked, Oct-Dec 2016



Source: Author Calculations from Labour Force Survey

Underemployment. There is compelling evidence of underemployment amongst workers on ZHCs. A quarter (25%) of those on ZHCs want to work more hours compared with 9% of people in employment not on these contracts. 9% of those doing zero-hours work would like a different job with more hours compared with 1% for other people in employment, while the remainder would like more hours in their current job or an additional job. Disaggregating underemployment figures by key worker characteristics is suggestive that while underemployment is a problem across all groups, men, immigrants and those with disabilities (according to Equality Act 2010 criteria) are particularly affected. While men and women employed on other types of contracts are equally likely to report being underemployed, women on zero-hours contracts are less likely to be underemployed than men suggesting that some women who want low hours might be selecting into this form of work. There is also some suggestion that a similar phenomenon might be at work with students.

Table 6. Underemployment by Worker Characteristics, Oct-Dec 2016

	ZHC	Non-ZHC
<i>Age</i>		
Younger workers	31%	15%
Older	22%	7%
Diff	9%**	8%***
<i>Gender</i>		
Female	22%	9%
Male	29%	7%
	-7%**	2%***
<i>Disabled</i>		
Disability	31%	10%
No Disability	24%	8%
	7%*	2%***
<i>Immigrant</i>		
Migrant	33%	11%
Not Migrant	23%	8%
Difference	10%**	3%***
<i>Student</i>		
Student	26%	12%
Not Student	24%	8%
Difference	2%	4%***

Source: Author's calculations from the Labour Force Survey

iii. Worker Characteristics

Here, we focus on whether zero hours work is associated with particular groups of workers (such as migrant workers, or those in particular sectors). In short, those doing zero-hours work are more likely to be young, migrants and either still studying or less educated.

The relationship between age and work under zero-hours arrangements is particularly striking. A third of zero-hours works are aged under 25, and 8% of those employed in this age group work on a zero-hours contract compared to 2% of those aged 25 and over.

Figure 5a. Age Distribution of ZHC Workers

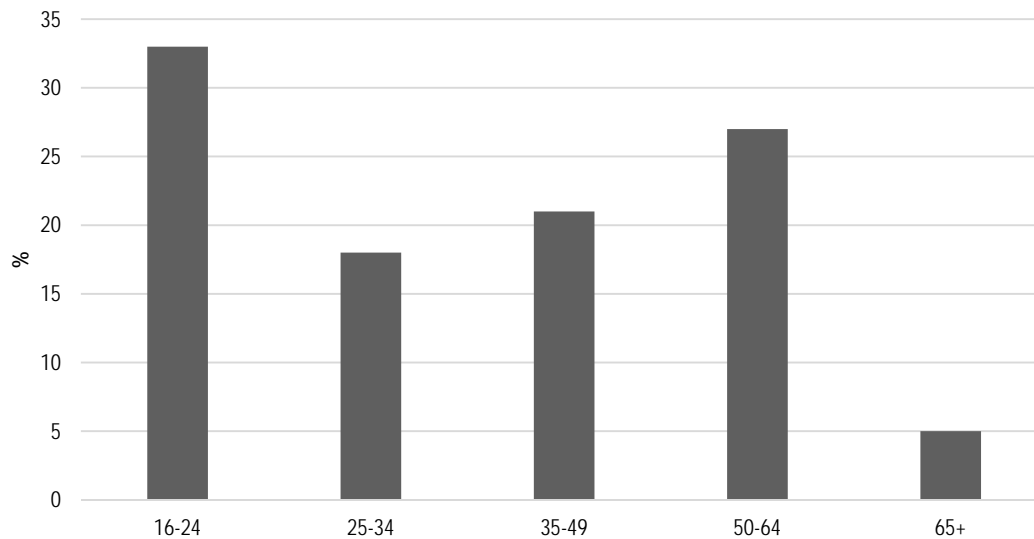
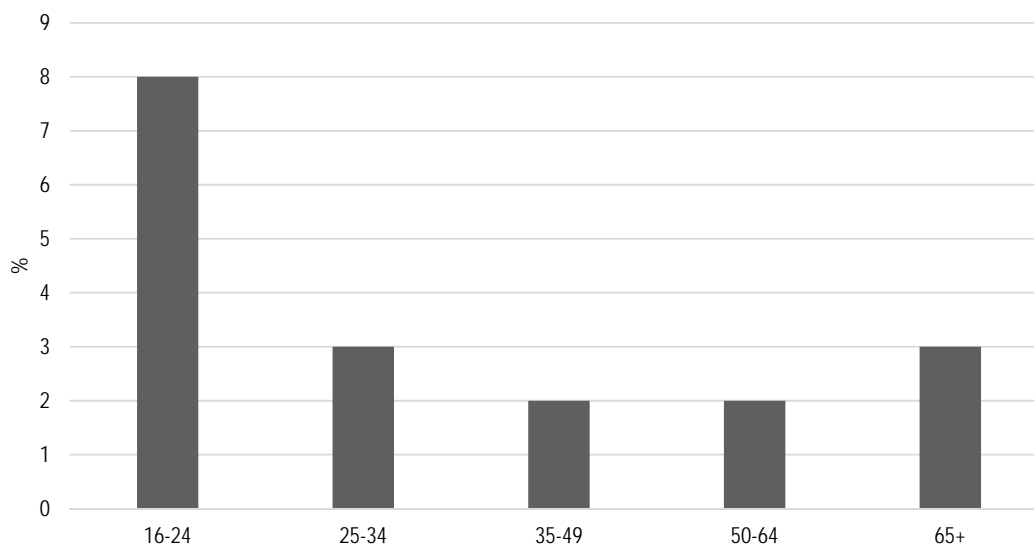


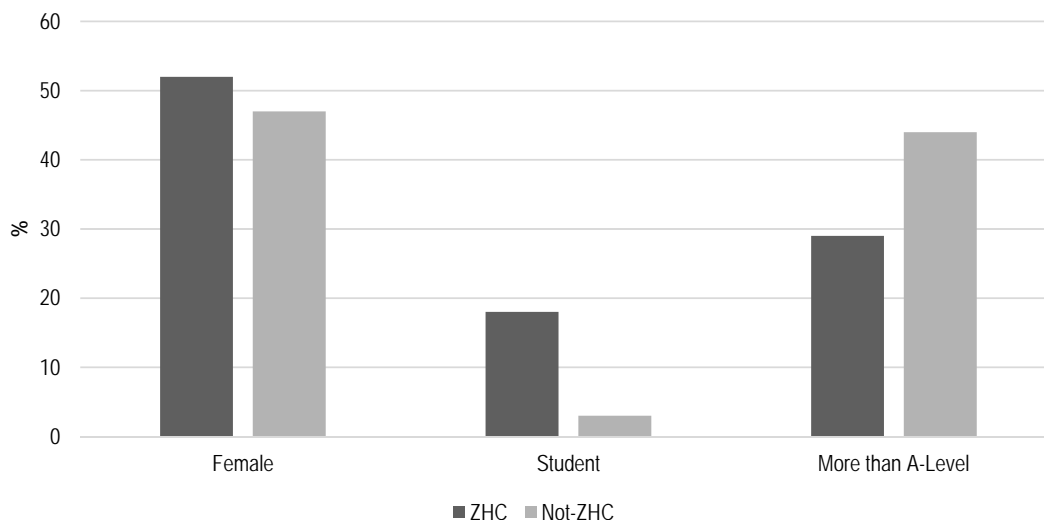
Figure 5b. % Workers in Each Age Group on ZHC



Source: Author Calculations from Labour Force Survey

Women, students and those with lower education are over-represented among zero-hours contract workers. However, it is important to note that zero-hours arrangements still account for a relatively small share of overall employment for most groups. While 52% of zero-hours workers are women, only 3% of women in employment are on a zero-hours contract. However, for students, zero-hours work does account for a bigger share of overall employment: 8% of students in work are employed on zero-hours arrangements.

Figure 6. Characteristics of ZHC Workers, Q4 2016



Source: Author Calculations from Labour Force Survey

To control for the impact of various characteristics simultaneously, we run a multivariate logistic regression of an indicator of whether an individual was employed on a zero-hours contracts on various characteristics. An odds ratio of more than one indicates that workers with this characteristic are more likely to work under a zero-hours arrangement. An odds ratio of less than one indicates that workers with this characteristic are less likely to work under a zero-hours arrangement. We give results with and without controls for industry and occupation.

The most salient themes match those of our graphical analysis: that zero-hours work is much more common amongst workers under age 25, current students, and, amongst those who have finished studying, those who do not have any qualifications higher than A-Levels (awarded at age 18 in the UK). There is also evidence for the work arrangement being more prevalent amongst those classified as disabled according to Equality Act 2010 criteria; 16% of those on zero hours arrangements are classified as disabled under this measure, compared to 12% employed on other types of contract. Non-native UK workers are also disproportionately employed on ZHCs; 20% of workers on ZHCs were born outside the UK compared to 15% on other types of contract. Those who self-identify with a non-white ethnicity are similarly over-represented amongst zero-hours work (14% to 10%). Women are more likely to be working under zero-hours arrangements but this is largely because the industries and occupations that women work in are more likely to use zero-hours contracts. Controlling for industry and occupation in the second column of Table X results in the relationship between women and zero-hours arrangements becoming insignificant.

Table 6. ZHC Worker Characteristics, Logistic Regression

ZHC	(1) Odds Ratio (Std Error)	(2) Odds Ratio (Std Error)
Age 16-24	3.89*** (0.43)	2.72*** (0.34)
Age 25-34	1.56*** (0.17)	1.42*** (0.17)
Age 50-64	1.38*** (0.15)	1.33** (0.16)
Age 65+	1.42* (0.28)	1.78*** (0.38)
More than A-Levels	0.59*** (0.05)	1.03 (0.10)
Student	2.06*** (0.20)	1.84*** (0.20)
Female	1.23*** (0.08)	0.95 (0.08)
Disability	1.60*** (0.15)	1.39*** (0.14)
Immigrant	1.58*** (0.16)	1.26** (0.14)
Non White	1.30** (0.15)	1.24* (0.16)
Children	0.95 (.15)	0.94 (0.08)
Constant	0.01 (0.00)	0.08 (0.12)
Industry & Occupation	✘	✓
N	33,334	28,540
Pseudo R ²	0.0593	0.1419

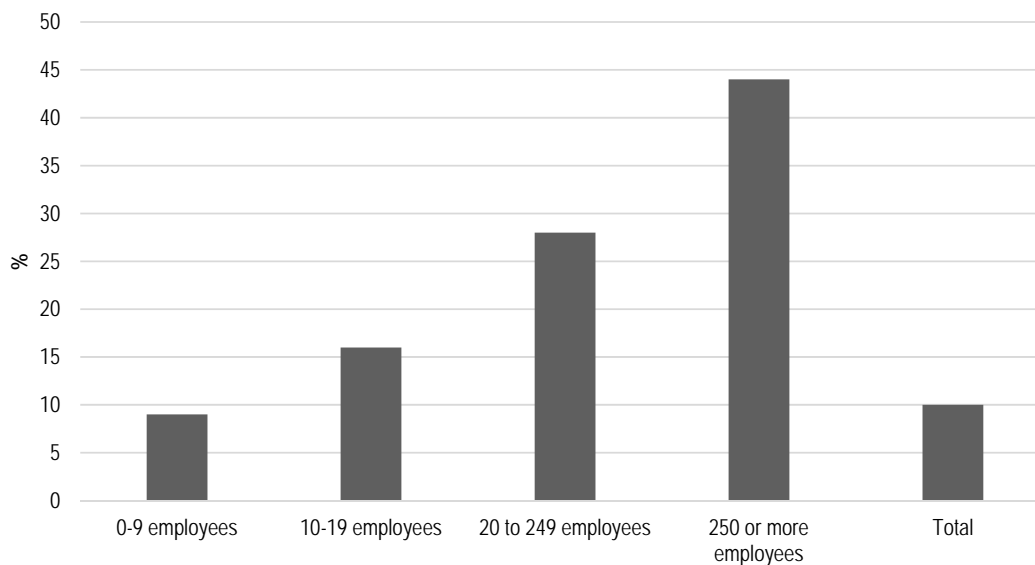
Benefit Receipt. Workers on zero-hours contracts are more likely to be in receipt of some state benefits compared to those not on these contracts. 30% of those working on zero-hours contracts are in receipt of benefits compared to 25% of workers employed under alternative work arrangements. We will return to a wider discussion of this point in Section 3.

Unionisation. Unionisation rates are lower amongst zero-hours workers. 22% of workers employed on other types of contracts are a member of a trade union, compared to only 8% of workers employed on zero-hours contracts. The negative association between zero-hours work and unionisation continues to hold even after controlling for worker characteristics, industry, and occupation.

iv. Employer Characteristics

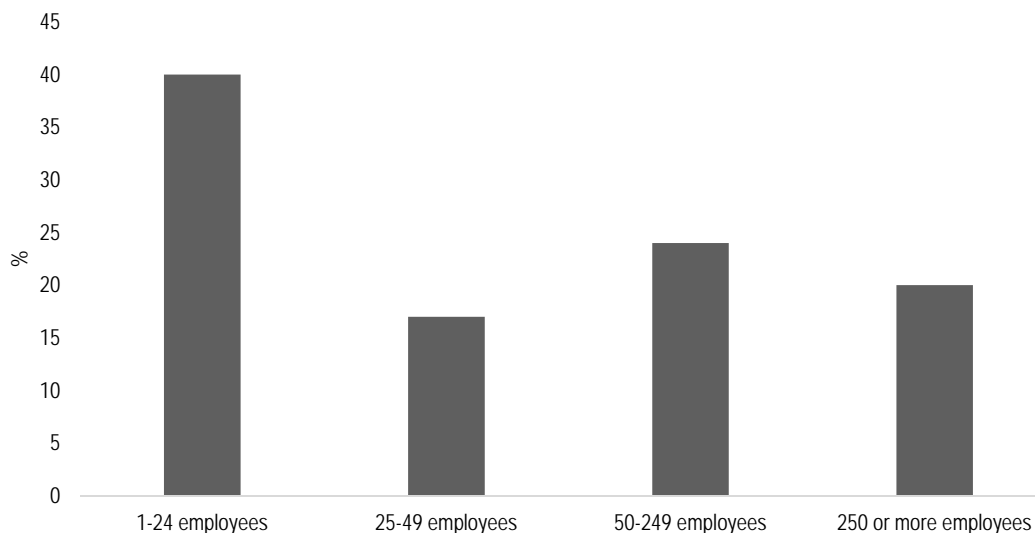
Zero-hours contract workers are more likely to be found in small firms – 40% of those employed on zero-hours contracts in October-December 2016 were in firms with fewer than 25 employees. 20% of zero-hours workers were in the smallest category of firm size, at firms with fewer than 10 employees. However, it seems that a higher proportion of very large firms make use of zero-hours contracts than smaller firms (there are just few large firms in the UK).

Figure 7a. Proportion of Businesses Making Some Use of NGHCs by Business Size, Nov 2015



Source: ONS Business Survey

Figure 7b. Distribution of ZHCs by Firm Size, Oct-Dec 2016



Source: Labour Force Survey

We gave the breakdown of zero-hours contracts by industry earlier in this section, finding that they are particularly prevalent in Health & Social Care and Accommodation and Food. Zero-hours arrangements also appear relatively more common in private than public-sector organisations; 13% of zero-hours workers are employed in the public sector compared to 23% of workers on other types of arrangements.

Agency Work. There is an important overlap between agency work and zero-hours arrangements. 10% of workers employed by agencies are on zero-hours arrangements. Thus, hybrid forms of work organisation are possible. Agency-ZHC work seems to be particularly important in the care sector. 30% of care workers employed through agencies are on zero-hour contracts according to the LFS.

v. Social Care

Given the heavy use of zero-hours contracts in the care sector, we provide a more in-depth study of their use and characteristics in the sector. Skills for Care administrative data reveal that approximately a quarter of all social care workers were employed on zero-hours contracts in 2015/16 (see Table 3). This is more than estimated in the LFS or ONS Business Survey which might again give reason to believe that these sources continue to underestimate the prevalence of zero hours work arrangements.

Domiciliary Care. Zero-hours contracts are particularly concentrated within care workers as opposed to managers or administrative staff. Further they are very common within adult domiciliary care (care given within an individual's own home). In 2015/16, a large 58% of care workers and 57% of registered nurses working in domiciliary care were employed on zero hours contracts.⁵⁰ 80% of domiciliary care workers on zero hours contracts were employed on a permanent basis on these contracts. There is also some evidence that zero-hours contracts are clustered within particular types of provider. Unison and a review for the Department of Health found that a large number of independent domiciliary care providers used zero hours contracts for all staff but this was not the case for local authority providers.⁵¹

Zero-hours contracts are sometimes justified as arising from employers need for flexibility, enabling them to scale the size of their workforce to fluctuating demand. While demand for social care is systematically high and constant across the week, homecare is time and location specific with some peaks and troughs over the day. This feature of service delivery combined with 'chronic underfunding' and the commissioning model used by most local councils leads to the use of zero-hours arrangements.

The majority of workers in social care are employed by private firms. However, as the UK Homecare Association explains, 'local councils buy around 70% of all homecare, meaning that they effectively have a near monopsony of purchasing power in their local care market. The purchasing decisions of councils, and the available funding from central government, largely determine the operation of the sector.'⁵²

It is widely acknowledged that councils do not usually pay for travel time; research by Unison suggests that more than 65% of councils only pay for the time a carer actually spends in a service user's home. Funding pressures have led councils to freeze the fees they pay to providers or providing only nominal annual increases.⁵³ Care providers have been 'very clear' in arguing that the use of zero-hours contracts is necessary because of the extremely low rates that local authorities pay for care, and the practise of councils paying for care by the hour.⁵⁴ Indeed, 'the majority of providers told [the UK Homecare Association] that their services would be unsustainable on the current levels of funding, without the use of zero hours contracts.'⁵⁵ There is thus little if no scope for many providers to remunerate workers fully for travel and on-call time. In addition to likely resulting in the use of ZHCs, as we will discuss further in Section 4, this practise has led to violations of National Minimum Wage regulations.

⁵⁰ Skills for Care, *The state of the adult social care sector and workforce in England* (Skills for Care 2016).

⁵¹ Unison, *Outsourcing the Cuts: Pay and Employment Effects of Contracting Out* (The Smith Institute 2014).

⁵² C Angel, The use of zero hours contracts in the homecare sector (Acas Blog 2014) <http://m.acas.org.uk/index.aspx?articleid=4901>

⁵³ House of Common Communities and Local Government Committee, *Adult Social Care: Ninth Report of Session 2016-17*, HC 1103 March 2017.

⁵⁴ Angel (n 52).

⁵⁵ *ibid.*

3. The Impact of Zero-Hours Work

In the third section of this report, we complement the numerical evidence just set out with an extended analysis of the effects of zero-hours work for workers, employers, and society more broadly. Our focus is not limited to the legal situation of those working under such arrangements, but also includes questions of social security entitlements, and wider implications for business flexibility, cost savings, and productivity growth.

a. What's the Counterfactual?

Before turning to a detailed discussion of the benefits and limitations of zero hours work for key stakeholders, we first explore the important issue of what constitutes the relevant counterfactual. While there might be drawbacks to the use of zero hours working arrangements, it might be the case that they are preferable to the alternatives that would exist in their absence. Some job is often thought better than no job at all.

Indeed, flexible work arrangements such as zero hours are suggested by some to have contributed to the UK's 'employment miracle' since the financial crisis. The UK employment rate is now at its highest level since records began at 74.6% of the working age population. As zero hours arrangements enable firms to take on workers with limited risk if demand falls short of expectations, there might have been higher unemployment over the recession if such work arrangements were not available. The CBI, for example, predicts that unemployment would have risen by an extra 500,000 people had firms not been able to resort to these work arrangements.⁵⁶ This is supported by evidence that a third of all workers and more than half of workers between 16-24 years old say that they are on these contracts because they cannot find a job with regular fixed hours.⁵⁷ This is important because a large body of research highlights the long-term damage of unemployment spells for individuals and society as people lose skills, lose confidence, and face difficulty returning to employment.⁵⁸

Zero hours arrangements might also function as a stepping-stone to 'better' employment. The Government consultation, for example, argues that ZHCs provide people with "opportunities to enter the labour market and a pathway to other forms of employment."⁵⁹ It is thus plausible that for certain groups of individuals facing a lacklustre labour market, the opportunity to work on a zero hours contracts represents a real benefit over the alternatives available.

However, that being said, there is evidence that zero hours contracts are used by some employers not because positions that guarantee hours are economically unviable but rather because of poor management practises. As we will explore in Section 3(b), many businesses stress that there exist more efficient means of workforce management. Many CEOs and HR managers interviewed as part of an independent review on zero hours contracts in the UK argued that, in the current economic climate, reliance on zero hours contracts represents "lazy management", an "unsophisticated way of managing workplace flexibility", and an "ineffective way of motivating people".⁶⁰

Further, the link between forms of temporary and causal work and positive future labour market outcomes is weak. Indeed, economists David Autor and Susan Houseman found that temporary help placements might even *harm* subsequent employment and earnings outcomes in their study of the Work First programme in Michigan.⁶¹ According to Norman Pickavance, the lack of training and the emergence of a two-tier workforce that can be associated with reliance on zero hours arrangements have 'broken' the

⁵⁶ <http://www.publicsectorexecutive.com/Public-Sector-News/vital-role-for-zero-hours-contracts-cbi->

⁵⁷ Pickavance 5.

⁵⁸ See, e.g. D Bell and D Blanchflower (2011), 'Young People and the Great Recession', *Oxford Review of Economic Policy*, 27(2); W Aruampalan, A. Booth and M. Taylor (2000), 'Unemployment Persistence', *Oxford Economic Papers* 52.

⁵⁹ Consultation 13.

⁶⁰ Pickavance 13.

⁶¹ D Autor and S Houseman, 'Do Temporary-Help Jobs Improve Labour Market Outcomes for Low-Skilled Workers? Evidence from "Work First"' (2010) *American Economic Journal: Applied Economics* 2.

ladders that normally allow people to progress through the ranks of an organisation.⁶² Thus, it is not unambiguously clear that zero-hours contracts necessarily have a positive effect on future labour market prospects.

With the difficulty of the counterfactual point raised, we now turn to a detailed discussion of the benefits and costs of zero hours work arrangements for workers, businesses, and society at large.

b. Workers

Zero-hours work arrangements are simultaneously lauded as good and bad for workers. On the positive side, employment on zero hours work arrangements is argued to reflect a ‘preference for flexibility’ amongst students, older workers, and women with care giving responsibilities. Further, as mentioned above, employment on a zero hours contract might be better than no employment at all. However, workers are subject to much greater income risk on these contracts and face greater uncertainty over the scope of their employment rights. Difficult questions also arise in relation to the social security system, particular as part of the on-going shift to the so-called Universal Credit (‘UC’) system, and broader issues from work-life balance to worker health.

i. Flexibility?

In principle, zero-hours arrangements allow individuals a greater say over when and how much they work. In theory they permit, for example, students to fit in paid employment while studying and allow women to work around childcare duties. There is evidence that a preference for flexibility is relevant for some workers. For example, a CIPD study suggested that 47% of workers were ‘very satisfied’ or ‘satisfied’ with having no guaranteed hours.⁶³ Interview responses to a Resolution Foundation study in 2013 also suggested that certain types of workers valued these work arrangements, whilst acknowledging that they would not suit everyone:

“I really value the flexibility of working on zero hours because it allows me to fit other things into my life and if I don’t get enough hours one week I can always make them up the next by taking on more. I can see that for families with a mortgage the situation would be seriously nerve wracking and of course I have to trust my line manager to deliver those hours and that’s far from ideal but it has worked for me so far.”

(Male domiciliary care worker, Edinburgh)⁶⁴

However, it is important to note that flexibility is not a universally valued characteristic. In the CIPD study quoted above, 27% reported that they were ‘very dissatisfied’ or ‘dissatisfied’ with having no guaranteed hours.⁶⁵ Recent academic evidence also suggests that the great majority of workers do not value flexible working arrangements; most workers are not willing to pay for flexible scheduling and traditional Monday-Friday 9-5pm schedules are preferred by most job seekers.⁶⁶

There is also some uncertainty as to the extent to which zero-hours work is genuinely flexible for workers. Acas argues that the problem of “effective exclusivity clauses” is a “very major concern”.⁶⁷ Their experience suggests that workers are often frightened to turn down work in case their employer starts ‘zeroing in’ on their hours. They conclude that these anxieties “reflect the imbalance of power between the worker and the employer in these contractual arrangements as workers are also fearful of raising

⁶² Pickavance 12.

⁶³ CIPD, Labour Market Outlook 2013.

⁶⁴ Matter of Time 16.

⁶⁵ CIPD, Labour Market Outlook 2013.

⁶⁶ A Mas and A Pallais, ‘Valuing Alternative Work Arrangements’, Working Paper.

⁶⁷ Acas, ‘Give and take? Unravelling the true nature of zero-hours contracts’ (2014) *Acas Policy Discussion Papers*.

queries regarding their rights and entitlements.”⁶⁸ A union representative interviewed as part of a wider study of zero-hours contracts in the UK retail sector explains that:⁶⁹

“People will do their utmost to do the extra hours and will allow themselves to be bullied into working days they don’t really want to work or shifts that they don’t really want to work. A lot of them are actually struggling to get childcare in place and things because they are terrified of not getting any more shifts and being stuck with this three-and-a-half or seven hours a week, which they’ve gotta live on . . . so I’ve known managers to say, ‘look if you don’t do the shift tomorrow, I won’t offer you any more’.

The power that schedule flexibility places in the hands of managers is an emerging theme from the academic and media coverage. One university academic comments that: “The whole thing is completely dependent on my relationship with the course leader. If the course leader changed, I could lose it all.” These arrangements thus contribute to employment relationships based upon ‘grace and favour’, which involve ‘ingratiating yourself to be given teaching the next year’.⁷⁰ Giving evidence to a Parliamentary Inquiry into the use of zero-hours contracts at a UK retail firm, Steve Turner, the Assistant General Secretary at Unite the Union argues:

“It is not just about insecurity. It is also about no guarantee on hours, giving absolute control to the employer [...] There is no process; there is no access to justice. Even though on paper you may be regarded as an employee and able to access, if indeed you can afford it, the employment tribunal system, the reality is, for most zero-hour workers and short-hour workers, you are simply denied work if you raise a grievance or raise a concern with your employer.”⁷¹

The characterisation of zero hours work arrangements as flexible, casual arrangements is also challenged by their permanency over time. As discussed in Section 2, many zero hours workers have been in their position for years and describe their job as permanent and full-time. Reports by the Resolution Foundation and Acas challenge the notion of zero hours contracts as always corresponding to typical notions of causal work. On the basis of analysis of calls to their helpline and independent research, Acas concludes that: “Any casualisation may, therefore, says as much about the specific terms of their contract and the way they are being used, rather than the nature of the work itself or hours worked.”⁷²

ii. Income and Social Security

Variation in hours translates directly into variations in pay for zero-hours contract workers. This is likely to be a particular challenge for workers who rely on such work for their main source of income, especially given the low rates of pay associated with such jobs. Forty percent of respondents to the CIPD study had ‘no notice’ when no further work was available from their employer.⁷³ This understandably causes budgeting difficulties for some workers as described in interview responses to a Resolution Foundation study:⁷⁴

“Many of my colleagues who are raising families have got into serious debt from working on zero-hours contract because they cannot be sure what they’ll get in each month. Those who’ve avoided debt have done so by living with parents, drawing on savings, having redundancy pay from previous jobs to fall back on or

⁶⁸ Acas, ‘Give and take? Unravelling the true nature of zero-hours contracts’ (2014) *Acas Policy Discussion Papers* 7.

⁶⁹ A Wood, ‘Flexible scheduling, degradation of job quality and barriers to collective voice’ (2016) 69 *Human Relations* 1998.

⁷⁰ H Swain ‘Zero hours in Universities’ 16/09/2013 *The Guardian*. Accessed on 7/5/2017.

<https://www.theguardian.com/education/2013/sep/16/zero-hours-contracts-at-universities>

⁷¹ 55 Third Report of Session 2016–17, HC 219, 7.

⁷² Acas (n 68) 4.

⁷³ CIPD, *Labour Market Outlook* 2013.

⁷⁴ *Matter of Time* 17.

because mortgage costs are currently low. The housing round here is cheap but lots of people on these contracts wouldn't be able to survive without family support".

(Female FE lecturer, Bradford)

"You have to be really careful with money. I try to save to cover the possibility that my hours will be low one week but it's hard as the pay isn't fantastic to start with."

(Male support worker, Brighton)

Tax. Unlike self-employment, zero-hours contracts are not treated preferentially by the UK tax system.⁷⁵ However, income variation week-to-week can nonetheless mean that zero hours workers pay more tax than otherwise identical workers on fixed hours contracts. In 2017/18, the first £11,500 of income is tax-free. The basic rate of income tax is 20% and paid on income from £11,501 to £45,000. In addition, employed individuals pay (Class 1) National Insurance Contributions of 12% on weekly earnings of £157-866. One potential disadvantage for zero-hours workers is the fact that NICs contributions depend on weekly pay. Thus, even if a worker earns less than £7,500 per year, they will must pay 12% NICs in any weeks that their earnings exceed £157.

To illustrate the relevance of the NICs thresholds for zero-hours workers, consider two workers A and B paid on a weekly basis at the national minimum wage (£7.50 per hour). A is employed on a fixed-hours contract for 20 hours a week, whilst B is employed on a zero-hours contract. B alternately works 30 hour and 10 hour weeks, resulting in a weekly wage of £225 and £75 respectively. In contrast, Person A gets paid a consistent £150 every week, keeping her below the primary threshold. While both A and B work 1,040 hours per year for the same wage, person B will find herself receiving £700 net less than person A annually, as she will be liable to NICs due to her sporadic income, whilst B—with her regular, fixed pay packet—will pay none.

Income Support. Given the financial precarity of zero-hours contracts it is not surprising that they are more likely to be in receipt of government benefits. Thirty percent of zero-hours workers are in receipt of government benefits compared to 25% of workers on other types of contracts.⁷⁶ They are approximately 25% more likely to be claiming tax credits compared to workers employed on other types of contract.⁷⁷ Work related benefit payments to zero hours contract workers typically come in one of three forms: tax credits, income-based job seekers allowance (JSA) or universal credit. Universal credit (UC) is a single monthly payment for people in and out of work that will eventually replace many of the current benefits that target those with low incomes or who are out of work. As the roll-out of UC is expected to take until at least March 2022, we describe the interaction of zero hours work and the benefit system under both the pre-UC and UC regimes.

Under the pre-UC system, zero hours workers can face additional hurdles to claiming benefits because of the lack of guaranteed hours. To claim income-based JSA, an individual must not be in paid employment for more than 16 hours per week.⁷⁸ To claim tax credits, individuals must work between 16 and 30 hours a week depending on their circumstances.⁷⁹ When hours vary week-to-week, the average hours over the five weeks prior to making a claim are used as the basis for benefit entitlement. Significant variation in hours may therefore require ZHC workers to repeatedly send evidence to the Tax Credit office, and perhaps switch between JSA and tax credits or risk benefit overpayment and the risk of sanctions. A case described by the Citizens Advice Bureau describes such a situation:

⁷⁵ A Adams, J Freedman and J Prassl (2016), *Different Ways of Working* (Oxford 2016).

⁷⁶ See analysis in Section 2.

⁷⁷ Analysis of the LFS shows that 12% of ZHC workers claimed tax credits compared to 7.9% of workers on other contracts.

⁷⁸ <https://www.gov.uk/jobseekers-allowance/what-type-you-get>

⁷⁹ <https://www.gov.uk/working-tax-credit/eligibility>

“Our client works for an agency and has a zero hours contract. Initially he was provided with 5 days work per week but this has decreased and recently he has been offered anything from 2 days to 4 days per week. This has played havoc with his benefit situation. He receives working tax credit if he works 4 or 5 days but not if he works 2 or 3. His housing benefit claim is also constantly changing. Unless he gets 4 or 5 days work he is worse off in employment than when he is not working at all. He says he has been told by the Job Centre Plus that if he leaves his job he will be sanctioned for 6 months.”⁸⁰

The Universal Credit system will replace six different benefits with a single monthly payment. It is designed to be more responsive to changes in earnings, using real time information from employer payrolls, and is not associated with weekly hours worked limits. The level of payment is determined by earnings in the previous month. While this streamlined process is considered more efficient, there is a concern that benefit payments might fall short for workers with highly variable hours and volatile monthly earnings. While the hope is that hours variation will net out over a month, there is currently not sufficiently detailed statistics to know if this is in fact the case for the average zero hours contract workers on benefits.

As UC benefit payments are conditioned on income some of the difficulties noted with the current Tax Credit system are avoided. However, while there are no hours thresholds with UC, individuals must accept a ‘Claimant Commitment’. This commitment is drawn up alongside a ‘work coach’ at the local job centre. It requires unemployed individuals to set out how they will transition into work and, for low income individuals in work, it must present a plan for them to increase their earnings.⁸¹

UC benefits can be cut, by hundreds of pounds a month for up to three years, if claimants do not meet their responsibilities. This is referred to as a ‘sanction’. Unemployed individuals, or those working part time, can face sanctions for failing to accept zero hours work. In 2014, Esther McVey MP, then Minister for Employment, stated benefits could be cut for failing to accept zero-hours work:

“We believe that jobseekers on any benefit should do all they reasonable can to get into paid employment...We do not consider zero hours contracts to be – by default – unsuitable jobs. ...So in Universal Credit our coaches can mandate zero hours contracts.”⁸²

(Minister for Employment, 2014)

Those currently in-employment on zero hours work arrangements have also raised difficulties with the UC system. A cross university study, funded by the UK Economic and Social Research Council, notes that the inflexibility of the current system creates challenges for those on ZHCs. Appointments with work coaches can rarely be changed to accommodate varying work schedules. A mismatch between work coach expectations and the reality of contemporary workplaces is also said to generate unrealistic expectations of the hours and income that individuals can expect to make under zero hours arrangements.⁸³

“I was working at the time...it was something like: ‘we’re going to charge you £10 a day for seven days’ and I said, ‘What, you’re going to fine me £70 for missing an appointment that I couldn’t even ring you to tell you that I’d be late?’

(UC recipient)

⁸⁰ Citizens Advice Bureau, Press Release: Citizens Advice Bureau warns on zero hours contracts, 2013

<https://www.citizensadvice.org.uk/about-us/how-citizens-advice-works/media/press-releases/citizens-advice-warns-on-zero-hours-contracts/>

⁸¹ <https://www.gov.uk/universal-credit/overview>

⁸² Letter from Esther McVey MP to Sheila Gilmore MP, 1st March 2014.

<http://web.archive.org/web/20140506090500/http://www.sheilagilmore.co.uk/wp-content/uploads/2014/03/GILM0200202140092020020092.pdf>

⁸³ Welfare Conditionality Project, Written evidence from the Welfare Conditionality Project: Sanctions, Support and Behaviour Change; Submission to Work and Pensions Select Committee Inquiry, Jan 2016 <http://www.welfareconditionality.ac.uk/wp-content/uploads/2016/07/Commons-Work-Pensions-Cttee-UC-Inquiry.pdf>

Sanctions are regularly applied in the context of the UK benefit system and thus the concerns above are not ‘academic’. As sanction statistics are not yet published for UC, we give the figures for JSA to provide some context. 800,000 individuals were referred for benefit sanctions relating to out-of-work and low income benefits in 2015.⁸⁴ 24% of all JSA claimants were sanctioned between 2010 and 2015. Eleven to 26% of JSA sanctions were overturned when challenged. The only statistics currently available about UC sanctions relates to the long waiting time for decisions on sanctions being overturned: 42% of UC referrals took longer than a month in 2015.

Pensions Since 2012, UK employers have had a duty to automatically enrol eligible workers into a pension and make contributions towards the scheme in a bid to encourage individuals to save more for retirement. Automatic enrolment duties apply to those aged 22 years to state pension age who are paid through payroll and earn over £192 per week or £833 a month. These duties also apply to zero-hours workers so long as they meet the earnings threshold.

However, Government guidance suggests that there is some confusion amongst firms as to their duties for workers whose pay fluctuates around the relevant thresholds.⁸⁵ Even if a zero-hours worker earns less than the annual threshold, the relevant pay reference period is usually held to be a week for such workers.⁸⁶ The first time that a worker earns more than £192 in a week, they should be auto-enrolled. Only when the worker’s earnings fall below £113 a week are employers not required to contribute.⁸⁷ There is also the potential for employers to postpone automatic enrolment if they anticipate that a worker will be on payroll for less than 3 months. However, zero-hours workers must be enrolled once that three month period has ended.

iii. Legal Implications

In 2013, the UK government asserted that Zero-Hours Contracts ‘are legal under domestic law. If they are freely entered into, a zero hours contract is a legitimate form of contract between individual and employer.’⁸⁸ The heterogeneity in zero-hours work models we have seen thus far presents a significant challenge to this statement. In a strict technical sense, the arrangements will of course be legal, in so far as they do not contravene the (rather generous) limitations of freedom of contract found in doctrines such as illegality: the arrangements do not involve contracts involving the commission of a legal wrong,⁸⁹ or contracts contrary to public policy.⁹⁰ On the other hand, it is deeply problematic to suggest that they represent a singular form of contract: instead, a rather a wide variety along a broad spectrum of contracts can be observed.⁹¹

Mutuality and the Global Contract of Employment. The legal institution of the contract is central to English employment law.⁹² Through the dramatic increase of legislative activity in the labour market from the second half of the twentieth century onwards,⁹³ contract has become the key legal relationship which confers an externally defined employment status on its parties. This latter function as a gateway to statutory rights and duties is illustrated in the interpretative provisions of the Employment Rights Act 1996, which simply provide that “‘employee” means an individual who has entered into or works under

⁸⁴ National Audit Office, Benefit Sanctions Report, November 2016. <https://www.nao.org.uk/report/benefit-sanctions/>

⁸⁵ Pensions Regulator, Automatic Enrolment: Compliance and Enforcement: Quarterly Bulletin 1 April-30 June 2015.

⁸⁶ Pensions Regulator, Detailed Guidance 75.

⁸⁷ Pensions Regulator, Employing staff on irregular hours or incomes <http://www.thepensionsregulator.gov.uk/employing-staff-on-irregular-hours-or-incomes.aspx#s20802>

⁸⁸ Consultation 13.

⁸⁹ E Peel, *Treitel's Law of Contract* (13th ed, Sweet & Maxwell 2011) [11-011] ff.

⁹⁰ *ibid* [11-032]ff. See also Deakin and Morris (n 2) 156-159.

⁹¹ See A Adams, M Freedland and J Prassl, ‘The Zero Hours Contract: Regulating Casual Work or Legitimizing Precarity’ (2015) *Giornale di Diritto del Lavoro e di Relazioni Industriali* 529.

⁹² M Freedland, *The Contract of Employment* (OUP 1976); J Prassl, ‘The Notion of the Employer’ (2013) 129 *LQR* 380, 381-382.

⁹³ S Deakin, ‘The Evolution of the Contract of Employment, 1900 to 1950 - the Influence of the Welfare State’ in N Whiteside and R Salais (eds), *Governance, Industry and Labour Markets in Britain and France - The Modernising State in the Mid-Twentieth Century* (Routledge 1998) 225.

[...] a contract of employment.’⁹⁴ Large parts of the British system of labour market regulation are thus designed to hinge on this status, the definition of which is left to the common law.⁹⁵

Over more than a century, a considerable amount of case law and scholarship has built up to develop, adapt and refine a series of common law tests to determine on which side of the ‘binary divide’ or the more recent tri-partite scheme of employees, workers and the self-employment any given individual should fall.⁹⁶ Under the prevailing common law tests, zero-hours arrangements could lead to a series of different classifications – and thus degrees of statutory protection – including certain scenarios which fall completely outside the scope of employment protective norms.

The primary reason behind this is the requirement of mutuality of obligation.⁹⁷ In *Nethermere v Gardiner*, Dillon LJ summarised earlier case law and suggested

that there is one *sine qua non* which can firmly be identified as an essential of the existence of a contract of service and that is that there must be mutual obligations on the employer to provide work for the employee and on the employee to perform work for the employer. If such mutuality is not present, then either there is no contract at all or whatever contract there is must be a contract for services or something else, but not a contract of service.⁹⁸

It is often assumed that mutuality of obligation has thus become a significant hurdle in establishing such a relationship, either by denying a ‘global’ or ‘umbrella’ contract necessary to clear statutory temporal qualification thresholds, or by attacking the very classification of the work undertaken as employment due to the absence of future commitments.⁹⁹

Upon closer inspection, however, that concept, whilst continuing to be problematic, is frequently in much less aggressive use than may be presumed from an initial reading of these leading cases. Lord Hoffmann in *Carmichael*, for example, warned that ‘in a case in which the terms of the contract are based upon conduct and conversations as well as letters’ the Courts should not ignore evidence of the reality of what happened between the parties.¹⁰⁰ Indeed, even *O’Kelly* itself could be characterised as a misinterpretation of the earlier decision in *Nethermere*,¹⁰¹ driven primarily by jurisdictional questions about the reviewability of the industrial tribunal’s findings.¹⁰²

It is unsurprising therefore that in the more recent decision in *Cotswold Developments v Williams*, Langstaff J (as he then was) expressed his concern that Tribunals may

have misunderstood something further which characterises the application of “mutuality of obligation” in the sense of the wage/work bargain. That is that it does not deprive an overriding contract of such mutual obligations that the employee has the right to refuse work. Nor does it do so where the employer may exercise a choice to withhold work. The focus must be upon whether or not there is some obligation upon an individual to work, and some obligation upon the other party to provide or pay for it.¹⁰³

⁹⁴ ERA 1996, s 230(1).

⁹⁵ The same is true for the more recent notion of the worker: *ibid*, s 230(3).

⁹⁶ For a full overview, see Deakin and Morris (n 2) 145ff.

⁹⁷ *ibid* 164-8. Though cf now N Countouris ‘Uses and Misuses of “Mutuality of Obligations” and the Autonomy of Labour Law’ in A Bogg, C Costello, A Davies and J Prassl, *The Autonomy of Labour Law* (forthcoming Hart 2014).

⁹⁸ *Nethermere (St Neots) Ltd v Gardiner* [1984] ICR 612 (CA) 632F-G.

⁹⁹ Deakin and Morris (n 2) 165.

¹⁰⁰ *Carmichael v National Power Plc* [1999] UKHL 47, [1999] 1 WLR 2042, 2050G. See also *O’Kelly v Trusthouse Forte Plc* [1984] QB 90 (CA).

¹⁰¹ Where ‘evidence of the absence of any strict legal obligation to offer or carry out homeworking was countered by an evaluation of the practice of the parties which had evolved over a period of time’: P Leighton, ‘Employment Status and the “Casual Worker”’ (1984) 13 ILJ 62, 65.

¹⁰² See further H Collins, ‘Employment Rights of Casual Workers’ (2000) 29 ILJ 73, 75.

¹⁰³ *Cotswolds Developments Construction Ltd v Williams* [2006] IRLR 181 (EAT) [55].

This sensitivity of the mutuality of obligation criterion to a wide range of factual variation can be seen in operation in the EAT's decision in *St Ives*, which found that whilst the work had been characterised contractually as a zero-hours arrangement, there 'were mutual obligations subsisting between the employer and the employee during periods when the employee, a casual worker, was not actually engaged on any particular shift'.¹⁰⁴ This was primarily due to the tribunal's findings of a long and well-established regular work pattern, with the employer on one occasion even taking disciplinary action against the casual worker's violation of that pattern.¹⁰⁵ As Elias J (as he then was) noted, 'a course of dealing, even in circumstances where the casual is entitled to refuse any particular shift, may in principle be capable of giving rise to mutual legal obligations in the periods when no work is provided.'¹⁰⁶

Even through an application of the mutuality of obligation test for employment status, it is therefore entirely possible that an individual working under a zero-hours contract could be classified as an employee under section 230 ERA. Such an outcome, however, would be heavily dependent on the precise facts of each individual case. It would, furthermore, and somewhat counter-intuitively, be dependent on level of precarity in any one work setting: the less stable or secure the arrangement, the higher the chance that it would fail to be classified as a contract of employment.

Workers' Contracts and Sham Arrangements. Where a zero-hours contract worker is found not to be working under a contract of employment, there remains a secondary gateway into (a smaller set of) basic employment rights. Statutory employment law has reacted to the increasing heterogeneity of work through a proliferation of additional categories,¹⁰⁷ including notably the worker concept in the sense of section 230(3) ERA, introduced in order to broaden the scope of basic labour standards.¹⁰⁸

The leading *dicta* on the interpretation of this status can be found in *Byrne Bros v Baird*,¹⁰⁹ a decision in the context of the Working Time Regulations 1998.¹¹⁰ Recorder Underhill QC suggested that the difference between the statuses of employee and worker was to be understood as one of degree, not kind:

Drawing the distinction in any particular case will involve all or most of the same considerations as arise in drawing the distinction between a contract of service and a contract for services – but with the boundary pushed further in the putative worker's favour. [...] Cases which failed to reach the mark necessary to qualify for protection as employees might nevertheless do so as workers.¹¹¹

Within the wide spectrum of possible factual scenarios, mutuality of obligation will therefore clearly not prove fatal for all claimants working under Zero-Hours Contracts seeking to rely on their statutory rights. Even those not found to be working under a contract of employment will frequently be able to have recourse to at least the set of rights protected under a worker's contract.¹¹²

The discussion thus far, however, has omitted one particular factual scenario, *viz* where employers have begun to react to the changing legal landscape of worker protection,¹¹³ and inserted explicit 'no mutual

¹⁰⁴ *St Ives Plymouth Ltd v Mrs D Haggerty* [2008] WL 2148113 [1], [33].

¹⁰⁵ *ibid* [9].

¹⁰⁶ *ibid* [26].

¹⁰⁷ For an extended discussion of employment status in English law, see J Prassl, 'Employee Shareholder "Status": Dismantling the Contract of Employment' (2013) 42 ILJ 307, 326ff, on which parts of the present discussion draw.

¹⁰⁸ Workers are there defined as those working (a) under a contract of employment or (b) any other contract [...] whereby the individual undertakes to do or perform personally any or work or services for another party to the contract [...].

¹⁰⁹ *Byrne Bros (Formwork) Ltd v Bard and others* [2002] ICR 667 (EAT). This case was approved in its basic approach by the Court of Appeal in *Redrow Homes (Yorkshire) Ltd v Wright* [2004] EWCA Civ 469, [2004] ICR 1126 (though with some reservations as regards the overall purposiveness of the approach to be taken: [21]).

¹¹⁰ Working Time Regulations 1998, SI 1998/1833. The worker definition can be found in reg 2(1).

¹¹¹ *Byrne* (n 109) [17].

¹¹² Including notably the Working Time Regulations 1998 (n 110) and the National Minimum Wage Act 1998. This position has been thrown in doubt by some of the most recent cases in this area, as discussed extensively in J Prassl, 'Who is a Worker' (2017) 133 LOR (forthcoming).

¹¹³ *Stevedoring and Haulage Services v Fuller* [2001] IRLR 627 (CA).

obligations' clauses into standard form contracts with Zero-Hours workers. This appeared for a while to be able successfully to deny any employment status, because '[s]o long as a document is clearly detailed, drafted and the worker signs freely [...] it seem[ed] unlikely that employee status can be successfully asserted by the worker.'¹¹⁴

Today, however, this technique may no longer be successful, especially in the case of zero-hours clauses. In *Autoclenz*, the Supreme Court famously addressed the issue of such explicit clauses (including 'no-mutuality' terms), and suggested that in case of any deviation in practice from a written Zero-Hours clause, effect could be given to the parties' 'actual legal obligations'.¹¹⁵ This was in large part due to the realisation of the relational inequality inherent in 'the relative bargaining power of the parties',¹¹⁶ which will be particularly stark in the sort of precarious work arrangements identified in the previous section.

As Bogg has noted, '[w]here there is other relevant evidence that the 'real agreement' differed from the signed contract, for example the subsequent conduct of the parties, the court will evaluate that evidence and determine what was agreed.'¹¹⁷ This approach can be illustrated in the recent decision of the EAT in *Pulse Healthcare*, where a preliminary question as to Zero-Hours Contract workers' employment status arose in the context of the transfer of an undertaking. The claimant care workers had provided intensive medical support under a 'Zero-Hours Contract Agreement' which 'the Employment Judge was [...] entirely justified in saying [...] did not reflect the true agreement between the parties.'¹¹⁸ The work arrangement in question was from the outset or had over time become one in which the parties are subject to some degree of continuing mutual obligation with regard to the provision of work and the doing of work as offered. 'The mere fact that an employee can object to rostered hours [...] did] not mean there is no mutuality of employment.'¹¹⁹

This line of cases is of course to be welcomed, as it ensures that a further cluster of zero-hours work arrangements is brought within the scope of statutory employment protection. At the same time, however, it is important not to overstate its potential, and to note its high degree of fact-specificity, and thus diversity of potential solutions: the finding of an *Autoclenz*-style sham will again be directly dependent on the level of precarity in any one work setting: the 'no mutuality' clause will only be disregarded if the relationship on the ground did in fact have a stable and permanent character.

The Individual Wage/Work Bargain. The final potential set or cluster of cases to be evaluated, then, are those situations where a zero-hours clause and corresponding working arrangement have in fact denied the existence of a global or umbrella contract. It is clear today that even in such scenarios, the courts will at least find the presence of a contract of employment in place during each period of work.¹²⁰ This assertion might at first sight contradict the already-discussed decision in *O'Kelly*.¹²¹ Subsequently, however, Lord Hoffmann in *Carmichael* saw no problem with each individual wage-work bargain constituting a contract, which could be classified as one of service: 'it may well be that, when performing [...] work, [the casual tour guides] were being employed.'¹²²

A short-term contract is frequently in place between the parties, and there is nothing in principle to stop it from being characterised as a contract of employment; indeed, the Court of Appeal so found in *McMeechan*.¹²³ Mutuality of Obligation similarly does not stand in the way of such a finding: as Elias J (as he then was) suggested in *Delphi Diesel*, 'The question of mutuality of obligation, however, poses no difficulties during the period when the individual is actually working. For the period of such employment a contract must, in our view, clearly exist. [...] This is so, even if the contract is terminable on either side

¹¹⁴ P Leighton, 'Problems Continue for Zero-Hours Workers' (2002) 31 ILJ 71, 74.

¹¹⁵ *Autoclenz Ltd v Belcher* [2011] UKSC 41, [2011] 4 All ER 745 [32].

¹¹⁶ *ibid* [35].

¹¹⁷ A Bogg, 'Sham Self-Employment in the Supreme Court' [2012] 41 ILJ 328, 333.

¹¹⁸ *Pulse Healthcare Ltd v Carewatch Care Services Ltd* [2012] UKEAT 0123/12/BA [35].

¹¹⁹ *ibid* [38].

¹²⁰ cf the notion of formation by conduct, Freedland (n 92) 10ff.

¹²¹ Though cf Ackner LJ's dissent: *O'Kelly* (n 100) 118H; 127B.

¹²² *Carmichael* (n 100) 2051C.

¹²³ *McMeechan v Secretary of State for Employment* [1996] EWCA Civ 1166, [1997] IRLR 353.

at will. [...] The only question then is whether there is sufficient control to give rise to a conclusion that the contractual relationship which does exist is one of a contract of service or not'¹²⁴

Each incidence of actual work might thus be regarded as taking place under the legal form of a miniscule contract of employment or miniscule 'worker's contract'. In the absence of an over-arching contract to join up those dots, however, the worker-protective consequence of such a series of contracts has been said to be 'illusory'.¹²⁵ One example of this possibility are the provisions of the National Minimum Wage Act of 1998, Regulation 3(1) of which stipulates that onsite availability should be counted as working hours. This was seen as a solution to 'one of the issues raised by an alleged abuse of the labour market, the "zero hour contract" under which the worker is required to be on site available for work, but only paid when actually working'.¹²⁶ in the Burger King scenario set out in the previous section, for example, payment could not be limited to moments actually worked whilst a worker is behind the counter.¹²⁷ The provisions nonetheless only address one part of the larger problem: if Zero-Hours Contract workers are asked to turn up, but then not offered any work for that day, their time will not be counted under the National Minimum Wage Act provisions, even though the worker may have already expended effort and incurred significant cost, from transportation to arranging child care.

The suggestion put forward by Wynn and Leighton that the courts' 'commercial reasoning if applied to contracts of zero-hours and intermittent workers would result in the denial of any contractual obligations at all',¹²⁸ is thus perhaps too stark an analysis. As courts at all levels are increasingly becoming aware of the fact that mutuality of obligation may be a 'red herring [which] hinders the tribunals from asking the relevant legal questions',¹²⁹ various clusters of zero-hours contracts can be analysed under traditional models, representing different points on a spectrum of casual work arrangements, from global or intermittent contracts of employment subject to varying degrees of employment protective norms to spot contracts for labour, which are much more difficult to classify under existing structures. At the same time, however, courts are still 'often caught between a rock and a hard place',¹³⁰ as the considerable opportunities for bringing a number of workers within the scope of employment protective regulation are but some of the points on a vast and complex fact-dependent spectrum. In law, as in fact, then, there is no such thing as *the* zero-hours contract.

In terms of legal questions, therefore, by far the most problematic technical issues arise from the fact that ZHC arrangements are in their nature apt to fall outside the worker-protective scope of key statutory employment right. The main legal problem identified by the government, on the other hand, relates to so-called exclusivity clauses. These are provisions in zero-hours contracts or arrangements whereby the worker undertakes to work exclusively for the employer in question. We return to a discussion of legislative action taken on exclusivity clauses in Section 4.

iv. Other Factors

In addition to these legal and income concerns, work under zero-hours arrangements might also have important implications for workers' career development, health and personal security. For example, a lack of training has been cited as a problem facing zero hours contract workers. This finds support in evidence from the LFS in which zero hours contract workers are 20% less likely to have been offered

¹²⁴ *Stephenson v Delphi Diesel Systems Ltd* [2003] ICR 471 (EAT) [13]-[14].

¹²⁵ Such as for example the annual leave rights in the Working Time Directive: C Barnard, 'The Working Time Regulations 1998' (1999) 28 ILJ 61, 62. Though cf now Case C-173/99 *R v Department of Trade and Industry (ex parte BECTU)* [2001] 3 CML Rev 7.

¹²⁶ B Simpson, 'The National Minimum Wage Act 1998' (1999) 28 ILJ 1, 17.

¹²⁷ Clement (n 28).

¹²⁸ M Wynn and P Leighton, 'Agency Workers, Employment Rights and the Ebb and Flow of Freedom of Contract' (2009) 72 MLR 91, 98, make an excellent comparison with *Baird Textiles Holdings Ltd v Marks & Spencer plc* [2001] EWCA Civ 274 (commercial dealings could be stopped without notice, as there was no 'framework' or 'umbrella' contract in place).

¹²⁹ Collins (n 102) 74.

¹³⁰ H Collins, 'Book Review: D McCann *Regulating Flexible Work* (Oxford, OUP 2008)' 2009 (72) MLR 141, 143.

training by their employer.¹³¹ When offered, it is more likely that zero-hours workers have to pay for training than other workers.¹³²

On the basis of 39 semi-structured interviews and participant observation, research at a large retail firm in the UK suggested that ZHCs could be ‘highly damaging to the work/life balance of employees. It has a negative impact on family life, caring responsibilities and personal relationships ... The anxiety and insecurity that result, both personal and economic, lead to high levels of stress which are detrimental to health’¹³³ Professor Sir Michael Marmot who led a government review into health inequalities, links stress directly to a lack of control that people experience over their working lives. Mental illness, metabolic syndrome, and cardiovascular disease are all directly linked to workplace insecurity in the review.¹³⁴

Beyond the difficulty of managing a fluctuating income and hours, relying on zero hours arrangements as a main job can be a barrier to renting properties and being approved for loans and mortgages. The Citizens Advice Bureau comments that many ZHC workers find it difficult to rent in the private sector because landlords and agencies regard them as at risk of rent default if they have no guaranteed income. A number of banks only consider ZHCs as ‘secondary income’, meaning that it is discounted by 50%, and typically require a longer track record of between 1-3 years as evidence of income.

Finally, in contrast to the family-friendly picture painted in some portrayals of zero hours work, some workers cite the difficulties that such arrangements pose for childcare and managing family commitments. Some of those interviewed by the Resolution Foundation, for example, cited a difficulty in managing their work-life balance and arranging childcare at short notice.¹³⁵

c. Business

For employers, there are also costs and benefits to employing individuals on zero hours arrangements. From the employer perspective, the key benefit of zero-hours arrangements relates to their flexibility, which enables firms to limit wage costs and overheads. According to the 2013 Government Consultation, zero hours work arrangements ‘allow businesses to hire staff while being able to adapt to changes in demand, for example offering more work when new orders arrive and being able to scale back when they do not.’¹³⁶ Further cost savings might also be achieved through the avoidance of employment law, including unfair dismissal protection and rights to maternity pay, as detailed above.

In discussions of the benefits of zero-hours arrangements, the relevant comparator group referenced is often agency workers rather than permanent employees at the same firm. For example, in the UK Government consultation document, it is argued that ZHCs enable businesses to ‘retain a pool of trained and skilled staff, who know the culture of the businesses and its procedures, rather than agency staff who may not.’¹³⁷ The Association of Colleges in evidence to the consultation notes that zero-hours arrangements facilitate ‘greater consistency of teaching and learning compared to agency workers.’¹³⁸ The Resolution Foundation suggest that there is some evidence of firms substituting agency staff for zero hours arrangements as a means of avoiding agency fees and the 2010 Agency Workers Regulations (SI 2010/93) that implements the 2008 European Union Temporary Worker Directive (2008/104/EC).¹³⁹ The significance of this channel is unclear, however, given that zero hours contracts are often used alongside agency staff (see Section 2) – 10% of agency workers are on a zero hours contract.

¹³¹ Authors’ calculations from the LFS.

¹³² Pickavance 6

¹³³ A Wood, B Burchell, A Coutts, *From Zero Joy to Zero Stress: Making Flexible Scheduling Work* (Cambridge 2016) 6.

¹³⁴ M Marmot, *Fair society, healthy lives: the Marmot Review: strategic review of health inequalities in England post-2010* (London, 2010).

¹³⁵ Matter of Time 17.

¹³⁶ Consultation 12.

¹³⁷ Ibid.

¹³⁸ BIS, *Zero Hours Employment Contracts - Impact Assessment* (2013), 6.

¹³⁹ Matter of Time.

The potential cost savings arising from the use of ZHC must, however, be weighed against potential downsides, including notably a lack of worker availability, and broader questions of worker retention, control and investment in firm-specific human capital. Since the ban on exclusivity clauses, employers cannot contractually prevent ZHC workers from getting work elsewhere. This can leave employers exposed to labour shortages and unable to meet demand in situations where the zero-hours model is genuinely two-sided. The significance of this factor will vary across time, industries, and regions depending on the tightness of the local labour market. A ready availability of large pools of workers with few alternative prospects is thus the ideal setting for the use of ZHCs. This helps explain a recurring theme in interviews conducted by the Resolution Foundation that where ‘alternative prospects for standard forms of employment are small, zero-hours contracts have become ubiquitous.’¹⁴⁰ However, the risk of worker shortfall might also be mitigated by ‘effective exclusivity’, in which employer sanctions for not accepting work as discussed above.

In many jobs, both the firm and worker must invest for the employment relationship to be as profitable as possible. It takes time and energy for workers to become competent and efficient at the task in hand. It is costly for firms to train staff and devote time to getting new workers up to speed. As investment is costly, each party must expect the employment relationship to persist for it to be worth their while. As zero-hours contracts often undermine the commitment to a long-term relationship, investment in firm-specific human capital might be inefficiently low under such arrangements, reducing workforce productivity. There is some evidence that zero hours work is associated with lower training. In the LFS in Q4 2016, zero hours workers were over 20% less likely to have experienced training than those on other types of contracts. Qualitative research also supports this theme:¹⁴¹

“People come and go quickly and the new girls are always inexperienced and untrained”

(Female Domiciliary Care Worker, Newcastle)

Finally, zero hours contracts can undermine staff morale and trust, reducing workforce productivity. Zero-hours workers reference a lack of ‘collaborative spirit’ between staff that can be intensified by perceived competition for hours amongst workers.¹⁴² Research by Acas also sounds a word of caution about the potential for ZHCs to ‘erode’ trust if not used in a sufficiently transparent manner.

These costs might explain why some firms publically reject the use of zero hours contracts. A number of firms have spoken publically about the tension they perceive between high customer service, workforce productivity, and use of zero hours arrangements (see quotes below). Other firms have put in place mechanisms to ensure that ZHCs workers are able to transition onto contracts with guaranteed hours if they desire to. For example, Center Parcs, who employs about 3% of its staff on ZHCs, has an automatic monitoring system in place so that when an individual has worked at least one hour per week for 13 weeks, they are invited in for a meeting with their line manager to discuss if they should be put on a contract with fixed minimum hours.¹⁴³

¹⁴⁰ *ibid* 15.

¹⁴¹ *Matter of Time* 19.

¹⁴² *ibid*.

¹⁴³ *Pickavance* 8.

d. Government and Society

“We believe [zero hours contracts] fundamentally don’t belong in a highly engaged business where our colleagues’ commitment to the business and its goals and vision are critical... Indeed to help reduce colleague turnover we have adopted a minimum 12 hour contract and are moving to a minimum 16 hour contract in larger stores”

(Sally Hopson, People Director, Pets@Home)

“We don’t offer zero-hours contracts... We feel that short-hours providing flexibility is a bit of a myth and because we’re an expertise and service-based business, retention is a big deal for us, hence we’re going for longer hours and a more serious commitment both ways.”

(Jonathan Crookall, Group People Director, Halfords)

“We [stopped using zero-hours contracts because we] realised we could best serve our values and our colleagues through more sophisticated rostering of employed staff. The benefits are really for Barclays as a firm because this has allowed us to deploy our existing staff more efficiently”

(Lynne Atkin, HR Director, Barclays)

“We don’t use zero-hours contracts. They wouldn’t work well for our business proposition where it’s important that our people really engage with the brand. For us it’s about dealing fairly and honestly with people and in return we see that people bring great commitment and flexibility to their roles”

(Maria Stanford, HR Director, Selfridges)

We now turn to the costs and benefits of zero hours contracts for society and the Government. The drawbacks of zero hours contracts for wider society should be clear from the preceding discussion: low productivity, high stress, and low economic security undermine growth, and thus tax revenues, and can lead to greater reliance on the benefits and pressures on the healthcare system. Of course, what is the counterfactual is crucial for attempts to quantify the fiscal impact of zero hours working. For example, the TUC estimates that zero hours contracts ‘cost’ the government £1.87bn per year through diminished tax revenues arising from lower pay and higher benefit spending.¹⁴⁴ However, the methodology used in this study is open to criticism. To come up with this figure it was assumed that all workers on zero hours contracts could become permanent employees with the same wage distribution that currently characterises this workforce. This is a very important area for future research.

While the public purse might be hurt by the use of zero-hours contracts, it is important to note that the Government itself is a user of zero-hours contracts and insecure working arrangements. The on-going drive to outsource public services to achieve cost savings is argued to have contributed to the use of zero hours work arrangements in social care and health care.¹⁴⁵ For example, a study by Unison argues that the growth in zero-hours contracts in the domiciliary care sector might originate with the commissioning models used by local councils.¹⁴⁶ Local authorities and public service providers are often heavy users of zero-hours contracts as they attempt to cut running costs to cope with austerity policy.¹⁴⁷

¹⁴⁴ TUC, The impact of increased self-employment and insecure work on the public finances (2017) 31.

¹⁴⁵ IDS Thomson Reuters, Flexploitation: zero-hours contracts in focus. <https://ids.thomsonreuters.com/pay-reward/features-analysis/flexploitation-zero-hours-contracts-in-focus>

¹⁴⁶ Unison, *Time to Care* (2013)

¹⁴⁷ LocalGov, The use of zero hours contracts, 12/02/2014. <https://www.localgov.co.uk/The-use-of-zero-hours-contracts/35606>

4. Policy Responses

With increasing awareness of the growth of zero-hours contracts from 2011 onwards came a marked increase in public discussion of the phenomenon, leading eventually to (limited) legislative intervention. In this section, we first explore the positions taken by the social partners, before exploring legislative responses (historical as well as recent) and presenting a case study of Parliament's response to a particularly egregious incidence of labour standards violations in warehouses operated by the sports equipment chain *Sports Direct*.

a. The Position of the Social Partners

The prevalence of, and working conditions under, zero-hours arrangements rose to the forefront of public discussion in the course of 2013. As a result of increasing awareness, particularly in the run-up to an official government consultation, the social partners published a series of opinions and policy lines on zero-hours work, which are discussed in this sub-section.

i. Trade Unions

Trade union responses to zero-hours work are unsurprisingly critical. The General Secretary of the Trade Union Congress, Frances O'Grady, argues that zero-hours contracts allow firms to treat workers like "disposable labour."¹⁴⁸ A commitment to ensuring guaranteed hours has now made it onto Unite's "Fight for Five" pledge that aims to win decent work for all.

In addition to highlighting the often precarious working conditions and low pay experienced by workers without guaranteed daily or weekly hours, the difficulties of organising an irregular and dispersed workforce have also been raised. Data from the LFS in the final quarter of 2016 highlights that only 8% of zero-hours workers are members of a union compared to 22% of those on other types of contracts. According to Zoe Williams, "You simply cannot mobilise when you don't know how many hours you're going to get each week. A zero-hours employer wouldn't even have the decency to victimise you; they just wouldn't call you."¹⁴⁹ However, there are increasing moves to mobilise this workforce. The University and College's union launched the 'Campaign Against Casualisation' in 2015, calling on higher education institutions in the UK to eradicate the use of zero-hours contracts.¹⁵⁰ Unite is asking for feedback on those employed on zero-hours contracts in its "No to Zero" campaign, which aims to pressure the government to eliminate insecure employment from state contracts as one of its goals.

Unions have attacked the Government consultation for not doing enough to tackle the problems associated with zero-hours work. The focus on exclusivity clauses emerging from the Government consultation is seen as "a joke. It misses the key point that zero hours confer fear and misery of those forced into them – no security, no protection and little dignity."¹⁵¹ The TUC, for example, argues that the "policy proposals outlined in the consultation document fail to meet the government's stated objective of 'cracking down on any abuse or exploitation of individuals.'"¹⁵² Unions differ in their preferred policy agenda. Unite is pushing for a ban zero hours contracts,¹⁵³ which they argue is supported by more than 60% of the public.¹⁵⁴ The common platform put forward by the TUC does not advocate a ban on zero-hours contracts but rather moves to ensure that, among others, all workers receive written terms and conditions setting out hours expectations, are given sufficient notice of work availability and

¹⁴⁸ TUC, *Zero-hours contracts allow bosses to treat workers like disposable labour*, TUC Press Release 15/03/2017.

¹⁴⁹ Even employers decry zero hours contracts. So why are staff still being exploited? Zoe Williams, *The Guardian*, 09/06/2016 <https://www.theguardian.com/commentisfree/2016/jun/09/zero-hours-contracts-staff-exploited-businesses-inequality-workplace>

¹⁵⁰ UCU, *A report on UCU's campaign against casualization 2015-16* (UCU 2016).

¹⁵¹ Unite statement on zero hours exclusivity (2015) <http://www.unitetheunion.org/news/unite-statement-on-zero-hours-exclusivity/>

¹⁵² TUC, *TUC response to BIS consultation* (2014) 15.

¹⁵³ Unite, *Unite say no to zero hours contracts*, 10/5/2017 <http://www.unitetheunion.org/campaigning/saynotozerohourscontracts/>

¹⁵⁴ Unite, *Public wants zero hours contracts banned* (2016) Unite Press Release.

cancellations, and that these workers are compensated for the added flexibility that they offer employers and their increased financial risk.¹⁵⁵

Trade Unions have also successfully exerted pressure on particularly notorious users of ZHCs through shareholder activism. The Trade Union Share Owners (TUSO) is a group of investors that represent the financial assets of the TUC, Unison and Unite. In September 2016 they tabled a resolution at the AGM of Sports Direct, a company to be discussed in more detail in due course, calling for the board to commission an independent review of the company's employment practises, including the use of zero-hours contracts and agency staff.¹⁵⁶ The resolution was supported by the majority of independent shareholders despite opposition from Sports Direct management. However, despite this success, there is no evidence that Sports Direct has acted on its pledges to improve working conditions for staff. This has led to a fresh action by TUSO, who have again written to investors urging them to vote against the reappointment of the Sports Direct chairman, Keith Hellowell.¹⁵⁷

ii. Employer Representatives

Employer representatives are more likely to highlight the advantages and benefits of a flexible workforce. The Head of Communications at the Institute of Directors (IoD), for example, argues that “[t]hose who wish to hold up zero-hours contracts as a symptom of an unfair economy will continue to do so – but they must appreciate that, for hundreds of thousands of workers and employers, these contracts represent an extremely attractive proposition. Despite efforts to portray all those on such contracts as exploited, the truth is that there are plenty of engineers, contractors and professionals whose willingness to be flexible adds significantly to their market value – and, therefore, their earning power.”

The limited impact of the financial crisis on employment is often attributed to zero-hours contracts by these organisations. For the IoD zero-hours work can be a “vital tool” in bringing about an economic recovery: “Countries with a flexible labour market tend to have lower unemployment and higher employment, and one of the reasons that the UK economy has not gone the way of southern Europe is because employers have been able to adapt swiftly to changing demand.”¹⁵⁸ The CBI predicted that unemployment would have risen by an extra 500,000 people over the financial crisis had firms not been able to resort to these work arrangements.¹⁵⁹

As discussed in Section 3, there is some support for claims that the UK's flexible labour market limited the impact of the recession on employment. However, as growth has returned to the economy, there is increasing concern about the persistence of low pay and low job quality. Employers representatives are increasingly open to acknowledge that the advantages of zero-hours work are not universal, noting that there is a time and place when even responsible employers might wish to offer work on a zero-hours basis. The IoD, in response to McDonald's giving staff the option to move onto a guaranteed hours contract notes that while “Zero-hour contracts will continue to be a useful part of a flexible labour market, but we would encourage firms to engage with staff, and look at offering permanent contracts where appropriate.”¹⁶⁰

¹⁵⁵ TUC (n 152) 15.

¹⁵⁶ Sports Direct has twice the average number of injuries says trade union shareholders' letter, TUC Press Release 16/08/2016 <https://www.tuc.org.uk/news/sports-direct-has-twice-average-number-injuries-says-trade-union-shareholders%E2%80%99-letter>

¹⁵⁷ Sports Direct fails to meet 2016 pledge on working conditions, The Guardian 05/11/2017 <https://www.theguardian.com/business/2017/sep/05/sports-direct-fails-2016-pledge-zero-hours-shirebrook-mike-ashley>

¹⁵⁸ Banning zero hours contracts would be “misguided and extremely damaging, IoD Press Release 17/08/2013 <http://web.archive.org/web/20130817194511/http://www.iod.com/influencing/press-office/press-releases/banning-zero-hours-contracts-would-be-misguided-and-extremely-damaging-says-iod>

¹⁵⁹ <http://www.publicsectorexecutive.com/Public-Sector-News/vital-role-for-zero-hours-contracts-cbi->

¹⁶⁰ McDonald's offer staff the chance to get off zero-hours contracts, Guardian 15/04/2016 <https://www.theguardian.com/business/2016/apr/15/mcdonalds-offer-staff-the-chance-to-get-off-zero-hours-contracts>

b. Legislative Responses

The main legal problem identified by the government relates to so-called exclusivity clauses for zero-hours work. These are provisions in zero-hours contracts or arrangements whereby the worker undertakes to work exclusively for the employer in question. The Consultation Document points to exclusivity as an occasional problem for Zero-Hours contracting, where a ‘small number of individuals on zero hours contracts are prevented from working for another employer’, whilst being quick to assert that it ‘is clear that, in some circumstances, exclusivity clauses are useful and justifiable’.¹⁶¹

Despite these mixed assertions, exclusivity clauses have now become unenforceable. The much-vaunted ‘regulation’ of Zero-Hours Contracts boils down to a brief sub-section in the Small Business, Enterprise and Employment Act 2015,¹⁶² which stipulates that

- (3) Any provision of a zero hours contract which—
- (a) prohibits the worker from doing work or performing services under another contract or under any other arrangement, or
 - (b) prohibits the worker from doing so without the employer’s consent,
- is unenforceable against the worker.¹⁶³

The extent to which (if at all) this provision addresses any of the real problems underpinning ZHC work is questionable. Indeed, as we have previously argued with Mark Freedland, there is a distinct sense that the ban on exclusivity clauses was put forward with the purpose of making good the legitimacy of a labour market institution which had already been marked out as a benign one, as the problems thus highlighted are either insignificant in comparison to the main issues or are falsely identified.

The acknowledgment of exclusivity as problematical, first, is thus a decidedly cautious and rather tactical one. We suggest that this is, in any case, by no means the greatest problem with Zero-Hours arrangements. Indeed, it is unlikely that even before the statutory ban, any such exclusivity clause could have ever been enforceable at common law. It could furthermore be argued that exclusivity clauses are in fact protective of workers, insofar as a valid exclusivity clause presupposes and confirms the existence of a contract of some sort.¹⁶⁴ The lack of enforceability in section 27A(3) ERA 1996 might therefore in certain circumstances have had the unintended consequence of negating an employee’s claim that a certain level of mutuality of obligation had been established. This scenario was addressed in a last-minute amendment to section 153, which now provides in section 27A(4) that

Subsection (3) is to be disregarded for the purposes of determining any question whether a contract is a contract of employment or other worker’s contract.

Even with this savings clause, however, recent governmental policy analysis and legislative action in section 153 of the Small Business, Enterprise and Employment Act have, somewhat by design, failed to identify (let alone solve) the real regulatory problems with Zero-Hours Contracts. The 2015 Act fails completely to tackle the economic issues of precarity and underemployment, nor does it assist in clarifying the employment status of individual ZHC arrangements.

Furthermore, many note that the regulations can be easily avoided by either guaranteeing workers a minimal amount of work, e.g. one hour per week, and it does not address the potential for employers to impose informal economic sanction for breaches, e.g., a refusal to make future offers to workers who

¹⁶¹ Consultation 13.

¹⁶² The Act also provides for a ‘Power to make further provision in relation to zero hours workers’, it is however unlikely that this power would be able meaningfully to address any of the main problems underpinning Zero-Hours work.

¹⁶³ Small Business, Enterprise and Employment Act 2015, section 153 (the relevant provisions have now become section 27A(3) of the ERA 1996).

¹⁶⁴ E Peel, *Treitel’s Law of Contract* (13th ed, Sweet & Maxwell 2011) 8ff, 70ff.

failed to accept hours offered or who accept work elsewhere.¹⁶⁵ An attempt to tackle these avoidance tactics is found in *The Exclusivity Terms in Zero Hours Contracts (Redress) Regulations 2015*, which creates rights for zero-hours workers not to be subjected to any detriment for failing to comply with an exclusivity requirement. These rights are enforceable through the employment tribunal, which has the power to award the worker compensation, subject to the same limit as that applicable in unfair dismissal claims.¹⁶⁶ It is important to bear in mind, however, that the introduction of fees to bring claims to the Employment Tribunal has rendered it uneconomic for low-paid workers to enforce their rights, which undermines the force of these provisions in practise.¹⁶⁷

c. Parliamentary Inquiry

We here give a brief account of the employment rights scandal that has recently engulfed *Sports Direct*, a major UK retailer. Through a combination of zero-hours arrangements and temporary agency work, the company had created a particularly hostile work environment, which was the subject of an extensive parliamentary inquiry and explicit criticism in a recent report published by the Business, Innovation, and Skills Committee of the House of Commons.¹⁶⁸

Sports Direct International plc is the largest sporting retailer in the United Kingdom, with around 465 stores. Over three quarters of its workforce are employed on zero-hours contracts, many through two employment agencies. The inquiry was initiated by repeated media coverage of poor employment practises and evidence given to the Parliamentary Committee. It was viewed as a precursor to a broader inquiry into the labour market, the Taylor Review of Modern Employment Practises, which was published in the summer of 2017.

The *Sports Direct* report was damning, condemning work practises across the board at the company:

“We heard no convincing reason why Sports Direct engaged the workers through agencies on short-term, temporary contracts, other than to reduce costs and pass responsibility... The way the business model at Sports Direct is operated, in both the warehouse at Shirebrook and in the shops across the country, involves treating workers as commodities rather than as human beings with rights, responsibilities and aspirations. The low-cost products for customers, and the profits generated for the shareholders, come at the cost of maintaining contractual terms and working conditions which fall way below acceptable standards in a modern, civilised economy.”

While the review did not suggest wide-ranging policy measures to address the substantive problems associated with zero-hours and insecure work (nor was it intended to), it is reported to have prompted management to engage with the trade union Unite in a ‘positive manner’. A worker representative now sits on the company’s board and shop staff directly employed by *Sports Direct* were supposed to be offered a choice of a guaranteed hour contract.¹⁶⁹ However, despite the firm’s pledges, there is little evidence that conditions have improved on the ground and aspirations to offer guaranteed hours to the more than 4,000 agency workers at its warehouse have not yet been formulated.

¹⁶⁵ BIS, Banning Exclusivity Clauses: tackling Avoidance, August 2014. 83% respondents to the consultation thought that it was ‘very likely’ or ‘likely’ that employers would seek to avoid ban, mainly through offering a low minimum number of guaranteed hours or imposing economic sanctions on workers who were not available for work.

¹⁶⁶ D Pyper and J Brown, ‘Zero-hours contracts’, House of Commons Library Briefing Paper 06553, 13 April 2016.

¹⁶⁷ A Adams and J Prassl, ‘Vexatious Claims? Challenging the Case for Employment Tribunal Fees’ (2017) 80 *Modern Law Review* 412.

¹⁶⁸ 55 Third Report of Session 2016–17, HC 219, 19 July 2016.

¹⁶⁹ Reynolds Porter Chamberlain LLP, Working Practises Report: Prepared for the Board of Sports Direct International, September 2016.

d. National Minimum Wage Act 1998

Zero-hours work counts as “time work” in the context of National Minimum Wage Regulations, and is required to be remunerated as such.¹⁷⁰ The national minimum wage (NMW) is currently at £7.50 per hour for workers aged 21 and over. It has undergone a significant increase since the July Budget of 2015 when George Osborne announced a transition to a ‘national living wage’.

As well as for time spent in productive activity, zero-hours workers must also be paid at least the NMW for ‘stand-by time’, ‘on-call time’ and ‘downtime’ if they are at their place of work and required to be there. Similarly, such time is likely to count as ‘working time’ under the Working Time Regulations if the worker is required to be on-call at the place of work. This means that it’s against the law to ask employees to ‘clock off’ during quiet periods but still remain on the premises.

Also significant in the case of zero-hours workers is the treatment of travel time. Time spent travelling between locations for the purpose of work is within the scope of NMW legislation. This is especially important in the case of social care, in which zero-hours workers are often not paid for travel time between clients or ‘on-call’ hours. A survey by Unison found that only 35% of councils in England make it a contractual condition that domiciliary care providers pay their workers travel time.¹⁷¹ The National Audit Office estimated that as many as 160,000 to 220,000 care workers in England are paid below NMW because of this.¹⁷² One of the biggest providers of domiciliary care in the UK, MiHomeCare, settled a claim for non-payment of the minimum wage in 2016 in respect of travel time between appointments.¹⁷³ At the start of 2016, HMRC had 130 open investigations into care providers, with Unison funding test cases to challenge pay and conditions in the sector.¹⁷⁴

¹⁷⁰ Section 3 National Minimum Wage Regulations 1999.

¹⁷¹ Unison, SOC 025.

¹⁷² National Audit Office, *Adult Social Care in England: Overview* (2014).

¹⁷³ Leigh Day, Settlement for carer in legal action over national minimum wage (March 2016).

¹⁷⁴ CIPD, Pay victory for workers denied the minimum wage, CIPD News Item 13/12/2016

<http://www2.cipd.co.uk/pm/peoplemanagement/b/weblog/archive/2016/12/13/pay-victory-for-care-workers-denied-the-minimum-wage.aspx>

5. Conclusion and Recommendations

We conclude our report with a series of policy recommendations and broader considerations. We believe an appropriate goal is a model in which (some of) the flexibility and benefits of zero-hours work arrangements are preserved, without their use continuing to pose a major threat to decent working conditions in the United Kingdom's labour market. In order to address the most egregious problems identified in previous parts, a series of responses are required. Whilst an extensive discussion of these options lies beyond the scope of the present report, we highlight our most pressing concerns.

i. Employment Law

Despite some promising developments in recent case law, as chronicled in Section 3, the requirement of mutuality of obligation for employee status (and to a lesser extent also for worker status) has been a key obstacle to the inclusion of zero-hours workers in the full scope of employment rights: at first glance, the absence of guaranteed hours can be seen, in one sense, as the very antithesis of a mutual set of undertakings between employee and employer.

Two possible reforms are imaginable: first, and most straightforwardly, the abolition (whether by statutory intervention, or judicial development of the common law) of mutuality as a criterion for employment status, thus guaranteeing access to at least a basic floor of employment rights to all workers from day one. A somewhat less ambitious, but still important, step could be a clearer recognition that mutuality of obligation could also be proved on the facts of a specific relationship (including, for example, the loss of preferred rota slots as an informal sanction for not accepting any given offer of work), rather than merely the contractual arrangement.

A further set of recommendations pertain to mechanisms for a regularisation of working hours. We support calls for employers to provide a written statement of working hours that are a true reflection of hours required by employee and the establishment of minimum work periods. We also call for further research on mechanisms to prevent abuse of managerial power over work assignment as discussed in Section 3.

We call for further consultation on policies which incentivise employers to reduce their use of zero-hours arrangements and “gig work”, where guaranteed hour contracts are a viable alternative. Jeremias Prassl has advocated the use of higher minimum wage rates for arrangements that do not guarantee a minimum number of hours,¹⁷⁵ an idea which was taken up and explored by the Taylor Review into Modern Employment Practises. The aim of the policy would be to “encourage employers to be a bit less lazy about transferring risk”.¹⁷⁶ It has thus far attracted some criticism from employers groups who argue that the success of the minimum wage was not “put at risk by complexity or the unintended consequences ... [of] trying to reshape employment contracts using a wage rate”.¹⁷⁷

A final recommendation for reform relates to the enforcement of workers' right in the United Kingdom more broadly. The introduction in July 2013 of launch- and hearing-fees of up to £1200 for an individual claimant's bringing of an employment tribunal claim has led to a drop of over 70% in workers' claims. However, as we have shown in recent work,¹⁷⁸ this has disproportionately effected the bottom end of the claim distribution; viz low-value claims such as those typically associated with zero-hours workers. Early evidence indicates that in the absence of meaningful enforcement, many of the problems highlighted throughout our report are likely to become more frequent and widespread as a result. In the summer of 2017, the Supreme Court's decision in *Unison v Lord Chancellor* struck down this fee regime as an illegal

¹⁷⁵ J. Prassl, *Humans as a Service*, (OUP 2018).

¹⁷⁶ Higher minimum wage proposed for zero hour workers, FT 17/4/2107 <https://www.ft.com/content/84abe8ea-20f7-11e7-a454-ab04428977f9>

¹⁷⁷ *ibid.*

¹⁷⁸ A Adams and J Prassl, 'Vexatious Claims? Challenging the Case for Employment Tribunal Fees' (2017) 80 *Modern Law Review* 412.

barrier on access to justice. In line with that judgment, we recommend extreme caution in any future employment tribunal fees model to ensure zero-hours workers are able to enforce their rights effectively.

ii. Social Security

A second set of reform proposals relates to the important point, already raised in section 3(a)(ii), that zero-hours work cannot be understood as a problem for employment law *stricto sensu* alone: any successful attempt at reform must take into account the powerful incentives created by the social security system, which at present can force individuals to accept work offered on a zero-hours basis or risk losing basic financial support. Social security regulations need to be adjusted to ensure that the state does not (inadvertently) create a significant surplus supply of workers desperate to accept work at any cost especially given the weak evidence of a link between accepting casual work and future labour market outcomes. The operation of the benefit system must also be sufficiently flexible to deal with the reality of work on zero-hours contracts. Systems for meeting with ‘work coaches’ must be improved to cope with work arrangements in which shifts are decided upon at short notice.

iii. Government Commissioning

Funding pressures in social care and local authority commissioning practises are contributing to the use of zero-hours contracts and low pay in the homecare sector. This has resulted in infringements of workers’ rights and has been linked to a decline in standards that is putting elderly and vulnerable people at risk (see Section 2). We support calls for an immediate increase in social care funding and a Government commitment to close the funding gap while creating a sustainable model of social care financing. We recommend that the Care Quality Commission should oversee the commissioning activities of councils, including assessments of the true cost of care to provide guidelines for local authorities in setting fees. As well as auditing the quality of care, the Care Quality commission should audit employment practices of providers to ensure that workers are being paid the minimum wage and zero-hours contracts are not used in an exploitative manner.

iv. Broader Outlook

In concluding, it is important to return to one of key observations made at the outset of this report: zero-hours work arrangements are but a subset of the wider world of ‘atypical’ work in the United Kingdom, often overlapping and intersecting with other categories. This can be highlighted with reference to a series of recent decisions on employment in the so-called ‘gig’ economy, where on-demand work is digitally mediated: when the Central London Employment Tribunal recently recognised that Uber drivers were workers,¹⁷⁹ for example, this meant – in effect – that the successful claimants are now employed as zero-hours workers, with the platform’s algorithms offering individual drivers work as and when customer demand so requires.

¹⁷⁹ *Aslam, Farrar and Ors v Uber* (Case No 2202550/2015; decision of 28 October 2016). An appeal was pending at the time of writing.

Conditions of Work and Employment Series

- No. 1 Quality of working life: A review on changes in work organization, conditions of employment and work-life arrangements (2003), by Howard Gospel
- No. 2 Sexual harassment at work: A review of preventive measures (2005), by Deirdre McCann
- No. 3 Statistics on working time arrangements based on time-use survey data (2003), by Andrew S. Harvey, Jonathan Gershuny, Kimberly Fisher & Ather Akbari
- No. 4 The definition, classification and measurement of working time arrangements (2003), by David Bell & Peter Elias
- No. 5 Reconciling work and family: Issues and policies in Japan (2003), by Masahiro Abe, Chizuka Hamamoto & Shigeto Tanaka
- No. 6 Reconciling work and family: Issues and policies in the Republic of Korea (2004), by Tae-Hong Kim & Hye-Kyung Kim
- No. 7 Domestic work, conditions of work and employment: A legal perspective (2003), by José Maria Ramirez-Machado
- No. 8 Reconciling work and family: Issues and policies in Brazil (2004), by Bila Sorj
- No. 9 Employment conditions in an ageing world: Meeting the working time challenge (2004), by Annie Jolivet & Sangheon Lee
- No. 10 Designing programmes to improve working and employment conditions in the informal economy: A literature review (2004), by Dr. Richard D. Rinehart
- No. 11 Working time in transition: The dual task of standardization and flexibilization in China (2005), by Xiangquan Zeng, Liang Lu & Sa'ad Umar Idris
- No. 12 Compressed working weeks (2006), by Philip Tucker
- No. 13 Étude sur les temps de travail et l'organisation du travail: Le cas du Sénégal. Analyse juridique et enquête auprès des entreprises (2006), by Alfred Inis Ndiaye
- No. 14 Reconciling work and family: Issues and policies in Thailand (2006), by Kyoko Kusakabe
- No. 15 Conditions of work and employment for older workers in industrialized countries: Understanding the issues (2006), by N.S. Ghosheh Jr., Sangheon Lee & Deirdre McCann
- No. 16 Wage fixing in the informal economy: Evidence from Brazil, India, Indonesia and South Africa (2006) by Catherine Saget
- No. 18 Reconciling work and family: Issues and policies in Trinidad and Tobago (2008), by Rhoda Reddock & Yvonne Bobb-Smith
- No. 19 Minding the gaps: Non-regular employment and labour market segmentation in the Republic of Korea (2007) by Byung-Hee Lee & Sangheon Lee

-
- No. 20 Age discrimination and older workers: Theory and legislation in comparative context (2008), by Naj Ghosheh
- No. 21 Labour market regulation: Motives, measures, effects (2009), by Giuseppe Bertola
- No. 22 Reconciling work and family: Issues and policies in China (2009), by Liu Bohong, Zhang Yongying & Li Yani
- No. 23 Domestic work and domestic workers in Ghana: An overview of the legal regime and practice (2009), by Dzodzi Tsikata
- No. 24 A comparison of public and private sector earnings in Jordan (2010), by Christopher Dougherty
- No. 25 The German work-sharing scheme: An instrument for the crisis (2010), by Andreas Crimmann, Frank Weissner & Lutz Bellmann
- No. 26 Extending the coverage of minimum wages in India: Simulations from household data (2010), by Patrick Belser & Uma Rani
- No. 27 The legal regulation of working time in domestic work (2010), by Deirdre Mc Cann & Jill Murray
- No. 28 What do we know about low-wage work and low-wage workers (2011), by Damian Grimshaw
- No. 29 Estimating a living wage: a methodological review (2011), by Richard Anker
- No. 30 Measuring the economic and social value of domestic work: conceptual and methodological framework (2011), by Debbie Budlender
- No. 31 Working Time, Health, and Safety: a Research Synthesis Paper (2012), by Philip Tucker & Simon Folkard
- No. 32 The influence of working time arrangements on work-life integration or ‘balance’: A review of the international evidence (2012), by Colette Fagan, Clare Lyonette, Mark Smith & Abril Saldaña-Tejeda
- No. 33 The Effects of Working Time on Productivity and Firm Performance: a research synthesis paper (2012), by Lonnie Golden
- No. 34 Estudio sobre trabajo doméstico en Uruguay (2012), by Karina Batthyány
- No. 35 Why have wage shares fallen? A panel analysis of the determinants of functional income distribution (2012), by Engelbert Stockhammer
- No. 36 Wage-led or Profit-led Supply: Wages, Productivity and Investment (2012), by Servaas Storm & C.W.M. Naastepad
- No. 37 Financialisation and the requirements and potentials for wage-led recovery – a review focussing on the G20 (2012), by Eckhard Hein & Matthias Mundt
- No. 38 Wage Protection Legislation in Africa (2012), by Naj Ghosheh

-
- No. 39 Income inequality as a cause of the Great Recession? A survey of current debates (2012), by Simon Sturn & Till van Treeck
- No. 40 Is aggregate demand wage-led or profit-led? National and global effects (2012), by Özlem Onaran & Giorgos Galanis
- No. 41 Wage-led growth: Concept, theories and policies (2012), by Marc Lavoie & Engelbert Stockhammer
- No. 42 The visible face of Women's invisible labour: domestic workers in Turkey (2013), by Seyhan Erdoğan & Gülay Toksöz
- No. 43 In search of good quality part-time employment (2014), by Colette Fagan, Helen Norman, Mark Smith & María C. González Menéndez
- No. 44 The use of working time-related crisis response measures during the Great Recession (2014), by Angelika Kümmerling & Steffen Lehndorff
- No. 45 Analysis of employment, real wage, and productivity trends in South Africa since 1994 (2014), by Martin Wittenberg
- No. 46 Poverty, inequality and employment in Chile (2014), by Sarah Gammage, Tomás Alburquerque & Gonzalo Durán
- No. 47 Deregulating labour markets: How robust is the analysis of recent IMF working papers? (2014), by Mariya Aleksynska
- No. 48 Growth with equity in Singapore: Challenges and prospects (2014), by Hui Weng Tat & Ruby Toh
- No. 49 Informality and employment quality in Argentina, Country case study on labour market segmentation (2014), by Fabio Bertranou, Luis Casanova, Maribel Jiménez & Mónica Jiménez
- No. 50 Comparing indicators of labour market regulations across databases: A post scriptum to the employing workers debate (2014), by Mariya Aleksynska & Sandrine Cazes
- No. 51 The largest drop in income inequality in the European Union during the Great Recession: Romania's puzzling case (2014), by Ciprian Domnisoru
- No. 52 Segmentation and informality in Vietnam: A survey of literature, Country case study on labour market segmentation (2014), by Jean-Pierre Cling, Mireille Razafindrakoto & François Roubaud
- No. 53 A chronology of employment protection legislation in some selected European countries (2014), by Mariya Aleksynska & Alexandra Schmidt
- No. 54 How tight is the link between wages and productivity? A survey of the literature (2014), by Johannes Van Biesebroeck
- No. 55 Job quality in segmented labour markets: The Israeli case, Country case study on labour market segmentation (2014), by Shoshana Neuman

-
- No. 56 The organization of working time and its effects in the health services sector: A comparative analysis of Brazil, South Africa, and the Republic of Korea (2014), by Jon Messenger & Patricia Vidal
- No. 57 The motherhood pay gap: A review of the issues, theory and international evidence (2015), by Damian Grimshaw & Jill Rubery
- No. 58 The long journey home: The contested exclusion and inclusion of domestic workers from Federal wage and hour protections in the United States (2015), by Harmony Goldberg
- No. 59 The (missing) link between wages and productivity in the Philippines: what role for collective bargaining and the new two-tier wage system? (2016), by Melisa R. Serrano
- No. 60 Negociación colectiva, salarios y productividad: el caso uruguayo (2015), by Graziela Mazzuchi, Juan Manuel Rodríguez y Eloísa González
- No. 61 Non-standard work and workers: Organizational implications (2015), by Elizabeth George & Prithviraj Chattopadhyay
- No. 62 What does the minimum wage do in developing countries? A review of studies and methodologies (2015), by Dale Belman & Paul Wolfson
- No. 63 The regulation of non-standard forms of employment in India, Indonesia and Viet Nam (2015), by Ingrid Landau, Petra Mahy & Richard Mitchell
- No. 64 The regulation of non-standard forms of employment in China, Japan and the Republic of Korea (2015), by Fang Lee Cooke & Ronald Brown
- No. 65 Re-regulating for inclusive labour markets (2015), by Jill Rubery
- No. 66 Minimum wage setting practices in domestic work: An inter-state analysis (2015), by Neetha N.
- No. 67 The effects of non-standard forms of employment on worker health and safety (2015), by Michael Quinlan
- No. 68 Structural change and non-standard forms of employment in India (2016), by Ravi Srivastava
- No. 69 Non-standard forms of employment in some Asian countries: A study of wages and working conditions of temporary workers (2016), by Huu-Chi Nguyen, Thanh Tam Nguyen-Huu & Thi-Thuy-Linh Le
- No. 70 Non-standard forms of employment in Uganda and Ghana (2016), by Christelle Dumas & Cédric Houdré
- No. 71 The rise of the “just-in-time workforce”: On-demand work, crowdwork and labour protection in the “gig-economy” (2016), by Valerio De Stefano
- No. 72 The introduction of a minimum wage for domestic workers in South Africa (2016), by Debbie Budlender
- No. 73 Productivity, wages and union in Japan (2016), by Takao Kato

-
- No. 74 Income security in the on-demand economy: Findings and policy lessons from a survey of crowdworkers (2016), by Janine Berg
- No. 75 Non-Standard forms of employment in Latin America. Prevalence, characteristics and impacts on wages (2016), by Roxana Maurizio
- No. 76 Formas atípicas de empleo en América Latina: Incidencia, características e impactos en la determinación salarial (2016), by Roxana Maurizio
- No. 77 Firms' demand for temporary labour in developing countries: Necessity or strategy? (2016), by Mariya Aleksynska & Janine Berg
- No. 78 Remembering rest periods in law (2016), by Naj Ghosheh
- No. 79 Initial effects of Constitutional Amendment 72 on domestic work in Brazil (2016), by the Institute for Applied Economic Research (IPEA)
- No. 80 Coverage of employment protection legislation (EPL) (2016), by Mariya Aleksynska & Friederike Eberlein
- No. 81 Emplois atypiques et résultats sur le marché du travail au Cameroun, en République Démocratique du Congo et au Tchad (2016), by Benjamin Fomba Kamga, Vincent de Paul Mboutchouang & Gaston Brice Nkoumou Ngoa
- No. 82 Impacto de las reformas legislativas en el sector del empleo del hogar en España (2016), by Magdalena Diaz Gorfinkel
- No. 83 Redistributing value added towards labour in apparel supply chains: tackling low wages through purchasing practices (2016) by Doug Miller & Klaus Hohenegger
- No. 84 Resultados de las reformas jurídicas relativas a las trabajadoras y los trabajadores domésticos en Uruguay (2016), by Alma Espino González
- No. 85 Evaluating the effects of the structural labour market reforms on collective bargaining in Greece (2016), by Aristeia Koukiadaki & Damian Grimshaw
- No. 86 Purchasing practices and low wages in global supply chains Empirical cases from the garment industry (2016), by Mark Starmanns
- No. 87 Sectoral collective bargaining, productivity and competitiveness in South Africa's clothing value chain: manufacturers between a rock and a hard place (2017), by Shane Godfrey, Trenton Elsley & Michaelle Taal
- No. 88 Mapping Employment Dismissal Law: A Leximetric Investigation of EPL Stringency and Regulatory Style (2017), by Benoit Pierre Freyens & J.H. Verkerke
- No. 89 Social dialogue and economic performance – What matters for business, a review (2017), by Damian Grimshaw, Aristeia Koukiadaki and Isabel Tavora
- No. 90 The International Labour Organization and the Living Wage: A Historical Perspective (2017), by Emmanuel Reynaud
- No. 91 Managing Social Risks of Non-Standard Employment in Europe (2017), by Günther Schmid & Johannes Wagner

-
- No. 92 Migrants and cities: Research on recruitment, employment, and working conditions of domestic workers in China (2017), by Liu Minghui
- No 93 Salario mínimo y empleo: evidencia empírica y relevancia para América Latina, (2017), by Mario D. Velásquez Pinto
- No 94 Organizing On-Demand: Representation, Voice, and Collective Bargaining in the Gig Economy (2017), by Hannah Johnston and Christopher Land-Kazlauskas
- No 95 Conceptualizing the role of intermediaries in formalizing domestic work (2017), by Judy Fudge and Claire Hobden
- No 96 Collective bargaining in the textile and clothing sector in Uruguay (2018), by Graciela Mazzuchi and Eloísa González
- No 97 Multi-employer collective bargaining in South Africa (2018), by Shane Godfrey
- No 98 Multi-employer collective bargaining in Jordan: the case of the garment industry (2018), by Thoraya El-Rayyes
- No 99 Unstable and On-Call Work Schedules in the United States and Canada (2018), by Elaine McCrate