Zeroed Out: The place of zero-hours contracts in a fair and productive economy

An independent report by Norman Pickavance

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Foreword

During the period of this review we have continued to witness a worrying trend in Britain, one in which too many of the new jobs created are in low paid, low skilled sectors. This reflects the risk of an accelerating jobs spiral to the bottom, where our economy has insufficient investment in the quality jobs the nation needs, leaving a majority of people mired in an economy of declining living standards with little hope of escape.

One aspect of this jobs spiral is the increase in jobs which do not provide income security. Jobs that demand total flexibility and commitment from individuals, but offer little in return. This review examines the growth of one such type of job: the so-called zero-hours contract. It considers the reality of the way these are used in the workplace, the risks that they present to individuals and wider society, and the way we believe responsible employers should be managing people.

I argue that the widespread use of zero-hours contracts is not inevitable. Businesses have choices about the way they compete, how they organise work and manage their staff to cope with fluctuations in demand. Faced with the same issues, the majority of employers choose not to use zero-hours contracts. But zero-hours contracts are on the rise and the lack of rules governing their use leaves scope for abuse.

We also have a choice about the sort of economy we want to build – whether to compete on quality with a trained and motivated workforce, or to allow a race to the bottom on wages and skills. A more dynamic, innovative and fairer economy needs a set of shared rules to prevent the majority of good employers from being undercut by those that seek to cut costs and create incentives for more businesses to compete in higher value markets that support the growth of well-paid and more secure jobs across the UK.

This report looks to shape policy in such a way that it reduces the opportunity for exploitative zero-hours contracts while retaining flexibility where it is appropriate. It seeks to accommodate the legitimate use of these contracts, such as short-term flexibility or individual lifestyle choices, while putting in place measures to prevent the unacceptable risks that zero-hours contracts can create when managing the workforce over the longer term. The report recommends sharply defined parameters within which such contracts would be allowed to operate, which will limit the use of these arrangements to only those areas where they are truly appropriate and effective.

All of this matters because high skilled, secure and well remunerated work is the basis for growing thriving communities, providing opportunities for young people to grow and develop and forming the basis for all citizens to make a meaningful contribution to the world around them. It also matters at a personal level, because it is a reflection on our attitudes towards one another, the degree to which we believe that every person no matter what their role or background deserves the same levels of dignity and respect at work that we would hope to expect for ourselves.

Norman Pickavance

Summary of key findings

- The majority of employers do not use zero-hours contracts, in most cases because they
 do not believe that they provide the right approach to flexibility or workforce
 management.
- When used appropriately, zero-hours contracts can aid short term flexibility for employers and provide increased choice for individual workers.
- However, zero-hours contracts are often used as a crude cost-reduction tool, and the lack of rules and safeguards governing their appropriate use leaves scope for abuse.
- There is also evidence that some organisations are using them as a way of managing their entire workforce, in place of good performance management and workforce planning systems.
- Zero-hours contracts can create significant financial insecurity for employees, uncertainty around entitlements to benefits and the new auto-enrolment system for workplace contributions, and high workplace stress.
- They are disproportionately associated with low value business models and low investment in training. This hampers social mobility, as people on these arrangements often struggle to find opportunities to progress to better paid and more secure work.
- They are not compatible with the goal to build a high skill, high wage economy. Many leading employers recognise that zero-hours contracts can undermine employee engagement and good customer service.
- There is a strong case for safeguards to prevent the exploitative practices associated with some zero-hours contracts.
- There is also a need to limit the use of these contracts when they are being used as a long term strategy to manage large sections of the workforce that are in practice working relatively regular hours.

Introduction

The expression "zero-hours" contract is a colloquial term meaning an employment contract under which the employee is not guaranteed work and is paid only for work carried out. These contracts can be associated with high levels of insecurity, including variations in hours on a daily or weekly basis, and have received substantial media attention over the past year following revelations that their use is far more widespread than previously thought.

The UK's labour market flexibility helped to keep unemployment down during the recession and remains important. Zero-hours contracts can help employers to manage sudden changes in demand and can also suit some people who want to fit work around other commitments. However, while many employers use them responsibly, to the benefit of both businesses and employees, the lack of clarity around these contracts leaves scope for abuse.

In September 2013, Ed Miliband asked me to lead an independent consultation into how to prevent the exploitative practices associated with zero-hours contracts.

I have since consulted with a wide range of HR directors, employers, employees and their representatives. This report sets out the findings. I examine the evidence on the realities of zero-hours contracts, the risks associated with the contracts, and different ways in which managers choose to manage fluctuations in demand when faced with similar cost pressures.

Finally, I outline a set of recommendations to stop the use of exploitative zero-hours contracts. These seek to create a set of shared rules and to reflect the sort of economy we want to build across the four nations of the UK. I have sought to ensure that these new rules work for both businesses and employees, and to consider the impact of new legislation on small businesses in particular. I set out new rules on the information that must be included in employment contracts and examine measures to:

- Ensure that workers on zero-hours contracts are not obliged to accept work and are free to work for other employers;
- Give workers on zero-hours contracts who are in practice working regular hours a right to a contract with fixed minimum hours; and
- Give workers on zero-hours contracts a right to compensation when a shift is cancelled at short notice.

1. Realities: evidence on the use of zero hour contracts

Zero-hours contracts are well-established in certain sectors and occupations, but there has been a sustained increase in their use in recent years. Official data compiled by the Office of National Statistics based on information provided by employees, suggests nearly 600,000 workers are affected – a three-fold increase since 2010. The research showed that employees on these contracts worked an average of 21 hours a week in 2013.¹

¹ Analysis by the ONS (2014) estimates the numbers to be between 522,000 and 645,000. Some of the increase may be due to greater awareness among employees of what constitutes a zero-hours contract. See: http://www.ons.gov.uk/ons/search/index.html?newquery=zero+hours+contract



Source: ONS, March 2014

This is a problem affecting all the nations of the UK: the latest data from the Workplace Employment Relations Study shows that the number of employers in England and Wales using these contracts has doubled in recent years to 8 per cent, up from 4 per cent in 2004², and a recent report estimated that there are 90,000 people in Scotland working on zero-hours contracts³. Some surveys suggest that the ONS statistics may underestimate their prevalence across the UK. A 2013 survey of employers by the Chartered Institute of Personnel and Development (CIPD) found that a fifth (19 per cent) of employers across the UK, and a quarter of all workplaces with 250 or more employees, employ at least one person on a zero-hours contract. The average proportion of zero-hours workers in these organisations was 16 per cent. Based on this data, the CIPD estimated that one million workers, or 4 per cent of the entire workforce, could be on zero-hours contracts.⁴

There is also evidence that zero-hours contracts are becoming the norm in some sectors of the economy. Zero-hours contracts are particularly prevalent in the hotel, catering, administration, retail and leisure sectors. The hospitality sector, for example, accounts for 19 per cent of all workers on zero-hours contracts, but employs just 5 per cent of the total non-zero-hours workforce. These arrangements are also increasingly associated with organisations facing cuts to public funding, including further education colleges, universities,

² Van Wanrooy, Bewley, Bryson, Forth, Freeth, Stokes and Wood (2013) *The 2011 Workplace Employment Relations Study: First Findings*, London: BIS

³ Scottish Affairs Committee (2014) *Zero-hours contracts in Scotland: Interim Report,* House of Commons ⁴ CIPD Press Release, 5th August 2013:

 $[\]frac{\text{http://www.cipd.co.uk/pm/peoplemanagement/b/weblog/archive/2013/08/05/one-million-workers-on-zero-hours-contracts-finds-cipd-study.aspx}{}$

⁵ Alakeson and D'Arcy (2014) Zeroing In: Balancing protection and flexibility in the reform of zero-hours contracts, London: Resolution Foundation

parts of the third sector and most notably the care sector, where an estimated 307,000 people, or a fifth of the adult social care workforce, are contracted on these terms.⁶

Zero-hours contracts are disproportionately associated with low wage, low skill industries and a lack of training and progression opportunities. Almost four in five (79 per cent) of employees on zero-hours contracts earn below the average hourly wage for workers across Britain⁷, and around one in ten employers report that they pay staff on zero-hours contracts less than those doing the same role on a permanent contract.⁸ Research by UKCES found that workers on temporary and zero-hours contracts are less likely to receive training than those on 'normal' contracts and more likely to pay for their own training.⁹ This hampers social mobility, as people on these arrangements often struggle to find opportunities to progress to better paid and more secure work. Vulnerable workers such as migrants and those with low qualification levels are disproportionately represented among zero-hours workers¹⁰, and two-thirds of all those employed on zero-hours contracts are over the age of 25¹¹, suggesting that they are not simply a stepping stone to better jobs.

What is driving the increased use of zero-hours contracts?

Zero-hours contracts can offer workable benefits for all parties. They can provide crucial flexibility for employees, such as people who are semi-retired but want to do some work, or a student who is happy to pick up some extra work around their study. In some sectors they are well established, such as for bank nurses and locum doctors, and can provide opportunities to gain additional experience for people who already have a full time contract with another employer. They can also provide a measure of security for some workers by guaranteeing work during peak periods over the year, rather than require them to be reemployed each time – such as in seasonal industries or for ad hoc consultancy work.

For employers, the main benefit of zero-hours contracts is to limit wage costs and overheads. Zero-hours contracts enable employers to flex the workforce up or down to cope with changes in demand and provide flexible cover for absenteeism. Although other forms of flexible working provide a similar function, zero-hours contracts enable employers to avoid the costs associated with recruitment agencies and provide continuity of staff.

The rise of such contracts is likely to be partly cyclical, reflecting the increasing cost pressures facing many employers since the downturn. Zero-hours contracts are just one aspect of a much wider problem of underemployment and labour market insecurity since the economic downturn, during which period self-employment, temporary jobs, and involuntary part time and short-time working arrangements have all increased. A third of all workers and more than half (54 per cent) of 16 to 24 year olds on zero-hours arrangements say that they

⁸ CIPD (2013) Zero-hours contracts: Myths and realities

⁶ Skills for Care (2012) *The State of the Adult Social Care Sector and Workforce in England, 2012*

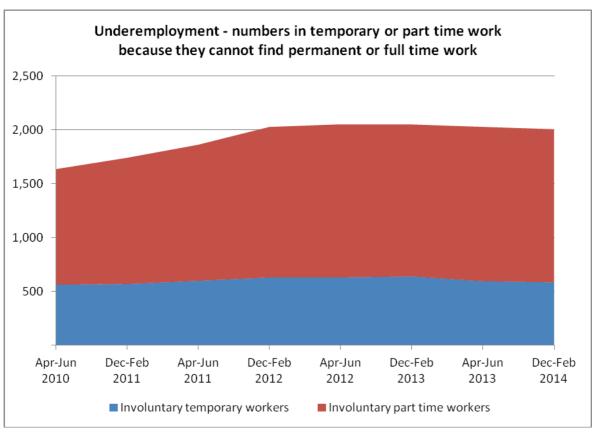
⁷ Research for the TUC found that the average hourly pay for employees on zero-hours contracts is £8.83, compared to £13.39 for permanent workers and £10.93 for agency staff. See: http://www.independent.co.uk/news/uk/politics/most-workers-on-zerohours-contracts-are-paid-less-than-the-national-average-wage-9246957.html

⁹ UKCES (2014)

¹⁰ Pennycook et al (2013) A Matter of Time: The rise of zero-hours contracts, London: Resolution Foundation

¹¹ Alakeson and D'Arcy (2014)

are on this type of contract because they cannot find a job with regular and fixed hours.¹² Overall, nearly 17 per cent of the workforce is now either unemployed or underemployed.¹³ The numbers of people in part time or temporary work because they are unable to find full time or permanent work now stand at 1.42m and 586,000 respectively (see graph below).



Source: ONS, March 2014

More worryingly, there is evidence that some employers are using zero-hours contracts as a permanent workforce management tool, often despite relatively predictable fluctuations in demand. A CIPD survey of employers using zero-hours contracts found that nearly half (45 per cent) are using them as part of their organisation's long term workforce strategy, while just 15 per cent said their use was a short term measure. Similarly, research by the Work Foundation found that nearly half (44 per cent) of people employed on zero-hours contracts have been with the same employer for at least two years and a quarter for five or more years. Media reports have also drawn attention to employers that base their entire workforce management strategy on zero-hours contracts. McDonalds and Sports Direct

http://www.ukces.org.uk/assets/ukces/docs/publications/flexible-contracts-final.pdf

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¹² UKCES (2014) Flexible Contracts: behind the headlines. See:

¹³ The ONS Labour Market Statistics Bulletin (April 2014) shows that, in Q4 2013, 3,125,000 people were underemployed and 2,342,000 were unemployed, out of a total economically active population (aged 16 and over) of 32,448,000.

¹⁴ CIPD (2013)

¹⁵ Brinkley (2013) *Flexibility or insecurity? Exploring the rise in zero-hours contracts,* London: The Work Foundation

reportedly employ approximately the vast majority of their UK workforces - 97,000 and 20,000 workers respectively – on these terms. 16

Sports Direct

Sports Direct has expanded dramatically since 2008 and gained a large share of the sports retail market. About 17,000 of their 20,000 strong staff are employed on zero-hours contracts.

Sports Direct declined to comment on how or why they use zero-hours contracts for the majority of staff, but reports suggest that this is integral to their model of performance management. Full time staff at Sports Direct receive generous bonuses when profit targets are met. According to their annual report, the company's performance-related benefit scheme recently saw around 3,000 permanent Sports Direct employees pick up shares worth tens of thousands of pounds. The majority of staff on zero-hours contracts, however, are not eligible. 17

I met one 18 year old girl in her first job who found herself 'zeroed out' when she struggled to keep up with the sales targets at Sports Direct. Her father expressed concern that zerohours contracts were being used "to punish her", saying that "[she] has been told she is restricted to a maximum of 3 hours a week after failing to sell enough expensive insoles as "add-ons" to shoe sales, despite selling more shoes than her quota ... She has no leave, no sick pay, and if she doesn't work when they demand, she gets no hours. Not flexible for her. She is also paid less than the few full time employees in the same role."

While employers clearly need to manage the performance of their staff, such an approach is a far cry from the coaching and training that many young people may need to gain confidence and improve when they start out in the world of work. There is a risk that these approaches undermine the trust and engagement that high quality service requires from staff.

The greater use of zero-hours contracts should be seen in the context of broader job insecurity, stagnant real wages and high levels of stress and fear in the workplace. The 2012 Skills and Employment Survey revealed that more than half (52 per cent) of all employees report anxiety about loss of job status and almost a third (31 per cent) are anxious about unfair treatment at work, including arbitrary dismissal, discrimination and victimisation by management. 18 This situation is contributing to low levels of trust and staff morale that are not conducive to building a professional and motivated workforce as part of a high skill, high wage economy. It is right that flexibility was prioritised over job losses during the recession, but as the economy recovers there is a need to tackle this increasingly pervasive workplace insecurity and to work towards a more inclusive growth that benefits all employees.

permanent contracts are on "flexible arrangements", and that "we do not state a guaranteed minimum as most of our employees join us because they like to be flexible to meet their changing personal requirements".

 $^{^{16}}$ These figures have been widely reported in the press. Dave Forsey, CEO of Sports Direct, confirmed that 17,000 out of 20,000 staff are on zero-hours contracts. A spokesperson from McDonalds declined to say how many of their employees are on zero-hours contracts but confirmed that 90 per cent of employees on

¹⁷ Sports Direct (2013) SportsDirect.com: Annual Report 2013

¹⁸ Gallie, Felstead, Green and Inanc (2013) Fear at Work in Britain, Work Intensification in Britain and Jobrelated Well-being in Britain, LLAKES

2. Risks: the problems associated with zero-hours contracts

Many employers use zero-hours contracts responsibly. In some industries, for example, employers and unions have drawn up agreements that set parameters on the use of zero-hours contracts and other forms of flexible working to meet a clearly defined business need. These agreements often put in place policies to ensure that zero-hours workers are not obliged to accept work, are fairly compensated for any inconvenience due to changes at short notice, and have the same rights and opportunities as other workers.

Some employers also say they regularly review the need for zero-hours contracts and prioritise workers on these and other flexible contracts when permanent and full time positions become available. Center Parcs, for example, employs a small proportion – about 3 per cent – of its total staff on zero-hours contracts to help cover absences and boost their capacity for ad hoc events and conferences over the year. Judi Leavor, HR Director at Center Parcs, told us that they have put safeguards in place to ensure that the approach is not open to abuse by managers. If a person has been working regular hours (at least one hour a week) over 13 weeks, a monitoring system triggers a process whereby the worker is invited in for a meeting with their line manager to discuss whether they should be put on a contract with fixed minimum hours.

However, the lack of rules surrounding the appropriate use of zero-hours contracts leaves them susceptible to abuse. This section examines some of the specific risks associated with zero-hours contracts, and the wider impact of this on employees.

Zero-hours contracts can push the risk due to uncertainty onto employees

In many cases employers will be better able to bear the costs associated with fluctuations in demand than employees, and therefore the risk should at the very least be shared. A core concern with zero-hours contracts is that they can push too much of this uncertainty onto the worker. This can lead to disruptive work patterns, including uncertainty about hours from week to week and changes at short notice. Research shows that:

- Three-quarters of those on zero-hours contracts say they hours vary each week, compared to 40 per cent of employees not on zero-hours-contracts¹⁹;
- Nearly half of workers on a zero-hours contract say they either receive no notice at all (40 per cent) or only find out at the start of a shift (6 per cent) when scheduled work is no longer available;
- When notice is given, 42 per cent say they receive less than 12 hours' notice, and a further 10 per cent between 12 and 24 hours;
- There is also a lack of clear rules in place, with 40 per cent of employers saying they have no policy or procedure outlining their approach to arranging work with zero-hours workers or cancelling work that has been offered.²⁰

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¹⁹ Brinkley (2013)

²⁰ CIPD (2013)

Zero-hours contracts can provide flexibility for the employer, but not the employee

For labour market flexibility to work effectively the relationship must be reciprocal, with flexibility working in the interests of employees as well as employers. Yet one in ten zero-hours workers say they have no choice at all over their hours and 4 in 10 want to work more hours than they receive in an average week.²¹ Despite the uncertainty created by zero-hours contracts, there is also evidence that a minority of employers also restrict the ability of workers to broaden their employment options by requiring that they work exclusively for them or that they are available as and when required:

- Nearly two-thirds (60 per cent) of workers on zero-hours contracts say that they feel obliged to accept work if their employer asks²²;
- One in 10 workers on zero-hours contracts say they are never able to work for another employer, and a further 15 per cent are only sometimes able to do so; and
- Nearly a third of employers expect staff on zero-hours contracts to always or sometimes be available for work, despite not offering any guaranteed hours.²³

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.

Zero-hours contracts can be used to avoid responsibilities to staff

In some cases, contracts that do not guarantee any hours to staff are being used on a routine basis despite the fact that most staff in practice work regular hours over long periods of time. In these cases there is no clear business case for using zero-hours contracts. The risk is that they enable some employers to use the threat of being 'zeroed-down' as a management tool, in place of good performance management processes. This situation can also prevent staff from voicing concerns and leave them vulnerable to arbitrary unfairness. A fifth of workers on zero-hours contracts say that they are always or sometimes penalised for not accepting hours from their employer, for example.²⁴

²² UKCES (2014)

²¹ Ibid

²³ CIPD (2013)

²⁴ Ibid

Zero-hours contracts also leave scope for some employers to avoid taking on the costs and obligations associated with contracts of employment, either deliberately or due to a lack of understanding about the law around employment status and the associated rights of their workforce. UK employment law makes a distinction between 'workers' and 'employees' with more formal employment contracts and arrangements. People on zero-hours contracts are sometimes falsely classified as 'workers' and so exempt from the important legal rights afforded to 'employees', notably unfair dismissal and redundancy rights.²⁵ The law around 'mutuality of obligation' already protects against this practice, indicating that if the day-to-day reality of the work suggests a relationship of employment, the contract will be one of employment.²⁶ However, in practice this is not well-enforced, and relies on an employee taking their case to an employment tribunal. This is compounded by the fact that many employees do not know their rights.

- Almost two-thirds (64 per cent) of employers using zero-hours contracts say they classify their zero-hours staff as 'employees', while 18 per cent regard them as 'workers'.
- However, only 55 percent of employers understand that staff engaged under zero-hours contracts enjoy the right not to be unfairly dismissed after two years' service and only 31 per cent understand that these employees have the right to statutory redundancy pay after two years' service.
- Only 18 per cent of workers on zero-hours contracts know that they have the right not to be unfairly dismissed after two years' service and only 10 per cent know that they have the right to statutory redundancy pay.²⁷

Zero-hours contracts can also create confusion about entitlements to maternity, sick and holiday pay. For example, the Scottish Affairs Committee reported a case where a worker on a zero-hours contract in the offshore industry who survived a helicopter crash but, because he is not currently available for work, then found himself without access to sick pay. The Committee highlighted that, if an employer is aware of their employee's sickness, they can simply fail to 'offer' any hours of work during this period, meaning that the individual will not officially be absent.²⁸

The impact on employees and the economy

As a result of these practices, life on a zero-hours contract can be precarious. One survey found that 57 per cent of all workers on zero-hours contracts say that they find it difficult to budget from month-to-month.²⁹ Submissions to this review by employees and trade unions quoted workers on these arrangements, who said that they struggle to make ends meet and

²⁵ All 'workers' (which includes everybody in work except self-employed people) are protected under National Minimum Wage, Working Time and anti-discrimination regulations. In addition to these rights, 'employees' are entitled to Statutory Sick Pay and Redundancy Pay; maternity, paternity and adoption leave and pay; minimum notice periods if their employment will be ending; protection against unfair dismissal; the right to request flexible working; and time off for emergencies.

²⁶ Employee status may be conferred if there is a mutuality of obligation (the employer has to provide work and you are expected to turn up) and/or through the 'control test', for example the extent to which your employer can require you to organise your life around their work.

²⁷ CIPD (2013)

²⁸ Scottish Affairs Committee (2014)

²⁹ UKCES (2014)

force people into debt, and highlighted the difficulty of calculating benefit entitlements, accessing credit and getting a mortgage for people on a contract that offers no guaranteed income. Concerns have also been raised about whether workers on zero-hours contracts will have access to the new system of auto-enrolment for workplace pensions, given that their hours may fluctuate above and below the threshold.³⁰

"It threatens my quality of life and my ability to pay bills and rent. The managers who are allowed to dictate how many hours they personally get a week don't seem to realise the stress the front of house are put under due to the unpredictable nature of the hours we are given."

Cinema worker

"I am only informed if I have shifts 1 week in advance and the hours I am given for the week can range from 0 to 48. This situation makes it virtually impossible to plan my finances. As a result I regularly feel anxious about whether I will be able to pay the rent and put food on the table."

Call centre worker

Workplace insecurity is also one of the primary drivers of stress, with consequences for employee wellbeing and costs to the National Health Service. Professor Sir Michael Marmot, author of an independent government review into health inequalities, links stress directly to a lack of control that people have over their working lives. His research showed that participants with low job control were 4 times more likely to die of a heart attack than those with high job control. They were also more likely to suffer from other stress-related disorders such as cancers, strokes and gastrointestinal disorders. Marmot found that those with the least control and influence over their working arrangements are most at risk of stress.

3. Responsibilities: choices about how to manage flexibility and workforce planning

Poor management practices, exemplified by the rise in zero-hours contracts, are not only bad for employees, but are also bad for the economy. The ability to manage flexibility is vital to all employers, particularly when faced with sudden economic shocks. But employers have choices about how to manage the peaks and troughs in demand that characterise most if not all industries. Zero-hours contracts represent a choice to cut costs by relying on 'numerical' flexibility, minimising the numbers and hours worked by staff. But firms can also respond to economic change through 'functional' flexibility, where workers are trained in a range of skills that enable them to be redeployed.

In an increasingly globalised world, the goal should be to build an economy based on quality, underpinned by a motivated and well-trained workforce. This section draws on my experience as HR director at a large retailer and submissions of evidence to the review to examine the different ways in which employers choose to manage flexibility and workforce planning, focusing in particular on employers that choose not to use zero-hours contracts.

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³¹ Marmot (2010) Fair Society, Healthy Lives: The Marmot Review.

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³⁰ Hansard debate on the Pensions Bill, 24 February 2014. See: http://www.theyworkforyou.com/lords/?id=2014-02-

Managing flexibility

Most large organisations closely manage staffing levels to map to sales and customer volumes. Many have sophisticated computer scheduling tools to help them to do this. The graph below shows an example of the expected fluctuations in demand over the course of a year, from a large British retailer. It is standard practice to plan staff hours and holidays to ensure that they have sufficient staff at the right times, but in peak periods such as Christmas and Easter some may also require extra staff on flexible contracts. Depending on how much flexibility they want, core staffing levels can vary, but most would sit in the range shown in the graph below between core staffing levels 1 and 2, with only a minority of staff on flexible contracts.

Some businesses, however, are choosing to hire the majority of people on contracts that require maximum flexibility, reserving a small proportion of core staff for senior management roles. One large pub chain consulted for this review, for example, hires 95 per cent of its workforce on zero-hours contracts on a permanent basis – effectively expecting staff to absorb all the risks associated with fluctuations in demand, and in place of more effective planning to map staffing levels to consumer demand.



In contrast to McDonalds, Sports Direct and the large pub chain cited above, many other well-known firms in the hospitality and retail industries facing similar pressures have chosen not to use zero-hours contracts – including Marks and Spencer, Pets@Home and Pret a Manger. Some of these organisations told me that they had considered using zero-hours contracts but decided against using them because, by undermining company loyalty and workforce commitment, they felt that they ran counter to their desire to provide the best possible service for their customers. These organisations stressed the importance of good workforce planning and the wide range of flexible working arrangements that better share the risks of uncertainty with employees, such as overtime, bank shifts or variable-hours contracts with flexibility above a guaranteed minimum.

"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. For the vast majority of employees zero hour are difficult to manage - true flexibility is a rare ability in real people's lives, and is at best a stop gap to 'proper' employment which gives a regular income and routine to life in and out of work. We find our colleagues are very flexible to our business needs, the result of feeling valued and committed to the business. 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. We have also introduced share store contracts - more than just overtime in a local store (which has its place) but rather a method by which we can create longer hour contracts for colleagues in turn creating a reliable regular income."

Sally Hopson, People Director, Pets@Home

"We don't offer zero-hours contracts and in fact have recently moved from a minimum of 7 to a minimum of 12 [hours per week]. We're looking to push that even further up. 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 the big deal for us, hence 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

Most organisations (over 70 per cent) do not use zero-hours contracts because they do not provide the kind of flexibility they want to run their organisation effectively. In explaining how they cope with the need for flexibility, some of the CEOs and HR directors I spoke for this review to argued that zero-hours contracts represent "lazy management", an "unsophisticated way of managing workplace flexibility" and an "ineffective way of motivating people". Many of these organisations put good employee engagement at the heart of their business models. Evidence shows that there is a firm correlation between employee engagement and high organisational productivity and performance, across all sectors of the economy. Analysis indicates that were the UK to improve its engagement levels this would be associated with a £25.8 billion increase in GDP.³²

"As we strongly advocate the mutual benefits of employee engagement we believe that a widespread, ongoing and systemic use of zero-hours contracts is incompatible with the objectives of employee engagement."

Unipart

³² Rayton, Dodge and Analeze (2012) *Employee Engagement: the evidence*, Engage for Success

"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 our 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

A key concern is the lack of training associated with insecure work. Chief executives identify lack of talent and skills as one of the main risks facing their organisations. Yet too few businesses are investing in training to underpin quality goods and services and ensure the ongoing vibrancy of the organisation. The result is that the ladders that previously allowed people to progress through organisations have been broken, and there are not enough people coming through the ranks to fill critical positions. Job insecurity and low pay have also made certain careers less desirable, leading to serious recruitment problems, high turnover and skills gaps. Without basic progression and an improvement in management practices, based on a belief that the talents of all workers should be nurtured and utilised, we will continue to witness problems of skill erosion and poor social mobility in the economy.

Just as businesses in the private sector make very different choices about how to manage the pressures they face, public sector organisations have choices about how they deploy staff in response to budget cuts. The Scottish Affairs Committee, for example, recently singled out universities in Scotland for criticism based on evidence that 79 per cent use zero-hours contracts, compared to 52 per cent of universities in the UK as a whole.³³ Research by University College Union highlights the wide variations in use of zero-hours contracts in different further and higher education institutions across the UK, from some that use no zero-hours staff to others that have hundreds and even thousands of staff on these arrangements. Those that do not use them say that they are able to cope by planning ahead and making use of existing staff resources, arguing that "effective management and planning of curriculum and staffing" was sufficient to deal with relatively predictable fluctuations in student demand over a given year. Many also make use of term-time only contracts, variable contracts with minimum hours and agency workers for unplanned cover.³⁴

There is also evidence that inefficient procurement practices and poor workforce planning are contributing to the high use of zero-hours contracts in the care sector. Local authorities and providers could significantly reduce the use of zero-hours contracts by working together to improve how care is procured and delivered. For example, a bank system for care workers, as exists in nursing, could be established on an area basis at little if any extra cost. The Labour Party's independent review into exploitation in the care sector, led by Baroness Kingsmill, is currently examining this issue.

4. Policy recommendations

The exploitative use of zero-hours contracts creates financial insecurity for many families and are contributing to a broader decline in living standards. That is not compatible with a long-term investment culture and can damage employers' ability to attract or retain high quality staff and to deliver continuity and quality of service provision. However, where zero-

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³³ Scottish Affairs Committee (2014)

³⁴ University College Union, submission of evidence, 2014

hours contracts are managed fairly and suit the needs of employees as well as employers, they can work well for both parties.

The following recommendations therefore recognise that the zero-hours contracts have their place in providing short term flexibility, provided certain safeguards are introduced to prevent exploitation. They also aim to ensure that employers do not use zero-hours contracts as a way of managing the entire workforce over the long term, in place of good management techniques.

They are based on three core principles:

- That the risk of insecurity, particularly short term fluctuations in demand, should be shared between employer and employee;
- That the labour market needs to be made more flexible for working people, not just for the firms that might employ them; and
- That we should encourage responsible management practices as part of a goal to build a high skill, high wage economy.

Employment legislation is a reserved matter, and therefore these recommendations would apply in the same way across the UK. This is essential to prevent a race to the bottom, with employers undercut by others across the border seeking to compete on a low wage, low skill business model. I have set out the rules that I believe make most sense, based on the evidence submitted to this review, but in some cases the government should consult further with key stakeholders such as the CBI and the TUC on the specifics. In addition, zero-hours contracts will need to be defined in law, for example, as a working relationship between an employer and a worker where there are no specific hours of work and payment is made only for work performed.

Safeguards to prevent abuse

The TUC recognises that some individuals are attracted by the flexibility of such contracts ... [However] employment on a zero-hours contract is often not a matter of choice for workers, particularly in those sectors where it is the predominant form of employment.

TUC submission

A large part of ensuring that a zero-hours contract works for both parties is mutuality of obligation - flexibility must go both ways. In practice this means that zero-hours workers should be able to work for other employers and be free to decline work when it is offered. It is important that an employee with a zero-hours contract with one employer is able to also work for other employers because in any given week their primary employer may not be able to offer work. The employee should have the best possible chance of working the hours that they choose each week.

CBI submission

Listening to businesses, I have found that some clearly have legitimate reasons for requiring the level of flexibility offered by zero-hours contracts, particularly to manage short seasonal peaks of work and in cases where individuals voluntarily think they suit

their personal circumstances. However, some safeguards are required to prevent certain exploitative practices used by a minority. I therefore recommend measures to:

1. Ensure that workers on zero-hours contracts are not obliged to be available over and above their contracted hours

- Workers on zero-hours contracts should be free to decline work when it is offered. Therefore, clauses that require workers on zero-hours contracts to be available for work should be declared by legislation to be unenforceable when there is no guarantee of work or pay. A worker on a zero-hours contract could still be asked and able to accept offers of additional work, but the employer would not be able to demand (either contractually or verbally) that they make themselves available without any guarantee of work.
- In order to ensure that employers do not simply contract people for one hour, and require availability over and above that, I also recommend that employers should only be able to require availability in direct proportion to the amount of work they offer. For example, employment contracts could only be able to require additional availability for a maximum 50 per cent of their contracted hours.
- The government should consult on the appropriate proportion of contracted hours an employer should be able to require an employee to be available, and should also examine whether employers should be able to expect additional availability if they pay employees a retention fee for being on-call, and if so what form this should take.

2. Ensure that workers on zero-hours contracts are free to work for other employers

• Workers on zero-hours contracts should be able to work for other employers. Therefore, clauses that require workers on zero-hours contracts to be available for work and prohibit the worker from working for another employer at that time should be declared by legislation to be unenforceable when there is no guarantee of work or pay. There are many legitimate reasons why employers may wish to require workers to work exclusively for them – such as commercial sensitivity – but employers should not be able to require this without any guarantee of work. Employees would still be bound by duties of confidentiality, but an employer would not be able to require exclusivity unless they offer a guaranteed minimum number of hours in return.

Encouraging good management practices

"While there is a need for some outlets to have a set number of staff on zero-hours contracts... there is evidence of overuse. There is no reason why 90 per cent of staff at major chain stores should be on zero-hours contracts."

Forum of Private Business

The flexibility to offer and accept work at short notice can be a useful characteristic of zero-hours contracts, but effective workforce planning and timely communication are essential to good management and should be encouraged. Businesses have become increasingly accurate at forecasting demand and most large organisations now have the systems in place to schedule staff hours accordingly. In addition to the safeguards proposed above,

therefore, I believe that it is right to limit the use of these contracts when they are being used as a long term strategy to manage large sections of the workforce that are in practice working relatively regular hours. I recommend measures to:

3. Give workers on zero-hours contracts who are in practice working regular hours a right to a contract with fixed minimum hours

- If you are working regular hours, your contract should reflect that. It is unfair that an employee can work regular hours and yet be on a zero-hours contract for long periods of time, sometimes years. I therefore recommend that, after 6 months, workers should have a right to request a contract that is other than zero-hours and which provides a minimum amount of work. Employers would only be able to refuse this request if they are able to demonstrate that their business needs cannot be met by any other form of flexible contract for example, seasonal work may be a legitimate exemption.
- Given that many employees are not aware of their rights, I believe there is a case for an additional 'back-stop' measure. I therefore recommend that, after a period of 12 months continuous employment, workers on zero-hours contracts who are working regular hours (e.g. a minimum of 8 hours a week over the reference period) should have the right to be offered a contract that is other than zero-hours and which provides a minimum amount of work. It is proposed that this would happen automatically and should reflect the actual hours that people are working on a regular basis. People working regular hours would only be able to be legally kept on a zero hour contract for more than a year if they formally opted-out of these arrangements. To do so the employer must demonstrate that the employee has received independent advice from a trade union or independent legal adviser, so as to avoid any undue pressure being applied to stay on a zero-hours contract.
- These rights should include bridging provisions³⁵ to prevent unscrupulous employers from laying people off or 'gaming' the hours during the reference period to avoid complying. However, a significant proportion of zero-hours contracts currently last for 2 years or more, so I do not believe that there is a significant risk of people being sacked or having their hours arbitrarily reduced just because they are reaching the 12 month mark. By this point most employers know whether the employee is suitable for the job and I have not found widespread evidence of people on 1 or 2 hour contracts. Furthermore, it would be expensive and time-consuming to recruit and train someone else simply to avoid providing a fixed term contract reflecting actual business practice. Nonetheless labour market practices should continue to be monitored on an ongoing basis.

4. Give zero-hours workers a right to compensation when shifts are cancelled at short notice

 We need to protect employees from unnecessary insecurity due to poor workforce planning. I am therefore persuaded by the CBI submission to this review, which argues that workers on zero-hours contracts should be entitled to compensation – 2

³⁵ Bridging provisions ensure that employees rights still apply when there have been gaps in service, and are used for example when assessing the right to holiday pay.

hours pay for example – when a shift is cancelled at short notice.³⁶ How long that notice period should be should be the subject of consultation, but in my view a minimum of 48 hours to a week's notice of any changes in hours should be provided when hours are reduced. Extra hours could still be offered provided the worker is not obliged to accept them, as above.

5. End the confusion surrounding rights and responsibilities

All workers should have clarity about their employment status and terms and
conditions. This could be done by amending the Employment Rights Act 1996 so that
employers are required to provide basic information about terms and conditions to all
workers they engage (not just employees) within two months of their start date.
Employers could also be required to state their policy on the periods by which a
worker should be notified that work is available, and to confirm their employment
status.

6. Promote good practice

 A new Code of Practice would provide clarity for employers and employees about their rights and responsibilities. The content should be developed by trade unions and employer representatives through ACAS, as is standard practice. Provisions could include advice for employers operating zero-hours contracts on when the use of zero-hours contracts may or may not be appropriate and guidance in relation to difficult issues such as holiday pay, notification periods, pensions and autoenrolment.

Conclusions

This report is based on two guiding principles: first that business must strive to be competitive and second, that they can best do so by showing respect for the dignity of each person ensuring a satisfied, healthy and engaged workforce. It demonstrates that good businesses already understand that their companies are best served by taking a longer term and broader view, who understand that providing a fair return for investors is best achieved by providing fair compensation and appropriate working conditions for their employees. Today some of these good businesses find themselves being undercut by less scrupulous companies. The recommendations in this report seek to prevent this from happening and provide incentives for more employers to adopt higher wage, higher skill business models, rather than compete on price and cost alone.

The rise in workplace insecurity, exemplified by the greater use of zero-hours contracts, represents choices about how we manage the economy. As one company put it to me during my interview process; "If you ask a manger what they want, they will always say 'more flexibility', even if that has a detrimental long term impact." Yet several of Britain's key performance indicators already show the danger of engaging in this race to the bottom. The UK lags behind other leading nations in productivity, skills and training levels, and the levels of motivation or engagement of staff. All of which point to a worrying lack of long term competitiveness for the British economy.

³⁶ CBI (2014) Zero-hours contracts: Encouraging flexibility that benefits employers and employees

In addition to the recommendations in this report, therefore, I believe there is a case for a broader review of what a truly competitive work environment needs to look like in the 21st century. A higher skill, higher wage economy with a far greater emphasis on how Britain can differentiate itself in world markets through better long term skills development, real innovation, investment in technology and sustainable improvements in productivity. The UK has too many low commitment, low pay jobs that cannot support these ambitions, and as a result, is failing to provide sufficient inspiration or support for our young people, who too often find themselves languishing in jobs with few learning or progression opportunities.

These choices also have a human cost. People's livelihoods and their sense of identity and wellbeing rest to a large extent on the nature of their work. Without proper safeguards, insecure and exploitative work undermines the ability of individuals to make a meaningful contribution to society and is associated with higher levels of stress, pressure on family life and rising healthcare costs. We must shape a different future where meaningful work and the rewards it can bring are put back at the heart of our economic strategy.

Appendix

List of contributors to the review

A wide range of people contributed to the review on an informal basis, including employers, policy experts and individuals on zero-hours contracts. In addition, the following organisations and individuals responded formally to my call for evidence:

Association of Colleges

Barclays

British Association of Leisure Parks Piers and Attractions (BALPPA)

British Retail Consortium

CBI

Chartered Institute of Personnel and Development

Employment Lawyers Association

Forum of Private Business

Fox International Channels, Europe

G4S

GMB

Grafton Merchanting GB

Halfords

Inchcape UK

Interserve

John Bowers QC, Littleton Chambers

Marks and Spencer

Mothercare Plc

National Trust

NHS Employers

Pets@Home

Public and Commercial Services Union

Recruitment and Employment Confederation

Serco

Talk Talk

The Educational Institute of Scotland

The Work Foundation

Thompsons Solicitors

TSSA

Trades Union Congress

UK Homecare Association Ltd

Universities and Colleges Employers Association

University College Union

Unipart

Unison

Unite the Union

Usdaw