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Zero Sum Game

zero-hours contracts in London

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1. Foreword

Zero-hours contracts have come to symbolise the unfairness created by the growing casualisation of the workforce and an economy – both here in London and across the country – that is increasingly founded on low paid, insecure, work.

It is estimated by the Office for National Statistics (ONS) that 96,000 Londoners have contracts of this type. This is an estimate based on self-reporting by workers, and therefore relies heavily on people recognising the term ‘zero-hours contracts’ as something that applies to them. The ONS recognises that this figure is not precise, and in practice it is impossible to accurately state how many people are on zero-hours contracts. What we do know is that zero-hours contracts are associated with low pay, low productivity and insecurity and that they offer workers fewer employment rights than are afforded to people on more conventional employment contracts.



The flexibility zero-hours contracts offer appeals to some sections of the workforce, such as students and some parents whose lifestyle benefits from casual working arrangements. However, that some individuals find them beneficial is not a good enough reason to excuse their widespread and growing use by firms as a tool for managing their workforce; a significant minority of those on zero-hours contracts state that their preference would be for increased security, while around 4 in 10 zero-hours workers want to work more hours.

“It is a zero-hours contract. It is definitely not a job.”

Boris Johnson on his appointment to the Political Cabinet, May 2015

In a city where the recent fall in unemployment is built on low-paid work, and increasing in-work poverty, the recent legal change preventing the use of exclusivity clauses in zero-hours contracts is welcome. But more must be done to ensure that workers are not penalised with fewer hours or dismissal if they are unavailable to work when their employer demands, or if they accept hours from another employer when no hours are available with their primary employer.

Flexibility shouldn't just go one way. It is clear that most employers should broadly be able to predict the demand for workers ahead of time. In extreme cases, we have heard of waiting staff turning up to work and being sent home again because they aren't needed. Indeed, workers should have far greater rights to predictable hours. Zero-hours contracts aren't just a UK phenomenon and we can find solutions from overseas. This is why this paper calls for workers to be guaranteed at least 80 per cent of the average hours they have worked over the previous 3 months, as agreed recently between trade unions and McDonalds in New Zealand.

This report examines the use of zero-hours contracts in London. It calls for further changes to the law, more predictable hours of work for those who want them, and greater reward for flexibility. It advocates the use of procurement by public bodies and government at all levels to ensure the use of this type of contract is limited.

The current Mayor has done little during his time in office to examine the impact of zero-hours contracts. Boris Johnson has failed to use his procurement power to set an example of best practice and has made light of zero-hours contracts, even going so far as joking about their use. Yet for too many workers, this type of contract is not the joke the Mayor seems to think it is. Whoever succeeds Boris Johnson next May must use their influence – both with employers and the government – to ensure that future growth in London's economy is not built on unfair employment practices.

2. Summary

The use of zero-hours contracts has risen sharply across the United Kingdom in recent years. In January 2015 the Office for National Statistics (ONS) estimated that 1.8 million jobs are now employed on zero-hours contracts.ⁱ Further data published in September 2015 showed that the number of workers reporting as employed on zero-hours contracts has risen by 343 per cent since 2010.ⁱⁱ In London, 96,000 workers are now estimated by the ONS to be employed on zero-hours contracts – the joint second highest of any region or nation in the UK.ⁱⁱⁱ

Zero-hours contracts mean an employer is not obliged to provide workers with any minimum number of working hours, and that the worker is not legally obliged to accept any of the hours they have been offered.^{iv} Zero-hours workers also typically have weaker employment rights than those on more conventional employment contracts. As a result, zero-hours contracts are considered by many to be part of a wider drive by firms to reduce their responsibilities to staff more generally.

This report outlines a number of key issues regarding the growth of zero-hours contracts:

- Zero-hours contracts have allowed employers to abuse the system by introducing exclusivity clauses, which prevent employees from accepting work from another employer, even if the primary employer is unable or unwilling to provide hours themselves. While explicit exclusivity clauses are now illegal, it is concerning that ‘effective’ exclusivity arrangements still remain – with employers able to penalise workers for accepting hours elsewhere by reducing the amount of work they themselves offer. Survey data compiled prior to the legal change in relation to exclusivity clauses found that one in four (26 per cent) zero-hours workers were ‘never’ or only ‘sometimes’ allowed to accept work from other employers,^v while one-in-five (20 per cent) zero-hours workers were ‘sometimes’ or ‘always’ penalised for turning down work.^{vi}
- Zero-hours contracts provide workers with looser working arrangements, and this is beneficial for many, particularly students and some families. However, whilst survey data suggests that 47 per cent of zero-hours workers are satisfied at having no minimum contracted hours, 27 per cent are dissatisfied by this arrangement.^{vii} This is a significant minority, particularly when considering that 41 per cent of workers on zero-hours contracts would like to work more hours than they are currently offered.^{viii}
- Zero-hours contracts tend to be associated with low-pay work (with earnings around £246 a week less than people on more conventional employment contracts^{ix}), job and income insecurity, and underemployment.
- Zero-hours contracts damage long-run growth prospects by weakening productivity. This is the result of both a lack of investment in developing skills of zero-hours workers and, through explicit and ‘effective’ exclusivity arrangements, which ensure that an element of labour remains unused.

To investigate the impact of zero-hours contracts, last year Fiona Twycross AM organised a meeting with a broad range of organisations, including employers, business groups and trade unions to discuss the issue. The discussion highlighted a consensus among these groups about the implications of zero-hours contracts, although opinions differed considerably on the required policy responses. Importantly, the information compiled for this report, and the evidence provided during the roundtable discussion, highlighted a lack of research on zero-hours contracts. This report therefore brings together existing research and the views of key stakeholders, whilst also identifying areas for further investigation.

3. What are zero-hours contracts?

Zero-hours contracts relate to an employment contract “under which the worker is not guaranteed work and is paid only for work carried out”.^x This differs from conventional employment contracts, which explicitly outline a set number of hours that an individual is expected to work each week. The Chartered Institute of Personnel and Development (CIPD) define a zero-hours contract as:

“An agreement between two parties that one may be asked to perform work for another but there is no minimum set contracted hours. The contract will provide what pay the individual will get if he or she does work and will deal with circumstances in which work may be offered and possibly turned down.”^{xi}

Prior to the Small Business, Enterprise and Employment Act 2015 zero-hours contracts had no legal definition.^{xii} Under the recent legislation, zero-hours contracts are now legally defined as:

“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”.^{xiii}

4. Implications of a zero-hours contract

Zero-hours workers tend to have a different employment status to those on more conventional employment contracts, being categorised as a ‘worker’ rather than an ‘employee’ of the firm.^{xiv} As such, zero-hours contracts often entail different employment rights and thus, with their growing use, can consequently be viewed as part of a much wider process of diluting employment rights in the labour market. For instance, ‘workers’ are not legally entitled to a minimum notice period, protection against unfair dismissal, time off for emergencies and statutory redundancy pay.^{xv} The CIPD also highlights that people on zero-hours contracts “may find it difficult to satisfy” certain criteria to qualify for statutory sick pay.

In October 2014 the Department for Business, Innovation and Skills launched a review of the current rules surrounding employment status, noting “that an increasing number of people in the UK... could be on ‘worker’ employment contracts which have fewer basic rights (such as unfair dismissal or maternity pay) than the vast majority of people who are on ‘employee’ contracts”.^{xvi} The new Government is yet to publish the outcome of this review.

ACAS (the Advisory, Conciliation and Arbitration Service) has highlighted that zero-hours workers are still entitled to some basic employment rights such as annual leave, the National Minimum Wage and pay for work-related travel. Similarly, while there is no legal obligation on employers to provide work, zero-hours workers have no legal obligation to accept the work they are offered. Nevertheless, a report published in November 2013 by the CIPD, based on a survey of employers, found that 64 per cent of employers classify zero-hours staff as ‘employees’ of the company, while 19 per cent describe them as ‘workers’. Overall, 3 per cent classify such staff as self-employed.^{xvii}

The previous absence of a legal definition and a lack of awareness among employers may explain why many zero-hours workers appear to be treated like they are employed on conventional contracts. The CIPD report noted that:

“Perhaps reflecting the confusion that surrounds the employment status of zero-hours contract staff, 7 per cent of employers have not classified their status and a similar proportion (7 per cent) don’t know. The remaining 6 per cent say that they employ zero-hours contracts on a variety of these arrangements.”^{xviii}

Furthermore, the CIPD report found evidence of “significant confusion among both employers and zero-hours contract staff over which employment rights people on zero-hours contracts are eligible for”.^{xix} The table below (see table 1) outlines the basic legal entitlements for each employment category. It highlights the extent to which the spread of zero-hours contracts has represented an erosion of employment rights.

It is worth noting that similar distinctions and issues apply for those workers on contracts with a minimum number of guaranteed hours, for example ten hours a week, but whom in practice may be expected to work significantly more hours. Arguably a side effect of banning exclusivity clauses could be to lead to an increased number of contracts of this type as they effectively tie workers to an employer for a fixed period reducing the workers’ flexibility further whilst appearing to offer some limited protection. Guaranteeing workers a minimum number of hours based on an average of hours worked across a set time period would offer greater income security. For example, a recent agreement between trade unions and McDonalds in New Zealand has led to workers being guaranteed at least 80% of their average hours over a 3 month period up to 32 hours a week.^{xx}

Right/protection	Employee	Worker	Self-employed
Right not to be unfairly dismissed (after two years’ service)	Yes	No	No
Right to receive written statement of terms and conditions	Yes	No	No
Itemised payslip	Yes	No	No
Statutory minimum notice	Yes	No	No
Statutory redundancy pay (after two years’ service)	Yes	No	No
Protection from discrimination in the workplace	Yes	Yes	Possibly
National Minimum Wage	Yes	Yes	No
Protection from unlawful deduction from wages	Yes	Yes	No
Paid annual leave	Yes	Yes	No
Right to daily and weekly rest breaks	Yes	Yes	No
Pension auto-enrolment	Yes	Yes	No
Right to be accompanied at a disciplinary or grievance hearing	Yes	Yes	No
Right under data protection legislation	Yes	Yes	Yes
Whistleblowing protection	Yes	Yes	Possibly
Statutory sick pay	Yes	Possibly	No
Statutory maternity, paternity and adoption leave and pay	Yes	No	No
Unpaid time off to care for dependants	Yes	No	No
Right to request flexible working	Yes	No	No
Time off for ante-natal care	Yes	No	No
Time off for trade union activities	Yes	No	No
Protection under the transfer of undertakings legislation	Yes	No	No
Health and safety in the workplace	Yes	Yes	Yes

Table 1: General categories of rights and protections^{xxi}

5. Exclusivity Clauses

At their most exploitative, employers had included exclusivity clauses into contracts in order to prevent zero-hours workers from accepting hours offered by other employers, even when they may be unable or unwilling to provide hours themselves. Prominent cases, such as that of Sports Direct, where a reported 90 per cent of staff are employed on zero-hours contracts,^{xxii} highlight the means through which companies sought to tie staff into exclusivity agreements. Contracts issued to staff are reported to have stated that:

“If you wish to undertake any work outside the company, whether paid or unpaid, you should raise the matter with your manager... it may be decided that the additional work would conflict with your duties at Sports Direct.com Retail Limited. You would then be prevented from taking it up.”^{xxiii}

A survey of employers may not be the most reliable method of measuring the extent to which exclusivity clauses were previously used by businesses. Whilst the 2013 CIPD survey suggested that 60 per cent of zero-hours workers were free to work for other employers when their primary employer had no work available, a sizeable minority – 24 per cent – reported that their zero-hours workers were either ‘sometimes’ or ‘never’ allowed to accept work from another employer (17 per cent did not know).^{xxiv} To place this in context, research undertaken in 2008 suggested that agency workers employed on temporary contracts in the hospitality sector – now the second largest sector for zero-hours contracts – will typically be registered with three separate agencies for work, highlighting that such workers often accept work from multiple employers.^{xxv}

The use of exclusivity clauses by some employers clearly represented a basic unfairness in the labour market. The practice tied workers to an employer who refused to guarantee secure working hours and pay, but allowed those same employers to prevent their workers from gaining hours elsewhere. It was therefore a welcome step when the previous Government agreed to “render unenforceable”^{xxvi} exclusivity clauses as part of the Small Business, Enterprise and Employment Act, which came into force in May 2015.^{xxvii} The Government outlined that the act will “allow individuals engaged on a zero-hours contract, whose current employers are unable to offer them enough work, to boost their income by working elsewhere if they so wish”.^{xxviii}

Yet progress cannot stop there. It is vital that Government now focuses on ensuring that explicit exclusivity clauses are not replaced by ‘effective exclusivity’, whereby zero-hours workers are penalised by employers for accepting hours with other employers (for example, by refusing to offer hours in future or even dismissal). The CIPD survey found that 20 per cent of zero-hour workers are either ‘sometimes’ or ‘always’ penalised if they are not available to take work when it is offered,^{xxix} a finding that was substantiated by an analysis of calls to the Acas Helpline, published in May 2014, which found that:

“Although explicit use of exclusivity clauses did not emerge as an employment relations issue in the Acas research (they cropped up in only one of the seventy calls analysed), the issue of what might be termed ‘effective exclusivity’ did emerge as a very major concern and was highlighted by the Acas Council in its response to the Government Consultation. Workers are often frightened to turn down work or look for other work in case their employer starts zeroing down their hours. These anxieties appear to reflect the imbalance of power between the worker and the employer in these contractual arrangements as workers are also fearful of raising queries regarding their rights and entitlements.”^{xxx}

Concerns have already been raised about the lack of enforcement measures surrounding the ban, with one employment lawyer describing the legislation as “utterly toothless”.^{xxxii} Another has argued that “there is no way this can benefit zero-hours workers”, and warned that workers could find their hours at the primary company reduced or cut altogether if they accept hours elsewhere.^{xxxiii}

6. The growth of zero-hours contracts

The most recent ONS figures, collected through the Labour Force Survey and published in February 2015, reported that the use of zero-hours contracts increased from 0.4 per cent of the UK labour market in 2004 to 2.4 per cent by 2015 (see table 2).^{xxxiii} The data suggests that 744,000 people are now reporting as working on a zero-hours contract, up from 168,000 since 2010 – an increase of 343 per cent. Of these, 96,000 zero-hours workers are estimated to be in Greater London.^{xxxiv}

	In employment on a zero hour contract (thousands)	Percentage of people in employment on a zero hour contract
2000	225	0.8
2001	176	0.6
2002	156	0.6
2003	124	0.4
2004	108	0.4
2005	119	0.4
2006	147	0.5
2007	166	0.6
2008	143	0.5
2009	189	0.6
2010	168	0.6
2011	190	0.6
2012	252	0.8
2013	586	1.9
April - June 2014	624	2.0
October - December 2014	697	2.3
April - June 2015	744	2.4

Table 2: Level and rate of people on zero-hours contracts (recorded between October and December for each year until April to June 2014)

The accuracy of ONS data in relation to the use of zero-hours contracts has been questioned by organisations such as the Resolution Foundation and Work Foundation because of the reliance on self-reporting. As the Resolution Foundation noted, the methodology requires:

“...individuals to recognise the term ‘zero-hours’ and be familiar with their own contractual arrangement. It is therefore likely that some individuals who are employed on zero-hours contracts do not associate their own working arrangements with this precise term leading to significant under-reporting.”^{xxxv}

The unreliability of the Labour Force Survey seemed to be confirmed by a further ONS survey of employers. The most recent employer survey, published in February 2015, estimated that 1.8 million jobs are now employed on zero-hours contracts (up from the 1.4 million jobs that the previous survey reported in January 2014).^{xxxvi} While the Labour Force Survey outlines the number of *people* working on zero-hours contracts, the business survey outlines the number of *jobs* that are filled by zero-hours workers. For both surveys to be correct, the average worker would need to be working 2.6 jobs on zero-hours contracts. The ONS business survey data is also based on self-reporting, meaning that the data contains the same potential for misreporting as the Labour Force Survey. The employer survey data is drawn from too small a sample size to produce regional estimates.¹

The employer survey and Labour Force Surveys published in February 2015 alongside the employer survey found that zero-hours contracts are more likely to be used in certain sectors, particularly the hospitality and administrative sectors. However, in some instances, the two surveys show a significantly difference in the distribution of zero-hours contracts between sectors. While to some degree this could be due to zero-hours workers maintaining multiple jobs, the large differences in some cases suggests an inconsistency between the results of the two surveys (see table 3).

	LFS	Business	LFS	Business
Production including Agriculture	32,000	170,258	4.7%	9.4%
Construction	26,410	26,634	3.9%	1.5%
Wholesale and Retail	72,368	63,266	10.6%	3.5%
Accommodation and Food	159,491	464,064	23.3%	25.5%
Information, Finance, Professional	31,326	92,100	4.6%	5.1%
Admin and support services	53,018	521,767	7.7%	28.7%
Public admin	0	3,912	0.0%	0.2%
Education	50,444	92,168	7.4%	5.1%
Health and Social work	149,463	241,469	21.8%	13.3%
Transport, Arts, Other services	111,151	145,120	16.2%	8.0%
Total	685,671	1,820,759	100%	100%

Table 3: Use of zero-hours contracts by industry, February 2015 (Office for National Statistics, including data from the Labour Force Survey and an Office for National Statistics business survey)^{xxxvii}

The London Chamber of Commerce and Industry (LCCI) highlighted survey evidence during the roundtable, which found that a quarter of LCCI members use zero-hours contracts.^{xxxviii} The 2015 ONS business survey estimated that, in total, 11 per cent of businesses use zero-hours contracts. Of these, 50 per cent were issued by large firms with 250 or more employees, while only 10 per cent were issued by firms with fewer than 20 employees, suggesting a greater tendency for bigger firms to use zero-hours workers.^{xxxix}

¹ The ONS business survey is based on the responses of 2,500 employers

7. Drivers of zero-hours contracts

The reasons behind the growth in zero-hours contracts are poorly understood. A key question is whether their use fluctuates with the economic cycle, or whether the recent growth is part of a more fundamental structural change in the UK's labour market. Both scenarios are currently supported by some degree of evidence.

If the cyclical argument is correct then, as the economic cycle turns towards a slump, the use of zero-hours contracts within the labour market will increase. Intuitively, this argument suggests that as employers contend with rising financial pressures they will increasingly use zero-hours contracts to manage their workforce more efficiently, therefore reducing these cost pressures. However, the evidence in favour of this is unconvincing, leading the Work Foundation to note in a 2013 report that “we do not have a wholly convincing story of why zero hours first fell and then revived, and no single cause is likely”.^{xi} While ONS data (see figure 1) shows that the use of zero-hours contracts in the UK labour market declined from 2000 as per capita output increased, the data also shows that the rise in zero-hours contracts began in 2004.^{xii} This predated the 2008 financial crisis. Meanwhile, the most significant recorded jump in the use of zero-hours contracts has been from 2012 – four years after the crash.

In part, this increase could be due to better recognition of zero-hours contracts, and therefore higher self-reporting by zero-hours workers to the Labour Force Survey. However, the data suggests that the dramatic rise in the use of zero-hours contracts over recent years has been part of a significant structural readjustment in the UK labour market, although more evidence is needed to fully substantiate this assertion. It is argued that this structural change is driven by employers increasingly deciding to use zero-hours contracts to manage their workforce, and public sector budget cuts that have resulted in greater use of zero-hours contracts, particularly across the NHS, education services, and higher education sector and in social care. From this point of view, the growth in zero-hours contracts is seen as part of a wider growth in casualisation within the labour market and increasing insecurity. It was suggested during the roundtable with stakeholders that this stems from wider macroeconomic problems, including low productivity, poor management practices, inadequate business forecasting, and the growth of low-skilled employment opportunities within the economy.^{xiii}

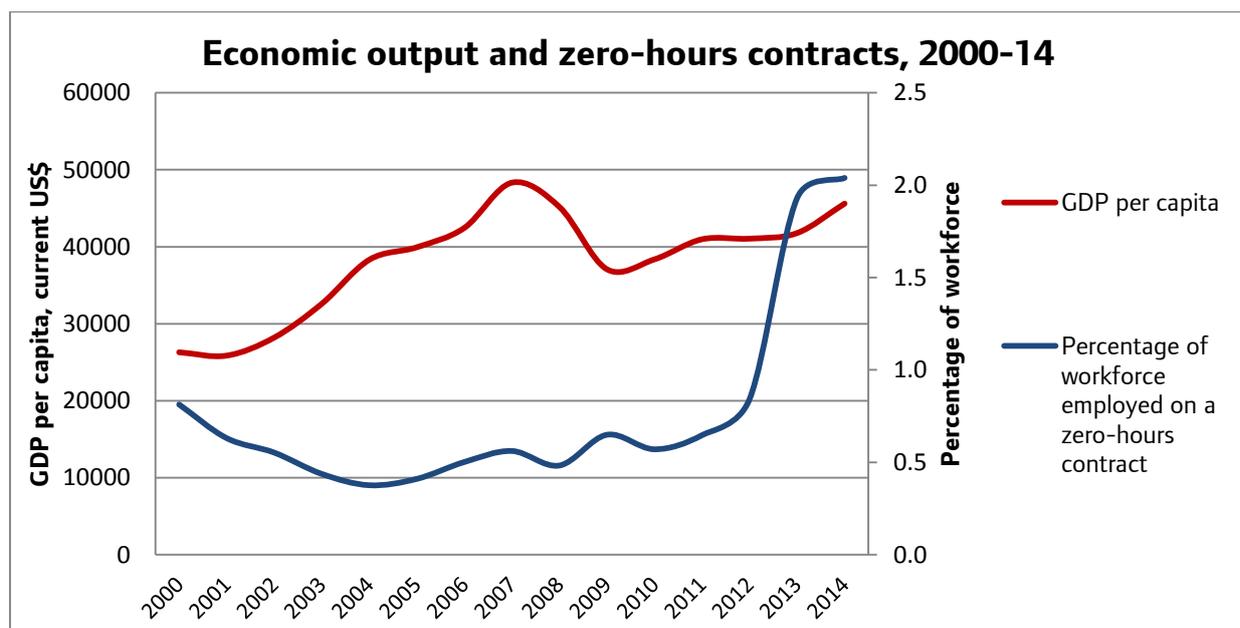


Figure 1: Economic output and zero-hours contracts, 2000-14^{xliii}

8. The impact of zero-hours contracts

Further research is needed on the social and economic implications of the growth in zero-hours contracts and the move towards greater casualisation and insecurity in the UK labour market. However, we can already identify a number of consequences of their growing use.

Evidence put forward during the roundtable highlighted that the growth of zero-hours contracts and casualisation has a particularly damaging macroeconomic implication for productivity. Raising productivity is the primary means of increasing per capita incomes in the long-run. Yet, zero-hours contracts hinder this for two primary reasons. Firstly, zero-hours workers are less likely to receive training than their counterparts with more conventional employment contracts.^{xiv} As a consequence, investment in the skills base of the labour force is reduced as zero-hours contracts become more widespread. This failure to invest in human capital reduces future productivity gains, which are necessary for driving forward wealth creation and improved living standards within the economy. Secondly, through the use of explicit or 'effective' exclusivity clauses, economic output is constrained by ensuring that an element of labour supply frequently remains unused.

For businesses, zero-hours contracts give them the significant benefit of being able to maximise the flexibility of the workforce so that they can better respond to changes in demand. They allow them to minimise labour costs by more easily matching labour to fluctuations in demand, avoiding recruitment agency fees and many of their employment law obligations. The growth of zero-hours can therefore be seen as part of a wider casualisation of the labour force. The CIPD research found that 38 per cent of workers on zero-hours contracts work 30 hours or more a week and describe themselves as employed full-time.^{xiv} This suggests that to a large degree these contracts are not being used as a means of employing casual labour but as a replacement for conventional contracts. While for many people the flexibility of zero-hours contracts may be welcome, it is vital that there should be no confusion between when these contracts are being issued to ensure flexibility and when they are simply leading to exploitation.

These two factors – minimised business costs, but weakened growth prospects – highlight a tension between the micro and macroeconomic implications of the growth in zero-hours contracts. In this instance, what is good for the individual firm's short-run balance sheet is not necessarily good for the long-run growth prospects of the economy more generally.

Perhaps the biggest objection to zero-hours contracts is that their use has gone too far in transferring the risk of employment from the employer to the individual worker. Put simply, in many cases zero-hours workers take too much of the risk of employment whilst also getting a worse deal.

- **Low pay:** The Resolution Foundation reported in June 2013 that people employed on zero-hours contracts earn on average £246 a week less than people on conventional contracts (£482 per week compared to £236 per week).^{xvi} Furthermore, 75 per cent of zero-hours workers in Greater London are paid less than the London Living Wage (57 per cent are paid less than the Living Wage outside of Greater London).^{xlvii} This compares to 15 per cent of the entire labour force and 40 per cent of agency workers.^{xlviii}
- **Under-employment:** A survey by the CIPD found that 38 per cent of workers on zero-hours contracts would like to work more hours than they are currently offered.^{xlix} This increases to 52 per cent when considering workers in the public sector.¹ ONS data has

also shown that there are 1.3 million contracts where employees were not given any hours at all during a two-week sample period.^{li}

- **Income insecurity:** 75 per cent of zero-hours workers report that their working hours vary each week, compared with 40 per cent of employees not on such contracts.^{lii} Furthermore, four in ten people on zero-hours contracts have no regular income.^{liii} This creates problems for budgeting and accessing credit, while the short notice employers often give makes it difficult to arrange childcare and to plan family life.
- **Poorer employment conditions:** Research for the Low Pay Commission found that nearly 60 per cent of domiciliary care sector workers and around 25 per cent of their managers and supervisors are employed on zero-hours contracts.^{liv} The TUC has argued that such large figures show that “in such sectors, workers must either accept employment on a zero-hours contract or not have a job”.^{lv} The TUC also argues that zero-hours contracts are more vulnerable to mistreatment and exploitation at work than regular permanent contracts, claiming, for example, that “there is a growing evidence of breaches of National Minimum Wage legislation in the home care sector, with a significant proportion of care workers not receiving pay for travel time”.^{lvi} It is perhaps unsurprising therefore that data published by the Work Foundation in August 2013 found that 18 per cent of people on zero-hours contracts are looking for alternative employment. This is more than double the 7 per cent of workers when considering all employees.^{lvii}
- **Difficulties accessing benefits and housing:** The variability of an individual’s earnings can create difficulties over eligibility for various forms of benefit. For example, working tax credits for a single person can only be claimed if an individual works 16 hours a week, but whether an individual exceeds these hours can vary from week to week under zero-hours contracts, often leading to delayed payments and increased uncertainty and pressure on household incomes. The income insecurity associated with zero-hours contracts has also deterred many private sector landlords from accepting such workers as tenants. One landlord has commented that zero-hours contracts do not provide a “guaranteed employment contract and the employer can basically stop giving someone work when they want... For us it is not a guarantee of earnings.”^{lviii}

The need for flexible working is clearly important to many, particularly students and some people with young families, and it is this flexibility offered by zero-hours contracts that many workers like about them. However, closer scrutiny is needed of how zero-hours contracts are used, as it is clear that for many zero-hours workers an imbalance in power has developed, with the risks of employment transferred to an unfair degree from the employer onto the worker. These exploitative practices associated with zero-hours contracts need to be urgently addressed, with a particular emphasis on ensuring that they are only used in appropriate circumstances. In most instances, the survey evidence suggests that employers could use contracts that preserve the more conventional employer/employee relationship and therefore maintain many of the rights that workers should expect.

9. Zero-hours contracts and the Mayor of London

In addition to comparing his appointment to the political cabinet as a “zero-hours contract” (which he claimed “is definitely not a job”),^{lix} the Mayor has supported the use of zero-hours contracts as a beneficial means of getting people into “employment, in a place of work, with all the added benefits that a job can provide, than being out of work and losing their confidence and self-esteem”.^{lx} In July 2014, the Mayor acknowledged the concerns that many in the business community hold about the growth in zero-hours contracts, but reiterated both his view that they can be beneficial and his opposition to a blanket ban on their use.^{lxi}

The Mayor’s own record on zero-hours contracts is poor. The most recent data showed that thirty-four members of staff at City Hall are currently employed on zero-hours contracts, including in facilities management and peer outreach.^{lxii} The Mayor has also refused to introduce rules into Greater London Authority funding contracts that would limit how recipients of funding can use zero-hours contracts.

Despite belatedly acknowledging the well-founded concerns many have about the negative economic consequences of the growth in zero-hours contracts, the Mayor has done little to examine the issue. In January 2015 the Mayor’s former Deputy Mayor for Business and Enterprise agreed to look into the matter,^{lxiii} but the paper that was eventually published did little more than explore the data relating to zero-hours contracts.^{lxiv} Given the significant rise in zero-hours contracts, the lack of solid evidence, and the negative social and economic consequences, this is an issue that warrants further research and examination from City Hall. This research needs to examine the following points:

- Drivers of insecurity and casualisation, in particular, whether there is evidence that casualisation is cyclical or a more recent structural phenomenon.
- The economic and social consequences of the increasing casualisation of London’s labour market. In particular, who benefits from the use of zero-hours contracts and the wider casualisation of the labour market?
- To what extent is the increasing casualisation of the labour market holding back London’s economic potential?
- Are the legal framework and enforcement mechanisms sufficient to prevent abuse of workers and the use of ‘effective’ exclusivity?
- To what extent is public sector procurement interacting with and, if at all, increasing casualisation?

10. Recommendations

Reform is needed to target exploitative practices by those employers who abuse zero-hours contracts. However, any policy response must be evidence-led, proportionate and allow those workers who like the flexibility offered by zero-hours contracts to maintain that flexibility. Policy responses must also take into account the need to avoid inadvertently pushing more employers towards guaranteeing a low number of hours on contracts as these do not necessarily help resolve the issues workers experience with zero-hours contracts. While more research is therefore needed on the issue, a few initial suggestions can be made for ending the abuse of zero-hours contracts. These reforms would essentially redefine zero-hours contracts, giving employees greater security and more predictable incomes. It would also prevent

companies replacing more conventional contracts with zero-hours contracts and prevent the erosion of workers' rights.

Tighten the laws surrounding employment contracts

It is positive that the Government has taken steps to prevent the use of exclusivity clauses in employment contracts and introduced a legal definition of zero-hours contracts. The government should now go further by redefining zero-hours workers as an 'employee' of a company rather than as a 'worker'. This would prevent companies from avoiding the statutory obligations – such as protection against unfair dismissal and redundancy pay – that should be a legal entitlement. Further consideration is needed as to whether the 'worker' category should be abolished altogether.

More predictable working hours

Zero-hours contracts should only apply to those who genuinely want to work more flexible hours; they should not be used (as in many cases they currently appear to be) to replace full- or part-time employees with more insecure jobs on worse employment terms. People employed on zero-hours contracts should also be entitled to know, at the very least to within a close approximation, how many hours they can expect to be working each week and what their income will be.

To achieve this, employees should receive a written statement of terms and conditions which sets out in writing how many hours a week they will be expected to work. This would bring practices in line with employment agencies, which are already required to outline the expected number of hours to be worked. After a certain period of time employees should also have a contracted guaranteed minimum number of hours based on how many hours they have regularly been working. The only exception should be where the individual actively – and genuinely – requests to remain on a zero-hours contract. Such a policy was widely supported by the stakeholders we spoke to although.

The issue of zero-hours contracts is not exclusive to Britain and it is worth noting the recent success of a campaign involving McDonald's in New Zealand. Following the threat of strike action, all McDonald's employees in New Zealand will be guaranteed 80 per cent of the average hours worked over the previous three months, up to a 32 hour weekly cap.^{lxv} All major fast food chains in New Zealand have now committed to ending the use of zero-hours contracts. While the McDonald's agreement will not result in entirely predictable hours, such an arrangement, if widespread, could ensure that the risk of employment is more fairly shared between workers and employers and increase income security.

Enforcing the law

Beyond legislation, more needs to be done to enforce the rights of workers. It is clear that many employees are unaware of their rights or their terms of employment; a point highlighted by the differing responses to surveys relating to the use of zero-hours contracts depending on whether the worker or employer is surveyed.

To address this, a campaign needs to be undertaken to highlight the rights that workers on zero-hours contracts already have. Barriers to justice also need to be removed, for example, by reversing the government decision to impose fees on employment tribunals that prevent many people, particularly people on low incomes, from taking forward cases and enforcing their legal rights. Similarly, improving enforcement of the National Minimum Wage should be a key priority, with higher fines for breaches and responsibility for enforcing the legislation devolved to local authorities who are better placed to take on rogue employers.

More also needs to be done to help employers who are unsure where and when it is appropriate to use zero-hours contracts. The Mayor (in conjunction with central government and Acas) should be more proactive in reaching out to employers with guidance to highlight when it may or may not be appropriate to use these contracts.

Rewarding flexibility

Zero-hours workers frequently report travelling to work for a scheduled shift only to be sent home because there is no work for them to undertake that day.^{lxvi} Such practices are clearly unreasonable, leaving the worker without pay and potentially even losing money by paying for transport and childcare. They may also have turned down other opportunities for work with an alternative employer.

Employers should be required to provide zero-hours workers with suitable notice of when work will be available and when it is cancelled. Similarly, employees on zero-hours and other casual workers should be suitably rewarded for the flexibility they offer and the personal financial risk they take on. This is the case in some professions, for example in the education sector, where supply teachers tend to command a higher wage in recognition of the flexibility they have provided.

Given the flexibility they provide, zero-hours workers should be paid for time spent on-call for the employer. Workers should also have a right to be reimbursed by employers for the costs incurred when a shift is cancelled at short notice – including transport, childcare and lost earnings.

Procurement

The government and Mayor should be using their influence, both as an employer and as a commissioner of services, to promote secure and well paid employment. Their procurement and employment practices should be altered to encourage positive changes in how zero-hours contracts are used and to ensure they are only used where absolutely appropriate and requested by workers.

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- ⁱ Contracts with No Guaranteed Hours, Zero Hour Contracts, 2014, Office for National Statistics, published 25 February 2015
- ⁱⁱ 'Contracts with No Guaranteed Hours, Employee contracts that do not guarantee a minimum number of hours: 2015 update', Office for National Statistics, published 2 September 2015
- ⁱⁱⁱ 'Contracts with No Guaranteed Hours, Employee contracts that do not guarantee a minimum number of hours: 2015 update', Office for National Statistics, published 2 September 2015
- ^{iv} ACAS
- ^v 'Zero-hours contracts: Myth and reality', Chartered Institute of Personnel and Development, November 2013, p.4
- ^{vi} 'Zero-hours contracts: Myth and reality', Chartered Institute of Personnel and Development, November 2013, p.4
- ^{vii} 'Zero-hours contracts: Myth and reality', Chartered Institute of Personnel and Development, November 2013, p.4
- ^{viii} 'Employee contracts that do not guarantee a minimum number of hours: 2015 update', Office for National Statistics, 2 September 2015, p.14
- ^{ix} 'A Matter of Time: The rise of zero-hours contracts', Resolution Foundation, June 2013, p.3
- ^x 'Zero-hours contracts', House of Commons Library Standard Note SN/BT/6553, 6 May 2014, p.3
- ^{xi} 'Zero-hours contracts: Myth and reality', Chartered Institute of Personnel and Development, November 2013, p.3
- ^{xii} ACAS
- ^{xiii} Section 27(A), Small Business, Enterprise and Employment Act 2015
- ^{xiv} ACAS
- ^{xv} Gov.uk
- ^{xvi} 'Employment review launched to improve clarity and status of British workforce', Department for Business, Innovation and Skills (press release), 6 October 2014
- ^{xvii} 'Zero-hours contracts: Myth and reality', Chartered Institute of Personnel and Development, November 2013, p.5
- ^{xviii} 'Zero-hours contracts: Myth and reality', Chartered Institute of Personnel and Development, November 2013, p.5
- ^{xix} 'Zero-hours contracts: Myth and reality', Chartered Institute of Personnel and Development, November 2013, p.5
- ^{xx} 'Strikes called off as McDonald's cuts zero hour contracts', The New Zealand Herald, 1 May 2015
- ^{xxi} 'Zero-hours contracts: Understanding the law', Chartered Institute of Personnel and Development, November 2013, p.7
- ^{xxii} 'Sports Direct 'stops 20,000 staff taking other work' by using zero hour contracts', Independent, 11 August 2014
- ^{xxiii} 'Sports Direct 'stops 20,000 staff taking other work' by using zero hour contracts', Independent, 11 August 2014
- ^{xxiv} 'Zero-hours contracts: Myth and reality', Chartered Institute of Personnel and Development, November 2013, p.4
- ^{xxv} Evidence provided during roundtable discussion on 25 June 2014
- ^{xxvi} 'Small Business, Enterprise and Employment Act 2015: Explanatory notes', legislation.gov.uk, part 11
- ^{xxvii} 'Government crackdown on zero hours contract abusers', Department for Business, Innovation & Skills press release, 25 June 2014
- ^{xxviii} 'Small Business, Enterprise and Employment Act 2015: Explanatory notes', legislation.gov.uk, part 11
- ^{xxix} 'Zero-hours contracts: Myth and reality', Chartered Institute of Personnel and Development, November 2013, p.4
- ^{xxx} 'Give and take? Unravelling the true nature of zero-hours contracts', Acas Policy Discussion Papers, May 2014, p.7
- ^{xxxi} 'Tories' legislation to protect zero-hours workers called 'toothless' by lawyers', Guardian, 26 May 2015
- ^{xxxii} 'Tories' legislation to protect zero-hours workers called 'toothless' by lawyers', Guardian, 26 May 2015
- ^{xxxiii} 'Contracts with No Guaranteed Hours, Employee contracts that do not guarantee a minimum number of hours: 2015 update', Office for National Statistics, published 2 September 2015
- ^{xxxiv} 'Contracts with No Guaranteed Hours, Employee contracts that do not guarantee a minimum number of hours: 2015 update', Office for National Statistics, published 2 September 2015
- ^{xxxv} 'A Matter of Time: The rise of zero-hours contracts', Resolution Foundation, June 2013, p.9
- ^{xxxvi} 'Analysis of Employee Contracts that do not Guarantee a Minimum Number of Hours', Office for National Statistics, 25 February 2015
- ^{xxxvii} 'Analysis of Employee Contracts that do not Guarantee a Minimum Number of Hours', Office for National Statistics, 25 February 2015, p.8
- ^{xxxviii} Evidence provided during roundtable discussion, 25 June 2014
- ^{xxxix} 'Analysis of Employee Contracts that do not Guarantee a Minimum Number of Hours', Office for National Statistics, 25 February 2015, p.5

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- ^{xi} 'Flexibility or insecurity? Exploring the rise in zero hours contracts', Work Foundation, August 2013, p.24
- ^{xii} Contracts with No Guaranteed Hours, Zero Hour Contracts, 2014, Office for National Statistics, published 25 February 2015
- ^{xiii} Evidence provided during roundtable discussion, 25 June 2014
- ^{xiii} Data sources: Office for National Statistics and World Bank
- ^{xiv} UKCES
- ^{xv} 'What are zero-hours contracts?' BBC News, 30 April 2014
- ^{xvi} 'A Matter of Time: The rise of zero-hours contracts', Resolution Foundation, June 2013, p.3
- ^{xvii} Evidence provided during roundtable discussion, 25 June 2014
- ^{xviii} Evidence provided during roundtable discussion, 25 June 2014
- ^{xix} 'Zero-hours contracts: Myth and reality', Chartered Institute of Personnel and Development, November 2013, p.4
- ⁱ 'Zero-hours contracts: Myth and reality', Chartered Institute of Personnel and Development, November 2013, p.18
- ⁱⁱ 'Briefing: Queen's Speech Debate – Jobs and Work', Parliamentary Labour Party, 11 June 2014
- ⁱⁱⁱ 'Flexibility of insecurity? Exploring the rise of zero hours contracts', The Work Foundation, August 2013, p.3
- ⁱⁱⁱ Evidence provided during roundtable discussion, 25 June 2014
- ^{iv} 'The National Minimum Wage, earnings and hours in the domiciliary care sector', Low Pay Commission, February 2013, p.30
- ^{iv} 'Ending the abuse of zero-hours contracts: TUC response to BIS consultation', TUC, March 2014, p.4
- ^{vi} 'Ending the abuse of zero-hours contracts: TUC response to BIS consultation', TUC, March 2014, p.4
- ^{vii} 'Flexibility of insecurity? Exploring the rise of zero hours contracts', The Work Foundation, August 2013, p.20
- ^{viii} 'Zero-hours contract workers turned away by some of UK's biggest landlords', Guardian, 31 October 2014
- ^{ix} 'Well it's not exactly a job': Is Boris Johnson disgruntled with David Cameron already?', The Independent, 11 May 2015
- ^{ix} Question 2014/3462, Wednesday 17 September 2014
- ^{xi} Question 2014/2415, Wednesday 2 July 2014
- ^{xii} Question 2015/0387, Wednesday 21 January 2015
- ^{xiii} London Assembly Economy Committee, 15 January 2015
- ^{xiv} 'The extent and consequences of zero-hours contracts and labour market casualization in London', GLA Economics, August 2015
- ^{xv} 'Strikes called off as McDonald's cuts zero hour contracts', The New Zealand Herald, 1 May 2015
- ^{xvi} 'Give and take? Unravelling the true nature of zero-hours contracts', Acas Policy Discussion Papers, May 2014, p.4

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