

STATES OF JERSEY



ZERO-HOUR CONTRACTS (S.R.3/2016): RESPONSE OF THE MINISTER FOR SOCIAL SECURITY

**Presented to the States on 24th August 2016
by the Minister for Social Security**

STATES GREFFE

ZERO-HOUR CONTRACTS (S.R.3/2016): RESPONSE OF THE MINISTER FOR SOCIAL SECURITY

Ministerial Response to:	S.R.3/2016
Ministerial Response required by:	22nd August 2016
Review title:	Zero-Hour Contracts
Scrutiny Panel:	Health and Social Security

FOREWORD

The Minister is pleased that the Scrutiny Panel's review has highlighted that zero-hour contracts are positive in many circumstances and that flexibility is a key benefit for both employers and employees. The Minister is aware that the Panel's proposals to introduce additional statutory restrictions may remove that flexibility for both parties. This brings a risk that employers may seek to avoid the additional regulation by making alternative arrangements which could have the overall effect of reducing the protection available to employees.

The scale and scope of the 17 key findings and 21 recommendations (8 of which seek law changes) would suggest that the Panel had found considerable evidence of widespread misuse, and evidence that supports a need for strict regulation which outweighs the potential drawbacks of this approach. However, the Minister is disappointed at the lack of local evidence presented by the Panel to support its recommendations in this area. The Minister would have expected the Panel's report to provide a balanced view of all the main evidence it collected and for this to support the findings and recommendations. Unfortunately the Panel has not presented sufficient local evidence, has presented only a proportion of its own findings, and has put forward arguments based on the UK position despite the differences in the legislation. Unfortunately the Minister is not able to accept a number of the recommendations for these reasons.

The Minister considers that it would have been helpful if the Panel had prioritised its recommendations on key issues where the Panel had identified evidence that a change, whether to practices or legislation, could make a positive difference in Jersey.

The Minister is concerned that the references to UK employment rights and working practices throughout the Report could have the unintended effect of adding to the lack of understanding of the local situation. The Report does make a number of recommendations regarding increasing awareness amongst employers and employees of the local rules, and the Minister is pleased to accept (or partially accept) several of the Panel's recommendations in this area.

SUMMARY OF THE MINISTER'S POSITION

- The Panel's review highlights that zero-hour contracts are positive in many circumstances.
- All types of employment opportunities are valuable.
- Flexibility is a key benefit of zero-hour contracts, for both employers and employees.
- The Employment Law was improved in 2015 to ensure employment protection for employees working under zero-hour contracts.
- Jersey's Employment Law currently provides a good balance between employer and employee interests.
- The Statistics Unit has presented local evidence of the positive experiences of the majority of those on zero-hour contracts (JASS 2014).
- Over-regulating the Law could encourage some employers to seek to avoid the Law by using practices such as bogus self-employment.
- The Panel presents 21 recommendations with little local evidence to support a significant increase in regulation in this area.
- The report reflects some common misunderstandings about zero-hour contracts, particularly the differences between Jersey and the UK.
- In response to the report and its recommendations, communications will be boosted to help people understand the current position.
- The Minister has an existing commitment to extend family-friendly rights and introduce disability discrimination and this will be the priority over the next 12 months.

INTRODUCTION

The Minister is grateful to the Panel for its report and appreciates that the Scrutiny process is important to help improve the delivery of public services by ensuring that decisions are soundly based on evidence. Some of the key findings of the Panel's review highlight that zero-hour contracts are positive in many circumstances, and that flexibility is a key benefit of such arrangements that can be enjoyed by both employers and employees. As well as providing the Minister's response to each of the Panel's key findings and recommendations, the following general comments on the report are noted.

1. **Recommended consultation and law changes** – A great deal of work would be involved in implementing the Panel's recommendations, many of which would require public consultation and Employment Law change. Jersey's Employment Law is currently straightforward and provides a good standard of employment rights. It is important to achieve a balance between providing more rights for employees and placing a burden on employers. There is currently no statutory concept of a zero-hour contract in the Employment Law. It is a colloquial, rather than a technical, term which encompasses a wide range of working arrangements. Additional legislation such as requiring employers to pay for travelling time, cancelled shifts, and additional inspection and enforcement powers may be beyond the current scope of the Law. In addition, increasing regulation around zero-hour contracts may give rise to an increase in bogus self-employment, the grey economy

(e.g. ‘cash in hand’ work), and other forms of precarious contracts. If any additional legislation was to be considered, the project would take at least one year to complete, including consultation via the Employment Forum. This work could not be undertaken within the context of the Department’s current priorities, which are disability discrimination and a review of family-friendly employment rights.

2. **Employment Law amended** – The Minister is disappointed that the Panel has not recognised 2 important measures that the Minister has taken during the period of the Panel’s review that are expected to improve the position for zero-hour employees:

(i) On 1st September 2015, the ‘8 hour threshold’ was removed from the Employment Law which means that most individuals working less than 8 hours a week will be entitled to written terms of employment, protection against unfair dismissal and will accrue continuous service for the purpose of the minimum period of notice on termination of employment. A person's rights under the Employment Law will depend only on whether they are an ‘employee’ or not for the purposes of the Employment Law. This is a major increase in the protection of employees on zero-hour contracts. This is significantly stronger than the position taken in the UK, where a much narrower definition of ‘employee’ means that many zero-hour workers are excluded from basic employment rights.

(ii) On 25th May 2016, the States agreed to remove the ‘two-thirds rule’ from the Employment Law. Currently, those who are employed under fixed-term contracts for 26 weeks or less are protected against unfair dismissal once they have completed at least two-thirds of their fixed-term contract (subject to having 13 weeks’ service). This means that staff on short, fixed-term contracts, and seasonal workers, are protected against unfair dismissal much earlier than employees on other types of contracts. To avoid falling foul of the two-thirds rule when employing temporary and short-term staff, employers may have increased their use of zero-hour contracts. It is hoped that removing the rule may encourage employers to revert to using fixed-term contracts where they are more appropriate than a zero-hour contract.

3. **Evidence** – There is a disappointing lack of local evidence presented by the Panel to support its recommendations. Paragraphs 11.4 and 11.5 of the Scrutiny code of practice¹ state that *“It is important that both the findings and the recommendations of the review are drawn out of the evidence and adequately supported by it... The report should give a balanced view of all the main evidence received, leading up to the findings and recommendations of the Panel.”* The Panel has presented only some of the outcomes from its own survey of local employers and employees which it carried out in 2015. Because of this, many of the Panel’s recommendations are not supported by evidence relating to zero-hour contracts in Jersey and instead rely on evidence presented in reports on the UK position. Rather than demonstrate the

¹ Code of Practice for Scrutiny Panels and the Public Accounts Committee – www.statesassembly.gov.je/SiteCollectionDocuments/States%20Assembly/Code%20of%20Practice%20for%20Scrutiny%20Panels%20and%20the%20PAC.pdf

downside of zero-hour contracts, or the negative consequences in Jersey, in some areas of the report the Panel has stated that it assumes that the position is the same in Jersey as in the UK. However, the local legislation in this area is quite different from that in the UK. The Panel has presented only a very small proportion of the evidence collected in meetings with employer representative stakeholders. For example, the Jersey Farmers' Union appeared before a public hearing yet none of their evidence is referenced in the report. The Panel has not explained why it gave more weight to the evidence of employees compared to that of employers in some areas, for example, in the evidence relating to wage rates.

4. **Survey data** – The Panel highlights on page 16 the limitations of its own data. *“The Panel would like to highlight the limitations surrounding the survey in assessing the use of zero-hour contracts. For example, half of all employee responses came from the public sector and the finance industry. The Panel believes this is disproportionate to the numbers engaged in those sectors.”* The Panel comments that only “indications” can be drawn from the survey. The Panel’s survey asked 34 questions of employees and 19 questions of employers. Where the survey results have been presented, it is not clear whether the percentages of responses that are quoted were from employees working under zero-hour contracts at that time, or from employee respondents generally. In addition, the report presents evidence from only some of the questions posed. Key areas where the response data has not been reported in sufficient detail are the reasons why employees choose to take zero-hour contracts and the reasons why employers use zero-hour contracts (p.23). The Scrutiny Panel’s Code of practice (paragraph 9.18) requires that *“In principle, all written evidence received by the Panel will be published on the website.”* Given the level of detail provided in certain areas of the report, the absence of survey results in other areas is disappointing. Some of the survey questions were worded to leave the response open to interpretation, (for example, see Recommendation 15 relating to paid annual leave). This makes it more difficult to interpret the numerical results.

The work of the Panel is valued, and all of the recommendations have been carefully considered. The Minister will be pleased to improve publicity and circulation of the guidance on zero-hour contracts and will discuss with JACS how we can further raise awareness. The following table responds to each of the Panel’s key findings and recommendations.

FINDINGS

	Findings	Comments
F1	<p>The proportion of zero-hour contracts is much higher in Jersey than in the United Kingdom and, in the private sector, the number of zero-hour contracts has grown by a third from December 2013 – December 2015.</p>	<p>According to the terms of reference for the review, the Panel’s intention was “to determine whether there is a disparity between UK statistics and Jersey statistics regarding the use of zero-hour contracts”. The report refers to information that was already available in Labour Market reports (produced by the Statistics Unit) but does not consider if or why there might be a disparity. There are evident differences in the data that might explain why the proportion of zero-hour contracts reported in Jersey is higher than the proportion reported in the UK:</p> <ul style="list-style-type: none"> - Survey respondents – The UK Labour Force Survey is based on respondents’ views about their working arrangements and counts people rather than contracts and so it is likely that any estimate from that source will be less than any estimate obtained directly from businesses. The Office for National Statistics (ONS) business survey figure is an estimate based on 2,500 responses from businesses. Jersey’s figure is an actual figure obtained from all businesses in Jersey. - Survey reference period – the Labour Force Survey counts the number of individuals who report that they are on a zero-hour contract in their main employment where they have done at least one hour of paid work in the previous week. The ONS business survey asks a sample of 5,000 businesses, and counts zero-hour contracts only where a person has worked under that contract in a 2 week period. Jersey’s Control of Housing and Work Law requires all undertakings in Jersey to report individual employee-level information to the States every 6 months which includes reporting on employees who have worked in the last month on zero-hour contracts. This longer reference period in Jersey is bound to include more people working under a zero-hour contract than either of the UK surveys. <p>If there is a higher proportion of zero-hour contracts in Jersey, this does not necessarily demonstrate that employers are misusing these contracts. Differences might also be attributed to factors such as:</p> <ul style="list-style-type: none"> - There may be a greater proportion of workers in Jersey than in the UK working in the industries that typically (and genuinely) use zero-hour contracts. - Employers who (pre-Employment Law) regularly employed staff under short fixed-term contracts or

	Findings	Comments
		<p>under seasonal contracts may have re-arranged their practices to use zero-hour contracts so as not to fall foul of Jersey's far greater protection against unfair dismissal than exists in the UK (or anywhere else in the world) for those working under seasonal and short fixed-term contracts.</p> <ul style="list-style-type: none"> - Proportionately more women work in Jersey than in the UK. Women are more likely to want the flexibility in hours and childcare costs are high in Jersey. - Seasonal differences may be more pronounced in Jersey than the UK, with more of a high and low season. - Local employers may be less able to deal with quiet periods, e.g. by seeking business and contracts in other nearby towns. - The Agriculture sector may be more likely to use zero-hour contracts to ensure that they have enough staff to cover the workload, depending on the weather. In the UK, farmers have more accessible casual labour, e.g. travelling farm workers. - The Finance sector in Jersey may be more likely to use agency temps to cover peak periods, leave and absences. UK banks, for example, can more quickly and cheaply move existing staff between different branches. <p>Employers in the UK may be making other arrangements, such as 'gig' work (hiring labour on demand facilitated through digital platforms such as Uber). This is supported by recent ONS figures showing that the UK self-employed workforce has grown by 730,000 to 4.7 million between 2008 and 2015. This is a marked upturn since the 2008 recession, and self-employed people now represent around 15% of the workforce. Part-time self-employment grew by 88% between 2001 and 2015.</p>
F2	<p>Most people employed on zero-hour contracts are working in the following sectors: education, health and other services; hospitality; construction and employment agencies.</p>	<p>It is to be expected that large proportions of the jobs that are recorded as zero-hour contracts (5,790) are in education, health and other services (1,080), given that it is standard practice to maintain a register of public sector supply teachers and bank nurses to maintain service provision. It is also to be expected that a large proportion of zero-hour contracts are in employment agencies (760) and in the hospitality sector (990).</p>

	Findings	Comments
F3	<p>The Social Security Department uses staff engaged on a zero-hour contracts through an agency, some of which have been working in the Department for a year or more and predominantly work to the Department's hours of 8:30 a.m. – 5:00 p.m. This suggests to the Panel a need for those agency workers to be employed on a permanent basis by the Department because hours that are regular and remain that way for an extended period of time do not reflect a typical zero-hour contract. They are denied access to the benefits of working as a permanent member of staff for the States of Jersey to which they would otherwise be eligible, for example the States earnings-related pension scheme (PECRS).</p>	<p>There is confusion in areas of the report between zero-hour contracts and agency work (e.g. page 20). To clarify, the Department does not engage staff on zero-hour contracts. At the Social Security Department, temporary staff are rarely, if ever, engaged through an agency with the intention that they will remain on assignment for extended periods of time of a year or more. However, in some cases, the initial temporary assignment may unexpectedly need to be extended. For example, if the post-holder is on sick leave longer than expected, if the duration of a project has to be extended, or if the person is offered a further temporary assignment to deal with a different project within the Department. A rigorous vacancy management process takes place before seeking to engage temporary staff. The Department's practice accords with the JACS guide (as set out on page 12 of the Panel's report).</p> <ul style="list-style-type: none"> • Is the work infrequent? – no • Is the work regular but for a project or a short period? – yes • JACS advises, either consider using a fixed term contract if you know how long it is for. If you don't know how long it is for JACS advises: <i>"think about using an agency or variable hours contract"</i>. <p>The JACS guide recommends that employers should carry out regular reviews of zero-hour contracts to see if they have effectively become contracts with fixed or guaranteed hours because a regular pattern of employment could lead the Tribunal to conclude that there had been a variation in the original zero-hour contract. Working regular office hours does not necessarily mean that a zero-hour contract or agency engagement is being misused, for example, to complete a short project during normal working hours each day, but for an unknown period of time.</p>
F4	<p>The Social Security Department uses agency staff as a mechanism to avoid the cap on staff numbers set by the States' Employment Board.</p>	<p>This is the view of the Panel rather than a finding of the review. In its stakeholder meeting with the Minister for Social Security, the Panel asked: <i>"Does the practice that you use of employing ... not employing, of using agency workers have anything to do with the headcount you are supposed to stick to?"</i> The Chief Officer of Social Security replied that: <i>"We also have funds available for the engagement of project work. They could be consultants, could be temporary staff, to make things happen."</i></p> <p>It is important that the Department is able to deliver services to its customers. The Department pilots new ideas and constantly seeks to make improvements. Use</p>

	Findings	Comments
		of arrangements such as engaging staff through an agency provides the capacity to offer new services and make improvements while maintaining 'business as usual', such as covering for staff sickness and managing seasonal workload peaks. As of 31st July 2016, the Department engaged 28 staff through an agency.
F5	Around 1,200 public sector workers are employed solely on zero-hour contracts.	<p>Page 4 of the Panel's report says that there are 510 zero-hour contracts in the public sector (Labour Market figure for December 2015). This reported figure is the number of jobs where the person has worked under that contract in a 4 week period and is the more appropriate figure to show 'active' zero-hour contracts. The 1,200 figure includes all zero-hour contracts even if no work has been done under the contract for years, e.g. all bank nurses and all supply teachers.</p> <p>98% of the total public sector zero-hour contracts (2,679 of the 2,729 contracts) are within the education and health departments and so they will primarily be for bank nurses and supply teachers. Those who are employed by the States solely on zero-hour contracts (i.e. the zero-hour job is not in addition to a full-time job with the States) are therefore likely to be supply teachers and bank nurses who choose to be available for casual work, who have retired from full-time employment, taken a break from employment e.g. to care for children, or may be employed in the private sector.</p>
F6	Zero-hour contracts offer a degree of flexibility for both employers and employees. Employees can choose when they work and employers are able to adjust their staffing levels to suit their business needs. However, the case for flexibility on both sides can only be made if employees are free to turn down work when it is offered.	Agreed.
F7	Some employers opt to use zero-hour contracts in response to the uncertain economy. However, despite signs of an upturn in the economy the number of zero-hour contracts in Jersey is still rising.	It seems logical that employers may have increased their use of zero-hour contracts to try to adapt to the economic downturn. However, the Panel's finding appears to be based solely on a quote from the Managing Director of Rowlands Recruitment (page 24) who said that the number of zero-hour contracts went up during the recession. The Panel provides a table of the most common reasons given by employers for the use of zero-hour contracts (page 23), but "Uncertain

	Findings	Comments
		business conditions”, which was one of the options provided in the employer survey, is not in that table and no response data from the survey has been provided.
F8	Zero-hour contracts can be beneficial for both employers and employees if used appropriately and correctly.	Agreed. The Panel recognises that many people choose and are satisfied with zero-hour contracts. This was supported by the 2014 JASS survey – around three-quarters (76%) of workers on zero-hour contracts reported being either ‘very’ or ‘fairly’ satisfied with this type of contract, identifying the flexibility as one of the main benefits. Similar questions were asked of employees in the Panel’s own survey but those results have not been reported. Employees were asked by the Panel how they would rate certain aspects of their zero-hour employment including flexibility of working hours, notice provided of work required and access to employee benefits and training.
F9	The Panel’s survey found that a large proportion (77%) of employee respondents had not seen the guide published by JACS. Therefore, it appears that important information on zero-hour contracts is not reaching a large number of employees.	Seven of the Panel’s recommendations (2 to 8) flow from this finding. The report does not specify whether this is a percentage of the employee respondents who were working under zero-hour contracts, or a percentage of all of the employee respondents, to some of whom the guide would not be relevant. While JACS services are provided for employers and employees (and data from their annual reports demonstrates that use of JACS services is fairly evenly split between employers and employees) this guide is clearly intended to provide technical advice to employers. It cautions employers against assuming that an employee on a zero-hour contract will not enjoy the same employment rights as other employees and sets out some alternatives to zero-hour contracts that employers might consider. The guide does not seek to explain all of the rights that an employee might have and so its use to employees is more limited.
F10	61% of employees who reported being employed under a zero-hour contract for at least one year answered ‘no’ when asked if their contract had been reviewed. Therefore, the results from the Panel’s employee survey suggest that the JACS guidelines, in some instances, are being ignored.	The Panel itself has highlighted the limitations of its survey data. The Panel does not state how many of the employees who responded had been employed under a zero-hour contract for at least one year. This finding could be based on response from only a few employees. The also Panel reports that 78% of employers had reviewed the terms of their employees zero-hour contracts. Employees would not necessarily know if their employer has reviewed contracts, particularly if the employer decided not to change the contracts. See the Minister’s response to Recommendation 9, which is based on this finding.

	Findings	Comments
F11	<p>Where an employee has been engaged on a zero-hour contract for 6 months or more then it is possible that “mutuality of obligation” has been established and therefore a zero-hour contract would no longer be appropriate. A large number of survey respondents revealed that they had been in their zero-hour job for a year or more.</p>	<p>The Panel’s survey asked employees ‘<i>How long have you been employed under a zero-hours contract?</i>’ The survey did not ask how long employees had been employed under the same zero-hour contract, as the recommendation states. In any case, the Panel has not provided the outcomes of that question and so presents no evidence to support this finding that ‘<i>A large number of survey respondents revealed that they had been in their zero-hour job for a year or more</i>’ (p.29). In addition, some employees will have been employed under a zero-hour contract for a year or more, but will have worked only occasionally and irregularly under that contract.</p> <p>More fundamentally, this finding is based on a misunderstanding of the concept of ‘mutuality of obligation’ which is not established by the mere passage of time. Mutuality is a complicated legal concept and is not an ‘all or nothing’ threshold. UK courts tend look for ‘sufficient’ mutuality to establish the employment status that is being claimed. The UK makes important distinctions between an employee and a worker, with employees having many employment rights that workers do not qualify for. One way to distinguish between an employee and a worker is to look at the mutuality of obligations and decide whether they are sufficient to support the existence of a contract of employment. This generally means that the employer is obliged to offer work and the employee is obliged to accept it. Even in a workers’ contract there is a need for ‘sufficient’ mutuality to support the existence of a contract. If there is simply no obligation on either side of the agreement then there is no contract at all and the individual will not even qualify as a worker.</p> <p>The distinction between employee and worker is not made in Jersey and so the Tribunal is likely to simply look for sufficient mutuality to infer the existence of a contract. It may be that, while it is clear that the employer is obliged to offer some work and the employee is obliged to accept at least some of the work that is offered, the relationship is still properly described as a zero-hour contract because in any given week there is no obligation for a minimum number of hours to be offered.</p> <p>The opposite of a zero-hour contract is not a permanent contract. Employees with a minimum number of working hours may still be in temporary or precarious employment. The fact that a zero-hour contract has been in place for months, or even years, does not provide any sound basis for concluding that it is being used inappropriately.</p>

	Findings	Comments
F12	<p>The Panel’s survey revealed that 60% of employee respondents are never penalised by their employer when turning down hours. However a significant number of employees (27%) said they were sometimes penalised and 12% said they were always penalised. According to the JACS guidelines, there should be no obligation on the employee to accept work when working on a zero-hour contract.</p>	<p>The JACS guidance is descriptive on this issue and is not prescriptive. It states that the normal position is that zero-hour contracts involve no obligation to accept work but it does not set out a legal standard that must be applied on this issue.</p> <p>The extent to which the employer is obliged to offer – and the employee is obliged to accept – work is not always straightforward. At one end of the scale, the person is someone that the employer may contact from time to time when work is available and the person is free to refuse or accept that work. At the other end of the scale, the pattern of work may be unpredictable, but there is a clear expectation that the employee will be available on a regular basis and that the employer will be in a position to offer a reasonable amount of work. Determining where on the scale of obligation the parties sit can be a very difficult question and JACS advises employers to review the situation regularly to ensure that the written contract accurately reflects the obligations of the parties. However that does not mean that an external standard can be set in which employers are prevented from requiring any particular level of availability from an employee.</p> <p>The Panel’s report does not explain the nature of the penalties to which employees may be subjected when they refuse work offered by the employer. It is not clear from the survey question what employees meant by ‘penalised’. The survey question offered one example of <i>‘not being offered hours in the future’</i>.</p> <p>While it is obviously undesirable for employers to impose unreasonable demands on employees it is understandable that, if some employees are generally happy to accept work and others frequently turn it down, the employer is likely to offer work to those who have been most willing to accept work in the past. As a result, those who are more likely to turn work down might be less likely to be offered work in the future. It is not clear from the report if that is the sort of penalty that the respondents to the survey were experiencing, or if there is a more serious form of victimisation.</p>
F13	<p>The Panel cannot see a benefit in the existence of exclusivity clauses. Abolishing such clauses would provide employees with the freedom to choose whether they would like to take on additional hours, thus potentially improving their financial situation, which at the moment for some is restricted.</p>	<p>The Panel states that it cannot see a benefit in the existence of exclusivity clauses. However, it is not clear from the Panel’s report whether it has seen an example of an exclusivity clause as part of this review. None of the employer responses to the survey prohibited their employees from working for other employers. The Panel’s report (p.33) states that it <i>‘sought to establish to what extent these clauses were being implemented by businesses in Jersey’</i> and yet the</p>

	Findings	Comments
		<p>Panel has based its recommendation instead on the perceptions of some employees. The Panel has not provided specific numbers in response to the question <i>'Are you allowed to work for another employer under the terms of your zero-hours employment'</i> but from the table on page 34 it appears that around 55% of the employee respondents said that they were always or sometimes allowed to work for another employer and around 30% said that they did not know whether they were allowed to work for another employer.</p> <p>Some employees (around 17% based on the chart on page 34) said that they were not allowed to work for another employer, but the survey does not make it clear whether this is as a result of an exclusivity clause written into the contract or whether it may be for other reasons, such as the demands made on the employee's time by the employer. An employee who works full-time hours for an employer, albeit under a zero-hour contract, may think that he or she is not allowed to work for another employer because doing so would mean that he or she is not available to work for the primary employer. However, this does not mean that there is an exclusivity clause in the contract.</p>
F14	<p>Results from the Panel's survey reveal that 39% of respondents report that they are paid less than those doing the exact same job who are not on a zero-hour contract.</p>	<p>This finding is based on the perception of employees rather than the responses provided by employers. The Panel's report states that <i>"7 in 10 of the employers who completed the survey do not pay their zero-hour employees differently to permanent employees. 3 in 10 report that rates of pay are actually higher than those they employ on permanent employment."</i> (p.35). It appears that almost all of the employers who responded to the Panel's survey said that pay rates were either the same or higher for zero-hour contract employees. The Panel also notes that this is reflected in the evidence presented to the Panel in person by Rowlands Recruitment. In addition, 44% of the employee respondents said that their rate of pay is the same as permanent colleagues.</p> <p>Despite the evidence collected by the Panel and the stated limitations of its survey data from employees, the recommendation focusses on the perception of 39% of the employees who said they were paid less than permanent colleagues. The Panel has not considered the reasons why employees might perceive their pay to be less than that of colleagues – see the Minister's response to Recommendation 12. In addition, the survey question did not specify what is meant by pay – hourly pay, or pay and benefits – and so the question may have been interpreted differently by different respondents.</p>

	Findings	Comments
F15	Employers should add 4% to the hourly rate of pay given to employees on zero-hour contracts to cover the statutory minimum of two weeks paid leave. Two thirds of the employee respondents to the Panel's survey believed they were not eligible to receive annual paid leave and only half of employer respondents said they provided annual paid leave. Therefore, better publicity of the Law is required either via JACS or Social Security.	The Panel has recognised that it is standard practice to provide 'rolled-up holiday pay' to zero-hour employees (which is 4% added to pay to cover 2 weeks' statutory paid leave). However, the survey asked if "paid annual leave" is provided. Rolled-up holiday pay is an acceptable equivalent, but many employers and employees would not describe this as "paid annual leave", i.e. time taken off work where the employee is paid at the time when the leave is taken. It was not clear from the survey questions whether employers and employees were expected to treat 'annual paid leave' as including rolled-up holiday pay, or not. In addition, no evidence has been presented to show that the two-thirds of the employee respondents who believed they were not eligible to receive annual paid leave were not actually receiving rolled-up holiday pay. Given that 74% of the employer respondents had seen the JACS guide, it seems likely that in many cases rolled-up holiday pay was being provided to zero-hour employees. See the Minister's response to Recommendation 15.
F16	Employees who have been engaged on zero-hour contracts for a long period of time should not be excluded from seeking a mortgage or loan. This is a further reason why zero-hour contracts should be reviewed and why employees should have the option of a permanent contract after 6 months if their work has been carried out on a regular basis.	This appears to be a statement of the Panel's views rather than a finding. The survey asked employees if obtaining a mortgage or loan was a problem for them as a direct result of being, or having been, on a zero-hour contract. 42% reported that obtaining a mortgage or loan was a problem but it is not clear what proportion of these had actually tried to obtain a mortgage or loan (i.e. based on experience rather than perception).
F17	It is unreasonable to expect carers to use their own time to travel to and from clients, when it is an essential part of the job of which they are expected to carry out. The Panel believes this is a fundamental misuse of zero-hour contracts.	The Panel has presented this key finding as well as recommendations 20 and 21 on the basis of timesheets provided by one care worker (page 46). Given the extensive research and publicity of this review, it is expected that more evidence would have been available to inform the Panel's findings if this was a significant problem. JACS is not aware of any particular issues in this sector. The Panel admits that it has found no evidence of UK local authority practices in Jersey (p.46) and that it has made assumptions based on UK practices and timesheets from one employee. The time that it takes to travel between clients is likely to be far less onerous in Jersey than in the UK.

RECOMMENDATIONS

The Panel makes a number of recommendations in respect of increasing awareness of existing employment legislation and the information available through JACS. The Minister accepts the principle of these recommendations. The Scrutiny Panel has specifically recommended radio advertisements and the distribution of printed leaflets. These communication methods will be considered; but other types of communication, including social media, websites and e-mailing lists, will also be looked at.

	Recommendations	To	Accept/ Reject	Comments	Target date of action/ completion
R4	In order to ensure employer/employee awareness of the current Zero-Hour Contracts Guide (pending the introduction of a code) the Social Security Department should send a copy of the Code or Guide to any employer engaging employees on zero-hour contracts (as declared in manpower returns) drawing it to their attention and requesting that copies be provided to employees.	SS	Partially accept	According to the Panel's survey, 74% of employers had already seen the JACS guide (p.26). However, the Minister agrees that it is important to continue to raise awareness of the JACS guide and intends to ensure that the JACS website is regularly promoted. Employers and employees are encouraged to use documents directly from the JACS website rather than printed versions of leaflets to ensure that only the latest version of a guide is being used. This is also more cost effective than sending printed copies to businesses.	Ongoing
R6	In order to raise awareness of the Zero-Hour Contracts Guide (pending the introduction of a code) the Social Security Department should periodically run a short advertisement with a local radio station.	SS	Partially accept	As stated in response to Recommendation 4, although 74% of employers had already seen the JACS guide, the Minister recognises that it is important to continue to raise awareness of the JACS guide. However, the Minister is concerned that a radio advert may not provide good value for money. It would be inappropriate to spend considerable sums on such an advert (or to favour the radio over other media) when more targeted advertising can be achieved at lower cost and in various languages through community organisations and IT based communications. For example, we could circulate information to employees and employers through contacts made	Ongoing

	Recommendations	To	Accept/ Reject	Comments	Target date of action/ completion
				by the Back to Work team and Citizen's Advice Jersey. As the Panel recognised (p.27), many employees already rely on JACS for information and support. The Panel's survey found that around half of the employees trusted that issues would be addressed if taken to JACS. In the first half of 2016, of the 5,176 client enquiries to JACS, 2,486 (48%) were from employees.	
R8	The Social Security Department and its inspectors engaging with zero-hour contract employers should promote and encourage good employment practice in accordance with any code or current guide.	SS	Accept	<p>The inspectors already promote and encourage good employment practice. This includes routinely advising employers that the use of zero-hour contracts is unlikely to enable them to avoid their obligations under the Employment Law. Where inspectors find issues with employment contracts, e.g. missing information or suspected misuse of any type of employment contract, officers will advise the employer that they are leaving themselves open to a possible claim and to seek JACS advice on what should be included in contracts. The inspector then sends a follow-up letter recommending that the employer seeks advice from JACS regarding any issues discussed during the survey. Inspectors might also ask the employer to send revised contracts to the Department for review within a certain period of time after the inspection.</p> <p>The JACS outreach service continues to target small employers across a range of industries and regularly advises those employers of the risk of claims should they continue to use a zero-hour contract and advises employers to offer staff other types of contracts, where appropriate.</p>	Ongoing

	Recommendations	To	Accept/ Reject	Comments	Target date of action/ completion
R15	Inspectors employed by the Social Security Department must exercise increased vigilance to ensure that employees working on zero-hour contracts are paid their additional contractual holiday pay	SS	Accept	<p>The Minister agrees that employees must receive the paid holiday to which they are entitled under the Employment Law. The Panel has identified that it is common practice to provide rolled-up holiday pay to zero-hour employees. See the Minister's response to Finding 15.</p> <p>The survey form used by Social Security inspectors makes specific reference to contracts and holiday pay and the inspectors are always vigilant with regard to the relevant holiday pay and contract type. Nevertheless, this is an issue that JACS may wish to highlight, and Social Security inspectors will be asked to continue to pay particular attention to when inspecting written terms of employment and payslips. The JACS guide to 'Rolled-up holiday pay'² states that employers are strongly advised to make explicit provision for rolled-up holiday pay in the written terms of employment and advises that the employee's pay slip should clearly identify the value of rolled up holiday pay. Inspectors can be asked to provide copies of the JACS guide to employers that use this practice.</p>	Ongoing
R16	The Minister should actively monitor the increasing prevalence of zero-hour contracts in the economic life of our Island by making full use of the data available from Social Security and manpower returns, including actively engaging with employers using such contracts, to attempt to establish the reasons why such contracts are being used and whether they are	SS	Partially accept	<p>This is likely to be a broader responsibility for the Council of Ministers as a whole. The number of zero-hour contracts will be kept under careful review, using appropriate statistics.</p> <p>The UK faces a period of economic and political uncertainty while it adjusts its relationship with the EU following the referendum. This is likely to affect employer confidence and decisions around staffing and recruitment. It is not clear at this stage how Brexit might affect</p>	Ongoing

² [www.jacs.org.je/legislation/employment-\(jersey\)-law-2003/rolled-up-holiday-pay/](http://www.jacs.org.je/legislation/employment-(jersey)-law-2003/rolled-up-holiday-pay/)

	Recommendations	To	Accept/ Reject	Comments	Target date of action/ completion
	appropriate in the circumstances. The Minister should include the findings from such monitoring in the Department's annual reports			Jersey. Further economic uncertainty may drive an increase in the use of zero-hour contracts. Or it may lead to an increase in other working arrangements (e.g. the UK self-employed workforce has grown by 730,000 to 4.7 million since 2008).	
R18	In recognition of a responsibility to promote best practice in employment, the Department (specifically the Income Support Section and Back to Work Scheme) should not require jobseekers to take zero-hour contract jobs unless the employer confirms that it will observe the guidance set out in the Zero-Hour Contracts Guide. The Department should also monitor such observance and encourage a review of the employment contract after 6 months at most.	SS	Partially accept	<p>The Minister accepts the principle of this recommendation and the Department will continue to promote best practice in employment where we engage with employers through our Back to Work schemes. Where the Department is directly involved in helping a jobseeker to find employment, then the employer can be asked to follow the JACS guide. The Minister does not accept the specific actions; to require observance of the guide or request a review of the contract after 6 months.</p> <p>We must be cautious of relying on the JACS guide as if it were legislation, applying standards that are not found in the Employment Law itself. The guide is intended to provide advice to employers who may not appreciate the extent to which those employed under zero-hour contracts are protected by the Employment Law.</p> <p>Income Support provides a service to low income households and its remit is to assess benefit entitlement. It is not realistic to widen the scope of Income Support to review or monitor employers and their employment practices. Back to Work Advisors support their clients during their first 6 months in work and will speak to the employer if a client has any concerns or issues with their contract. Employees can also contact JACS directly.</p>	Ongoing

	Recommendations	To	Accept/ Reject	Comments	Target date of action/ completion
				<p>The Minister believes that all work opportunities are valuable. This is supported by the Panel's finding that <i>"a large number of Jersey's workforce would rather be employed under unreliable circumstances than not work at all"</i> (p.42) although no figures have been provided from the Panel's survey to support this. The Department encourages Income Support claimants and jobseekers to obtain full-time permanent work and recognises that a zero-hour contract may sometimes be the best stepping stone to achieve this.</p> <p>In many cases, employees will have chosen a zero-hour contract because it is appropriate for their circumstances, for example, to allow flexibility to fit around family life. The Panel's survey asked employees to identify the reason for choosing a zero-hour contract but the results of this question are not included in the Panel's report. Where a zero-hour contract suits the person's circumstances, they may not want their employer to review the contract every 6 months.</p> <p>The Panel has expressed concern that <i>'wide variation in income when someone is on a zero-hour contract, which is not uncommon, can cause problems'</i> in relation to Income Support claims. In the Panel's survey, when questioned about the typical working hours of employees, the Panel was also concerned that 51% of employer respondents said that working hours are broadly the same each week (p.18). It is not clear whether the Panel is concerned about people working regular hours or irregular hours under zero-hour contracts. The Social Security Department confirmed to the Panel that, through continuous</p>	

	Recommendations	To	Accept/ Reject	Comments	Target date of action/ completion
				improvements in process, Income Support now complete change of circumstances with the minimum of delay and a new online form enables customers to inform Income Support straight-away about changes in their hours of employment.	

The Panel has made a number of recommendations that seek to amend the Employment Law and establish a formal code of practice under the Law. The Minister is not able to accept these recommendations based on the level of evidence included within the Panel's Report. The Panel proposes a significant tightening of the Employment Law in this area, which could lead to an imbalance within the Law and could encourage employers to adopt other employment practices which could reduce the level of protection currently available to employees. The extensive recommendations of the Panel would take considerable resources to implement, and the Minister has already committed to an ambitious programme over the next 3 years in order to move forward with the next phase of family-friendly legislation and to introduce the disability characteristic under the Discrimination Law.

	Recommendations	To	Accept/ Reject	Comments
R2	The Minister should consult with a view to approving a Code of Practice on zero-hour contracts pursuant to Article 2A of the Employment (Jersey) Law 2003, in order to build on the foundations of the current Zero-Hour Contracts Guide, thereby giving greater emphasis and value/efficacy to its provisions. The Minister should report back to the States within 6 months.	SS	Reject	<p>A code of practice is not appropriate in these circumstances. A code of practice is appropriate where there is a clear legal framework in place and employers need direction as to how to best comply with the Law. A code may also be of use where there is a clear consensus about how employers should behave in a particular situation.</p> <p>Neither of these applies in the case of zero-hour contracts. It is unlikely that a code could be sufficiently broad to encompass the many different situations and businesses in which zero-hour contracts may be used, while still being specific enough to provide useful direction.</p> <p>There is a danger of creating perverse incentives by seeking to regulate zero-hour contracts too closely. If an</p>

	Recommendations	To	Accept/ Reject	Comments
				<p>employer was required to take some specific action in the event that an employee's working pattern achieved a given level of regularity – e.g. the established pattern becomes a contractual obligation – there is a danger that employers will ensure that the level is never reached (see Recommendation 9). An employer might withhold work from an employee who is nearing the threshold of 'regular' work. It would be difficult to legislate against this, which would potentially cause real practical difficulties for employees.</p> <p>The Employment Law requires a period of formal consultation before a code of practice is introduced and so, even if the recommendation had been accepted, it would not be possible to report back to the States on the outcomes within 6 months.</p>
R3	The Minister should consult with a view to bringing forward proposals to amend the Employment (Jersey) Law 2003 to provide that a statement of terms of employment should be signed and agreed by both parties (or be deemed to be signed by both parties if one or both parties have failed to sign the statement after a specified period has elapsed following it being provided to the employee).	SS	Reject	<p>It is not necessary to consult or to amend the Employment Law. Article 3 of the Employment Law already requires employers to provide employees with a written statement of their terms and conditions and requires that the statement must be signed by the employer. This applies irrespective of the number of hours worked. The JACS guide and model terms of employment make provision for the employee to sign as well.</p> <p>The value of amending the Law to require a signature from the employee is questionable given that such a signature will be deemed to have been applied after a period of time in any event. Where the employee does not sign the contract, but continues to work under the contract, this is taken as implicit acceptance.</p> <p>No evidence has been presented to suggest that the current rule on providing a statement is inadequate. The Panel's survey asked employees if they had seen and signed a contract</p>

	Recommendations	To	Accept/ Reject	Comments
				<p>for their zero-hour employment. However, no outcomes have been presented from this question. There may be cases where the employer fails to issue such a statement, but this problem – which is not confined to zero-hour contracts – will not be solved by imposing an additional requirement that the statement be signed.</p> <p>An employee may complain to the Tribunal where a written statement has not been provided at all, or been provided but it does not fully comply with the Law. The Tribunal has the power to amend the written terms so that they comply. In addition, from April 2017, the Tribunal will have the power to award compensation to an employee where their employer does not comply with the Law in relation to written terms of employment.</p>
R5	The Minister should consult with a view to bringing forward proposals to amend the Employment (Jersey) Law 2003 to provide that where an employee is engaged on a zero-hour/variable hour/minimum hour contract, the employee should be provided with a copy of the Code of Practice or current guidelines or given information in writing as to where those documents may be accessed electronically.	SS	Reject	<p>This is excessive in legislation. The guide primarily provides technical advice to employers. It does not seek to explain all of the rights that an employee might have and so its use to employees is limited. Employers being aware of their obligations has a positive impact on employees without the employees necessarily needing to be issued with a copy of the guide itself.</p> <p>No other area of employment rights is subject to the need to provide an employee with written guidance.</p>
R9	The Minister should consult with a view to bringing forward proposals to amend the Employment (Jersey) Law 2003 to provide that where an employee has been working on a zero-hour/variable hour/minimum hour contract for a continuous period of 6 months and during that period he/she has worked for the employer on a regular basis (to be determined in legislation), the employer shall be obliged to	SS	Reject	<p>The Panel has not presented sufficient evidence to justify the work that would be required to make provision in law and so the Minister cannot accept the recommendation. The recommendation is based on the Panel's finding that: <i>"61% of employees who reported being employed under a zero-hour contract for at least one year answered 'no' when asked if their contract had been reviewed."</i> The Panel also found that</p>

	Recommendations	To	Accept/ Reject	Comments
	<p>conduct a review of the contract with the employee to determine whether it is an appropriate reflection of the hours worked in accordance with the Code of Practice or current guidelines.</p>			<p>78% of employers had reviewed the terms of their employee's zero-hour contracts. This demonstrates that employees may not necessarily know if their employer has reviewed their contract, particularly if the employer decided not to change the contract. The Panel's survey also asked employers if they transfer zero-hour contract employees to full-time or other types of contracts but the outcomes to that question are not presented.</p> <p>There are a number of difficulties raised by this recommendation:</p> <ol style="list-style-type: none"> 1. When would the rule apply? The Panel uses the term 'on a regular basis' and states that this will 'be determined in legislation'. This is not straightforward. If the law were to set out the sort of work patterns that would trigger additional obligations on the employer, there is a danger of simply providing a target for the employer to avoid (e.g. if the trigger point is 26 weeks in which the employee has worked for at least one hour each week, the employer could deliberately create a workless week). This would disadvantage employees but it would be difficult to frame the legislation to prevent this. 2. What does 'review' the contract mean? If it simply means that the employer has addressed its mind to the issue of whether an arrangement should continue then it is not surprising if employees are not aware of a review being carried out. If, however, the idea of a review means something more specific, then this would need to be set out in the legislation. Should there be a meeting with the employee, for example? However, it is ultimately for the employer to

	Recommendations	To	Accept/ Reject	Comments
				decide what contractual arrangements best suit the future needs of the business. It is likely that procedural hoops such as this would not ultimately make a difference to the arrangements under which an employee is employed.
R10	The Minister should consult with a view to bringing forward proposals to amend the Employment (Jersey) Law 2003 to introduce a mechanism whereby a Social Security Officer might refer zero-hour contracts to the Employment Tribunal to determine whether the use of a zero-hour contract is appropriate.	SS	Reject	<p>Article 3 of the Employment Law provides that a written statement of employment must include terms and conditions relating to hours of work, including any terms relating to normal working hours, etc. Article 7 provides that where a statement has been given and a question arises as to what should have been included, the employee may ask the Employment and Discrimination Tribunal to determine the question.</p> <p>Where the Tribunal determines that certain particulars should have been included or amended it can effectively deem the change to have been made to the employee's terms of employment. It will also have the power to award compensation of up to 4 weeks' pay when an employer has failed to meet its obligations regarding terms of employment. This additional compensation is an improvement made to the Law during the period of the Panel's review, as adopted by the States in May 2016 and in force 1st April 2017.</p> <p>The Tribunal does not have jurisdiction to rule on the 'appropriateness' of a particular contract. If a zero-hour contract has been validly entered into and has not been varied by the parties then it remains valid. The Tribunal can deal with a dispute arising from an alleged breach of that contract and can make a declaration to correct any terms that have not been accurately recorded in the written statement. However, it cannot say to an employer that it must amend a valid contract on the grounds</p>

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				<p>that the contract that has been agreed is in some way ‘inappropriate’.</p> <p>This recommendation would also require a significant change to the role of Social Security inspectors, requiring a more time-consuming and intensive system of labour inspection. The appropriateness (or otherwise) of a zero-hour contract is a subjective decision based on the individual circumstances and daily practices of the employer and employee. These officers currently inspect matters of fact, such as non-payment of minimum wage and failing to provide a payslip.</p>
R11	The Minister should consult with a view to bringing forward proposals to amend the Employment (Jersey) Law 2003 to abolish exclusivity clauses.	SS	Reject	<p>The Panel has not presented sufficient evidence that exclusivity clauses are being used in Jersey or that they present a significant problem that would justify the time required to consult and prepare legislation. It is not clear from the report what practice the Panel actually seeks to abolish (see Finding 13). Banning exclusivity clauses is unlikely to make any practical difference to the experience of employees. It may be more appropriate to provide additional support to employees to help them understand their terms of employment.</p> <p>The development of legislation in this area in the UK was far more complex than had been anticipated. Particularly challenging was the further consultation and legislation required to introduce anti-avoidance measures to prevent employers from circumventing the ban (e.g. what if the employer offers a contract guaranteeing 1 hour per month?).</p> <p>Although some employees (around 17%) told the Panel that they were never allowed to work for another employer, the employer respondents said that they did not restrict their zero-hour staff in this way. Even in</p>

	Recommendations	To	Accept/ Reject	Comments
				the UK, the number of zero-hour contracts with exclusivity provisions is believed to be small and so the law change is not expected to have much impact.
R14	The Minister should consult with a view to bringing forward proposals to amend the Employment (Jersey) Law 2003 to provide for compensation to be paid to employees working on zero-hour contracts where pre-arranged work is cancelled at short notice, (drawing on the experience of the Republic of Ireland and New Zealand where such provision has been enacted).	SS	Reject	<p>The Panel's survey did indicate that some employees experience work being cancelled at short notice. The Panel did not, however, ask whether compensation was paid to employees in such circumstances. Importantly, the Panel also did not ask how frequently work was cancelled at short notice and, therefore, it is difficult to gauge how much of a problem this actually was. This is not a good basis for introducing a potentially complicated amendment into the Law.</p> <p>New Zealand has recently introduced a law on the cancellation of shifts at short notice. However, this applies to all hourly paid workers, not just those on zero-hour contracts.</p> <p>In Ireland, the Organisation of Working Time Act 1997 provides some minimum protection where zero-hour workers have shifts cancelled at short notice. However, a 'zero-hour contract' in Ireland is a contract that requires the employee to be available for work, either for a certain number of hours, or when required, or a combination of both. If the employee has the right to refuse work, there is no obligation on the employer to compensate the employee for a late cancellation. This provision therefore would not apply to a zero-hour contract as the term is understood in Jersey. For that reason, we cannot draw on this experience.</p> <p>Both Ireland and New Zealand have much more heavily regulated labour markets than Jersey. It is not clear why, of all the areas of employment law covered by those countries, these provisions should be given particular</p>

	Recommendations	To	Accept/ Reject	Comments
				priority for transposition to Jersey. It is not clear that an amendment to the Employment Law would lead to any substantial benefits for employees, and insufficient evidence has been presented to justify the amount of work that would be required.
R17	If, after a period of monitoring the increasing prevalence of zero-hour contracts, the Department considers that it was not receiving adequate co-operation from employers or considers that there might be misuse of zero-hour contracts among employers, then consideration should be given to further measures, including legislative changes.	SS	Reject	<p>The Minister does not consider that the evidence provided by the Panel's report provides a sufficient case to extend the Employment Law in this area.</p> <p>If local employment conditions change in the future, the Minister (at that time) will consider whether changes to employment legislation would help to address the issue. Any such decision would need to be taken at the appropriate time, and the Minister cannot commit today to such future action.</p>

The following recommendations cannot be accepted, as they relate to areas that are not under the control of the Minister for Social Security.

	Recommendations	To	Accept/ Reject	Comments
R1	Agency Workers who have been working in the Social Security Department for 12 months or more should be offered permanent positions.	SS	Reject	This recommendation cannot be achieved as there may be no permanent vacancy available for the person. In addition, to take such action would conflict with the States of Jersey recruitment and selection policy. The policy requires open competition including a panel interview. Temporary workers are assigned to, rather than employed by, the States of Jersey and so they would not go through this recruitment process. In addition, a number of other procedures must be followed when recruiting to a vacancy, such as checking whether any employees on the skills register would qualify for the vacancy (e.g. staff at risk of redundancy) and complying with the Department's restricted recruitment procedure for entry level positions.

	Recommendations	To	Accept/ Reject	Comments
				<p>Agency staff allow the Department to pilot new ideas, undertake new projects and constantly make improvements. Around 1 in 4 permanent staff in the Department were previously temps.</p> <p>There is some confusion within the report about the difference between agency staff and zero-hour contracts (e.g. page 20). The JACS guide recommends building in a review period where a zero-hour contract exists, not where staff are engaged through an agency. The Department has followed best practice according to the JACS guide (as set out on page 12 of the Panel's report).</p>
R7	The Social Security Department should introduce an accreditation scheme for employers who wish to demonstrate their credentials as good employers by complying with any code or current guide: such a scheme possibly to be promoted through JACS.	SS	Reject	<p>The recommendation is not appropriate in the context of employment legislation. The Panel has not provided any evidence to support a scheme or indicate the benefits; nor has it provided any evidence of such schemes operating in other jurisdictions.</p> <p>An accreditation scheme may be appropriate in other circumstances, such as 'Rent Safe', an accreditation scheme to provide a list of landlords, managing agents and letting agents whose properties meet measurable standards (homes must be safe, be wind and watertight, have reasonably modern kitchens and bathrooms and must have effective and efficient heating).</p> <p>Employment legislation is more complex and nuanced. What is appropriate will depend on the specific circumstances. It is for the Tribunal, not the Department, to decide whether an employer has complied with the Law or not. JACS helps employers to comply with the Law and helps employees to understand their rights. It is important that JACS is neutral and so it would not be appropriate for JACS to promote such a scheme.</p>

	Recommendations	To	Accept/ Reject	Comments
R12	The current Zero-Hour Contracts Guide should be amended to recommend that employers pay zero-hour employees at the same rate as permanent employees unless a differential in pay rates can be justified.	SS	Reject	<p>The Panel recommends that the JACS guide should be amended. The Minister does not consider it appropriate to seek to instruct JACS as to what should or should not be included in a JACS guide. JACS is an independent body that is free to advise on good practice as it sees fit.</p> <p>However, the Minister considers it unlikely that JACS would deem it appropriate to use a guide to dictate pay, beyond the requirement to pay the minimum wage.</p> <p>It is clear from the evidence that, in most cases, those working under zero-hour contracts receive at least the same pay as directly employed colleagues and that many are paid at a higher hourly rate.</p> <p>Where those working under zero-hour contracts are paid less than other staff, this could be for many reasons. For example, an agency worker may be engaged to cover a period of sick leave, but the same demands may not be made in terms of performance or productivity, or the agency worker may need additional support and guidance. It could also be that the people working alongside the agency worker have been given pay increases based on their performance after a long period of service, or they may also have additional skills that the agency worker does not have. It is also possible that these employees are mistaken about the amount that colleagues are being paid, or are mistaken about the extent to which they are doing the ‘exact same job’ as their colleagues. The Panel has not considered any of these factors or given sufficient weight to the evidence.</p>

	Recommendations	To	Accept/ Reject	Comments
R13	The current Zero-Hour Contracts Guide should be amended to recommend that employers give as much notice as possible to employees when offering work and also when cancelling pre-arranged work.	SS	Reject	<p>As above, the Minister does not consider it appropriate to seek to issue specific instructions to JACS as to what should or should not be included in a JACS guide. As an independent body, JACS is free to make recommendations as to good practice as it sees fit. While this means that the Panel's recommendation must be rejected, the Minister can confirm that JACS documents are kept under review and updated, as required, in light of changes to legislation, Tribunal judgments and experience.</p> <p>The Panel's survey asked both employers and employees how much notice is given when work is offered and when work is cancelled. The Panel reported that 47% of employers say they give 48 hours or more notice and only 8% say they cancel work at the start of a shift. 59% of employers already have a policy or standard practice in place when cancelling work.</p> <p>As the JACS guide states, under a zero-hour contract there should be no obligation on the part of the business to offer work as well as no obligation on the individual to accept. The Panel's survey asked employees if they decided to work under a zero-hour contract because they want to be able to turn down work at short notice as well as asking them to rate their satisfaction with the flexibility of their working hours, but no data on the outcomes of these questions has been provided.</p>

Other Recommendations

	Recommendations	To	Accept/ Reject	Comments
R19	<p>The Minister should investigate the prevalence of the potential harm caused to employees working on zero-hour contracts who may find that, despite being available for work, they have worked insufficient hours to meet the lower contribution threshold for Short-Term Incapacity Benefit, particularly having regard to the likelihood that some of those employees would have been placed in work through the Department's 'Back to Work' Scheme. The Minister should take action to remedy this situation and report back to the States within 6 months.</p>	SS	Reject	<p>As the Panel notes, the lower contribution threshold is currently £864 per month. There must be a minimum earnings threshold for entitlement to contributory benefits. This prevents taxpayers' money being used to top up the contributions of people working few hours. The number of hours a person works each month will depend on many factors, including personal choice. It is inevitable that some people working in Jersey will fall under the contribution threshold because of the hours they work and their rate of pay. This can apply to people working under all types of contracts (permanent, fixed-term, apprenticeship, etc.), not just zero-hour contracts.</p> <p>As the Panel states in its report, during a hearing with the Minister for Social Security, it was confirmed that the Department will start a review of the Social Security Fund in 2016, and that criteria to access benefits will be looked at as part of that review. The Panel has been provided with the timetable for the review. The Minister agrees that this matter will be considered, but cannot confirm whether any changes might be made until the outcomes of that review are available. The review is a long-term project which will take several years to complete, and so it will not be possible to report to the States within 6 months.</p> <p>If a person is receiving income support, and is unable to claim short-term incapacity allowance due to low wages in a previous period, their income support claim will be adjusted during the duration of the illness to compensate for any reduction in earnings.</p>

	Recommendations	To	Accept/ Reject	Comments
R20	The Minister should urgently address the issue of domiciliary and care workers who may only be paid for contact time with clients and not travelling time between clients, possibly resulting in hourly rates of pay below the statutory minimum wage. The Minister should investigate whether such practices are in breach of employment legislation, and in any event work with employers to promote more appropriate contracts e.g. variable hour contracts.	SS	Reject	<p>The Panel raises the issue of payment for travel time in the context of one particular care worker and a reference to timesheets (that are not detailed in the report) which, in the Panel's view, indicate that the hourly rate may be below the minimum wage. The Minister has not had sight of these timesheets, but it should be noted that time spent by an employee travelling between assignments under the direction and control of the employer would be likely to be regarded as working time by the Tribunal. However, each case will turn on its own facts, and the Tribunal would want to look at the degree of control that the employer exercised over the employee between assignments and how much of that time could be seen as a rest break. For example, if the employee was able to return home or stop for lunch between assignments. In addition, those working under zero-hour contracts have a choice about their hours and the number of clients they choose to accept each day.</p> <p>If any employee is being paid less than the minimum wage, a claim can be taken to the Tribunal or the employee can refer the matter to the Social Security enforcement team. As the Minister advised the States in response to a States question on this subject earlier this year (written question 9148), the Minister would urge the Panel, or individual Members, to make contact with the Department or with JACS if they are aware of any employees who are not receiving the correct minimum wage or their other entitlements under the Employment Law. As noted in answer to that States question, of the 9,469 client queries received by JACS during 2015, no client queries or complaints were received relating to these issues.</p>

	Recommendations	To	Accept/ Reject	Comments
				<p>The JACS outreach service continues to target small employers across a range of industries, and regularly advises those employers of the risk of claims should they continue to use a zero-hour contract, and advises employers to offer staff other types of contracts, where appropriate.</p> <p>Social Security enforcement inspectors undertake both pro-active and re-active surveys. In a routine survey, officers will ensure that the minimum wage is being paid, and that terms and conditions of employment are inspected. If an employee has concerns, inspectors will conduct a re-active visit and will ensure that any particular questions are addressed.</p>
R21	<p>Similar standards to the UNISON Ethical Care Charter should be adopted in Jersey. The Charter aims to improve standards for both carers and their clients, for example by improved training, payment for travel time and no more zero-hour contracts.</p>	SS	Reject	<p>Recommendations 20 and 21 relate to care workers. Both recommendations have stemmed from the Panel's findings in relation to the timesheets of one employee locally (page 46). All of the other information in this section is taken from a UK report. The UK Ethical Care Charter was created and promoted by the trade union UNISON, which asks UK councils to pledge to improve working conditions and care for service users.</p> <p>As reported at the Minister's meeting with the Panel, financial constraints on local councils in the UK have placed downward pressure on the amount of money that is available for social care costs through councils. The Long-Term Care Scheme in Jersey, however, ring-fences money for long-term care, and the pressure seen in the UK is not relevant to the support available in Jersey for the provision of home care.</p> <p>The Minister considers that insufficient evidence has been presented to support the recommendation. The Health and Social Services Department has</p>

	Recommendations	To	Accept/ Reject	Comments
				<p>confirmed that providers are expected to promote consistency of staff, and most will work on developing routes for carers so that they see the same clients, and travel time is not excessive. Increasing numbers of providers are offering mileage payments, and some provide vehicles to attract and retain staff. During inspections undertaken by Health and Social Services Quality Assurance Officers, staff rotas are reviewed. No evidence has been found during inspections that carers are working excessive hours. If evidence of such practice is found, this would be of concern to the Quality Assurance Officers, who would investigate further as there may be safeguarding concerns.</p>