

STATES OF JERSEY

Health and Social Security Scrutiny Panel Quarterly Meeting with the Minister for Social Security

THURSDAY, 22nd SEPTEMBER 2016

Panel:

Deputy R.J. Renouf of St. Ouen (Chairman)
Deputy G.P. Southern of St. Helier (Vice-Chairman)
Deputy J.A. Hilton of St. Helier
Deputy T.A. McDonald of St. Saviour

Witnesses:

The Minister for Social Security
Chief Officer
Director, Policy and Strategy
Policy Principal

[10:01]

Deputy R.J. Renouf of St. Ouen (Chairman):

First of all, welcome, Minister, and your team. This is a hearing with the Minister for Social Security and her officers, which is being recorded. So we would like to extend a welcome to you and thank you for coming to answer our questions. As this is being recorded we will go through the usual procedure and declare who we are. Minister, if I can ask you to do the same for your team. I am Deputy Richard Renouf and I am Chairman of the Health and Social Security Scrutiny Panel.

Deputy G.P. Southern of St. Helier (Vice-Chairman):

Deputy Geoff Southern, Vice-Chair.

Deputy T.A. McDonald of St. Saviour:

Deputy Terry McDonald, member of the panel.

Deputy J.A. Hilton of St. Helier:

Deputy Jackie Hilton, member of the panel.

The Minister for Social Security:

Deputy Susie Pinel, Minister for Social Security.

Chief Officer:

Ian Burns, Chief Officer.

Director, Policy and Strategy:

Sue Duhamel, Policy Director.

Policy Principal:

Kate Morel, Policy Principal.

The Deputy of St. Ouen:

Thank you. Minister, since we last met in a quarterly hearing you have issued your response to the panel's zero-hour contract report. You understand why the 3 of us who served on the panel at that time would like to ask you some questions and take some time today to consider your response and try and draw out some of what you say. You told us in your response that you felt there was a disappointing lack of local evidence in our report, and I would point out that we as a panel commissioned a survey and drew heavily on its findings and we wrote to and received evidence from stakeholders, such as industry representatives and unions. It seems to us that the panel has gathered what local evidence there is now available in zero-hour contracts but was there any other evidence out there that you felt we should have gathered and has the department got its own evidence, local evidence, on zero-hour contracts?

The Minister for Social Security:

It depends what evidence you mean, Chairman? Yes, we were disappointed in the lack of local evidence. There was constant reference to U.K. (United Kingdom) which of course is a completely different jurisdiction and different legislation. So the examples of local evidence did not actually prove that there was any difficulty with zero-hour contracts, in our view.

The Deputy of St. Ouen:

I would have to take issue with you about your statement there was “constant” reference to the U.K. But you feel there is no difficulty with local zero-hour contracts and no evidence of that?

The Minister for Social Security:

We have no evidence of it, inasmuch as we have asked J.A.C.S. (Jersey Advisory and Conciliation Service), our own inspectors who go round checking on contracts, have no evidence that there is a problem with it. Certainly as far as the department goes, there is no evidence of abuse of zero-hour contracts with employers.

The Deputy of St. Ouen:

What about the evidence presented by the respondents to our survey, which clearly show that the zero-hour contracts have not been reviewed after a year in employment, for example?

The Minister for Social Security:

I think the questions were a little ambiguous. I think in some of the answers it was not clear when the employees said that their contracts had not been reviewed, maybe the employers had reviewed them and had not told the employees that they had been reviewed. It is a difficult sort of ...

Deputy G.P. Southern:

What sort of routine is that?

The Minister for Social Security:

Sorry, I am just trying to answer the Chairman. Inasmuch as the context of the question was not clear in the survey as to whether the employees knew or not that their contracts had been reviewed.

The Deputy of St. Ouen:

So I will ask Deputy Southern to ask his question.

Deputy G.P. Southern:

If I am an employee surely I know when my contract has been reviewed otherwise it is not a review if the employer just says: “That is the review done.” Does not check whether this person is working full-time equivalent hours consistently and does not talk to the employee about that then that is not a review, is it?

The Minister for Social Security:

The employee can always ask the employer if the contract has been reviewed. If it is satisfactory ...

Deputy G.P. Southern:

The onus goes back to the employee to sort out their protection, does it?

The Minister for Social Security:

It is a dual onus. If the employee is perfectly satisfied with the contract why would they worry about it? If the employer is satisfied and feels it is his duty to review it every 6 months and there is not a problem then why would they make a big point of it? It would be in the contract as to how often it would be reviewed.

Deputy G.P. Southern:

Every contract contains that phrase, does it?

The Minister for Social Security:

No, it is not in legislation.

Deputy G.P. Southern:

It is not in legislation at all, no.

The Minister for Social Security:

Zero hours is not in legislation so it would be within the terms of agreement of the employer.

The Deputy of St. Ouen:

It is not a mandatory term of the agreement, is it?

The Minister for Social Security:

No.

Deputy G.P. Southern:

You say in your first summary point, summary of Minister's position: "The panel's review highlights that zero-hour contracts are positive in many circumstances." What are those circumstances?

The Minister for Social Security:

I think the panel agreed, and from your survey, that the flexibility was the main plus point of zero-hour contracts inasmuch as the employer has no right to demand a certain amount of hours of the

employee and the employee has no mandatory acceptance of those demands, so work can be offered and equally the work can be refused if it is not convenient to the employee at that time. I think that flexibility in a lot of cases ... it is well known that in Jersey we have a very much higher proportion of women working and for a lot of women these contracts are perfect if they have childcare or a carer's role to take, or in some cases another job. So generally speaking I think in the J.A.S.S. (Jersey Annual Social Survey) survey of 2014, 77 per cent of people surveyed said that they were either satisfied or very satisfied with zero-hour contract terms.

Deputy G.P. Southern:

How many of those in the J.A.S.S. survey were students or women?

The Minister for Social Security:

I am not sure what the breakdown was.

Deputy G.P. Southern:

There was not a breakdown. This flexibility, do you not accept that flexibility works largely one way? It is convenient for the employer not necessarily for the employee because flexibility means that from one week to the next they do not know how much money is coming in.

The Minister for Social Security:

I do not agree with you that it is not convenient for the employee, for the reasons I just described earlier. I think it is very convenient for a lot of employees and especially in the seasonal circumstances that we have in Jersey, which of course is very different from comparisons in the U.K.

Deputy G.P. Southern:

So you seem to be stating that ... are there any circumstances in which zero-hour contracts are not appropriate, in your view?

The Minister for Social Security:

I have yet to have evidence of one that is not appropriate. I think it depends on the ...

Deputy G.P. Southern:

Only one? The example we gave of the domiciliary care worker?

The Minister for Social Security:

The one example.

Deputy G.P. Southern:

You just asked for one. I am just giving you one.

The Minister for Social Security:

There was only one example in the report and the domiciliary care worker, I think that was travel time that you were mentioning. I think again that is a bit of a comparison because that was an issue in the U.K. where obviously travel time is not comparable to a small Island like this. I think in that certain case the employer was looking at it, but that is the one example that was ...

Deputy G.P. Southern:

That the employer was looking at it?

The Minister for Social Security:

The employer.

Deputy G.P. Southern:

Was looking at it in what way?

The Minister for Social Security:

In the case ... I think maybe Sue has got more information.

Director, Policy and Strategy:

I think care workers is an interesting employment sector where zero-hour contracts will be very appropriate for the kind of examples that the Minister reported about. People wanted to work part-time. People being available to do extra hours. Do they have other clients within the agencies? The domiciliary care market in Jersey is fast maturing and gone from a position where you have got some very small agencies where it had been quite difficult to do.

The Deputy of St. Ouen:

But should staff be unpaid when they are travelling between assignments?

Director, Policy and Strategy:

I am sorry, but we do not have any evidence of that. We do not have ... you are asking about zero hours ... whether it is appropriate for a zero-hour contract to be appropriate to a care agency setup and I am saying that might well be appropriate in the initial phase of a care agency setting up. I think what we see now is agencies getting bigger and more established and they are providing quite good employee benefits.

The Deputy of St. Ouen:

I am surprised you say that should be appropriate.

Director, Policy and Strategy:

You do have over to that, yes.

Deputy G.P. Southern:

Where is it?

Director, Policy and Strategy:

I think we have some evidence in our response.

Deputy G.P. Southern:

Have you surveyed employers in that particular sector to find out what the practice is?

Director, Policy and Strategy:

So this evidence is second hand so what you do have is the Health Department are now regulating to the providers and there is a full-time inspector. So it is not a statutory role at the minute but she understands a similar function. She is making sure that care agencies are providing appropriate care. That includes understanding how staff are trained.

Deputy G.P. Southern:

That is largely about training and making sure you have the quality and the right people doing the business who were working within a framework. They are not empowered to look at the employment contract.

Director, Policy and Strategy:

No, but that is the ... okay, but she is ...

Deputy G.P. Southern:

That is no evidence at all then.

Director, Policy and Strategy:

No, but the role does include the fact that the care is being provided safely and that would very quickly affect people, if people were working longer hours, particularly long, then safety would be what you consider, that she would take into account.

Deputy G.P. Southern:

In this particular example, and your Minister did ask for an example, there was evidence that there was 15 hours in total day, including travel time, of which 12 hours were caring, were contact time. Is that not safe?

Director, Policy and Strategy:

To be fair to the Minister, we have not seen your evidence. You refer to it, it was referred to in a Scrutiny hearing quite some time ago, I think.

Deputy G.P. Southern:

So the evidence from the time sheets was disregarded?

Director, Policy and Strategy:

No, we have not seen it. We have not seen the time ... we do not know what the circumstances of the time sheets are.

The Deputy of St. Ouen:

What would happen because in the Minister's response it is said that ... quoted the Minister's response to a States question and said: "The Minister would urge the panel or individual Members to make contact with the department if they are aware of any employees who are not receiving the minimum wage. So if we came to the department and said: "We have evidence that this is happening" what would the department be able to do?

Director, Policy and Strategy:

That is standard practice. People can approach the department and inspectors will make the appropriate investigations and that can be done in a way which does not draw attention to the source of the inquiry.

The Deputy of St. Ouen:

That is the trouble, is it not? Because if you present a timesheet the employee then becomes identifiable.

Director, Policy and Strategy:

No, we know how to create the appropriate way of making those reviews with the inspectors.

The Deputy of St. Ouen:

If the evidence that you saw was that people were not being paid for travel between assignments what would your view be, Minister?

The Minister for Social Security:

I think, from what I understand, and Sue referred to the care providers now who are aware of the, time in between, which we know has happened in other industries. People who had previously, not on zero-hour contracts - it is just other industries and I do not know the circumstances - but have been left in some areas waiting for their next instruction for some considerable time. This does not apply in this case because they were not on zero-hour contracts. I do not know the ...

Deputy G.P. Southern:

Who was not on zero-hour contracts?

The Minister for Social Security:

The people I am referring to and I will not mention the company. But in this case the care providers, I think, are very well aware of the situation where you do not want to keep people hanging around. They have established rotas and, for the benefit of the clients, have established trying to make sure the same carers go to the same clients because obviously that is what people prefer. So the rota is established so that the time taken in between each client works very well.

The Deputy of St. Ouen:

But should it be paid, Minister? If you are asked to begin work at 9.00 a.m., move all over the Island and finish work at 5.00 p.m. should you be paid for travelling on your employer's business?

The Minister for Social Security:

I think that is a question for the employer as to what the contract is they have with the employee.

The Deputy of St. Ouen:

Is it? Have you taken legal advice?

Deputy G.P. Southern:

Is that family friendly working, if you are working 15 hours in the day? You are away from home 15 hours.

The Minister for Social Security:

We do not write the contracts, Deputy. So it would be down to the employer.

Deputy G.P. Southern:

And there is no role for the department at all then in protecting employers from that sort of exploitation?

[10:15]

The Minister for Social Security:

If we knew there was that sort of exploitation then obviously we would have to look at it, but we have no evidence of that.

The Deputy of St. Ouen:

Your suggestion is that an individual member can approach the department.

Deputy G.P. Southern:

Are you accusing us of lying? Did we actually make this up?

The Minister for Social Security:

Sorry, Chairman, I did not hear your ...

The Deputy of St. Ouen:

Your response suggests that if that evidence comes to light, an individual Member can approach the department. I am trying to establish what the department could do.

The Minister for Social Security:

Initially they would approach J.A.C.S. who obviously is a conciliation service and they would sort it out. But they have had no evidence of any abuse or problems with zero-hour contracts.

The Deputy of St. Ouen:

But if a Member is bringing you this and says to you: "Is this a misuse of the contract? Not being paid, although you are doing your employee's business.

The Minister for Social Security:

We would initially refer them to J.A.C.S. because that is J.A.C.S.'s role because they are an independent body. We do not write zero-hour contracts.

Deputy J.A. Hilton:

Can I just ask you, Minister? As a principal, if you have an individual who is working a 40-hour week and 5 days a week on a zero-hour contract, if they are working a 40-hour week, 9.00 to 5.00, 8.30 to 5.30, as a principal do you think that individual should be paid for the time that they are travelling between each client?

The Minister for Social Security:

I cannot say as a principal because it is not a legislative matter; it is down to the employer and employee who have that contract. If they feel that they are having to travel from east to west 5 times a day and it is taking up their time for which they are not being paid, then surely their first recourse should be to their employer. If that is unsatisfactory they would go to J.A.C.S.

Deputy G.P. Southern:

Do you believe in those circumstances that is appropriate use of zero-hour contracts or is it inappropriate use? Because when we say zero-hour contracts are not supportable we always use the phrase ... and every witness that came to us, employer/employee organising body, whatever, said: "If appropriate." If appropriate to use then zero-hour contracts are not our problem. We found evidence that our employees, who responded to that question, that they were in fact on full-time contracts but on a zero-hour contract. They were doing full-time work, is that appropriate?

The Minister for Social Security:

All I can keep saying, Deputy, is we have not seen the evidence to support that. Just a percentage of employees who said their contract was not appropriate. Well, without any evidence I am afraid I cannot comment any further. We do not write the contracts. We do not employ people on zero-hour contracts, so without any evidence to suggest that there is something wrong I cannot comment.

Deputy G.P. Southern:

Is part of your job to provide appropriate protection for employees?

The Minister for Social Security:

Which we do under Employment Law.

Deputy G.P. Southern:

But not in this case because we will ask you to change the Employment Law to enhance the protection on zero-hour contracts and try to ensure that their appropriate use is promoted and maintained. So are you saying you are not prepared to do that at this stage?

The Minister for Social Security:

I think it was - to make it clear to whoever is listening - disappointing to us that nothing in the report was included about the change in the law to protect employees with the 8-hour rule which we changed this year, end of last year, this year, to give a sort of protection with continuity of service with hours and holiday pay. Before anybody working for 8 hours or less did not have a contract and we have changed the law to produce that. So I think it is a pity that was not mentioned in the report because that is a big improvement in employment legislation to protect employees.

The Deputy of St. Ouen:

Minister, you are criticising us for not applauding your efforts.

The Minister for Social Security:

No, I am not. It is just you did not mention it.

The Deputy of St. Ouen:

Can not a Scrutiny Panel ... we did not mention it. But we did mention a lot of areas where we felt that Employment Law lacked protection. You quoted us a few minutes ago the J.A.S.S. survey that you undertook and was included in your response to the States Assembly in 2015. I think you quoted the figure that 77 per cent of zero-hour contract workers said that they were satisfied ...

The Minister for Social Security:

Or fairly satisfied.

The Deputy of St. Ouen:

Or fairly satisfied or very satisfied. But that leaves 23 per cent of zero-hour contract workers who are not even fairly satisfied. That must mean they are dissatisfied with their zero-hour contracts. Now in terms of numbers I think that same report said that 3,794 people had zero-hour contracts as their primary source of employment. Forget the secondary contracts people might work. We know from the Jersey labour market report that the private sector numbers of zero-hour contracts are increasing, continually it seems. So that leaves the best part of 1,000 people who have a zero-hour contract as their primary source of employment and they are dissatisfied with it; that 23 per cent. So, yes, I am quite happy to accept 77 per cent might be happy but the best part of 1,000 people are not satisfied being on the zero-hour contract, and we do not give them any protection, it seems to me. Our report was trying to suggest that there should be consultation to protect that body of people in the economy. Do you say they do not need protection from possible misuse of contracts?

The Minister for Social Security:

No, I am not saying they do not need protection but there is no evidence that we have come across to say why they are dissatisfied at all.

The Deputy of St. Ouen:

So our recommendation was that there should be consultation on these issues but you have rejected even consultation to try and find that evidence base.

The Minister for Social Security:

I think in some of your recommendations it was consultation which would be followed up by legislation, and that is what we are saying. The Employment Forum already have their remit to review the Family Friendly Law, which in your Scrutiny a year ago, and in the States, held the Minister to account to review it a year after it came into force. That is now September 2016; it came in in September 2015. There is only so much work the Employment Forum can do.

The Deputy of St. Ouen:

We can come on to timing later but if you know from your own survey that there are 1,000 people in the economy who are on a zero-hour contract as their primary source of employment and they are dissatisfied with it, are you saying you have no evidence that there is any ...

The Minister for Social Security:

There is no evidence produced in the survey and unless you have a distinct questionnaire levelled at those people who say they are dissatisfied, who are not named, how can you possibly understand what their dissatisfaction is?

Deputy G.P. Southern:

The J.A.S.S. survey was your survey, is it not? Those questions.

The Minister for Social Security:

It is not our survey, we just put the questions.

Deputy G.P. Southern:

You put the questions so that is your evidence from your survey.

Director, Policy and Strategy:

So those questions ...

Deputy G.P. Southern:

There are people using zero-hour contracts as their prime source of income dissatisfied with their conditions.

Director, Policy and Strategy:

So those questions were indeed drafted by the department and they were a response to States requirements to investigate zero-hour contracts. A general point about this continued examination of zero-hour contracts is that undoubtedly if you ask people whether they are happy or unhappy about their employment situation some people will be happy and some people will be less than

happy. But we are not asking people who are on fixed-term contracts or part-time contracts, who are working full time in a shop when they are asked if they work for too many hours. All those people may be happy or unhappy with their employment situation. The Employment Law itself does not have the concept of zero-hour contract in it. We are creating it by a particular ... you are creating a situation which zero-hour contracts .is being given.. increased significance compared to other types of contracts. The role of the Employment Law is to provide basic employment rights for all employees. The Minister mentioned removing the 8-hours rule, that is a really important thing that was ... it made it more inclusive. The Employment Law now covers everybody who has a contract of employment and it is something which did not happen before and, as it happens, some people on zero-hour contracts were also on part-time contracts, are now brought into the remit of the Employment Law and can be covered by those very important basic rights. But to start to kind of create a much more complicated Employment Law where you are differentiating between different types of contracts, adding extra rules for this kind of contract and that kind of contract, will make the Employment Law a vastly different kind of legislation that what it is at the minute. You do need to be careful as to what you are trying to achieve and also when you look at evidence, if you ask a particular group of people whether they are happy or unhappy with something that is all very well, but you have got to ask everybody else whether they are happy or unhappy as well. So know the thing you are looking at ...

The Deputy of St. Ouen:

But in this case the “everybody else” have protection.

Director, Policy and Strategy:

No, sorry, that is not true. That is when you said that last year the Employment Law was changed so that all employees are covered by the Employment Law. Every employee has the same protection under the Employment Law; it does not matter if it is zero-hour contract, flexible contract, part-time contract, full-time hours ...

Deputy G.P. Southern:

And how is that protection enforced?

Director, Policy and Strategy:

It is enforced in the same way that every ... also there is protection against, so minimum wage is ... so there are things that our inspectors do. There is advice that J.A.C.S. gives. There is an Employment Tribunal which is free for people to use. So we have got to get a very accessible arrangement in which people can challenge their employers ... both employees and employers, both use J.A.C.S., both use the Employment Tribunal. It is a very open process and it is a simple

process. Adding complexity to the process may or may not be of advantage to the people you are trying to help.

The Deputy of St. Ouen:

Might those 4,000 people on zero-hour contracts as their primary source of income be more vulnerable to misuse of contracts than those on permanent contracts, Minister?

The Minister for Social Security:

I do not see why they should be.

Deputy G.P. Southern:

For example, if they are on ...

The Minister for Social Security:

They have the protection that Sue has mentioned.

Deputy G.P. Southern:

... zero-hour contracts, Minister, then presumably the employer can, as of tomorrow, say: "I am not offering you any hours."

The Minister for Social Security:

Equally the employees can say the same.

Deputy G.P. Southern:

The employee?

The Minister for Social Security:

Can say: "I do not want to work those hours."

Deputy G.P. Southern:

But in terms of challenging the conditions on which they work and challenging their employer, does that not make an extreme difficulty knowing that if I challenged my employer in the Tribunal then he may well turn round, as he is perfectly allowed to, and say: "I am giving you no hours as of tomorrow. You are challenging me." Is that not an unsafe position for an employee to be in?

The Minister for Social Security:

But this is why we have the protection in law now because of this removal of the 8 hours that everybody has protection for unfair dismissal, continuation of service, holiday pay, so they are far

more protected than they were before, which is why I was not criticising, Chairman, but just mentioning that it was not in your reports because it is a very important part of legislation which was passed.

The Deputy of St. Ouen:

Because it covered all employment contracts and not specifically zero hours.

The Minister for Social Security:

Yes.

The Deputy of St. Ouen:

But your criticism, I think, is that additional regulation would encourage employers to seek ways round it, but is this not the function of good legislation, to provide protection for people who need it and to avoid people getting round the rules?

The Minister for Social Security:

Our Employment Law in Jersey is, by nature, because of the size of the Island, intentionally made simple. I think if you start complicating it with all sorts of bits of legislation that perhaps apply to a very, very small percentage of the people it then makes the whole situation ...

The Deputy of St. Ouen:

Is 23 per cent of people a small percentage; one in 4?

The Minister for Social Security:

This is people who did not say that they were satisfied or very satisfied. These are people who were outside that category. That does not mean to say that their contracts were not suitable to them or that they were being abused. There is no evidence of abusive zero-hour contracts ...

Deputy G.P. Southern:

Yes, there is.

The Minister for Social Security:

... whatsoever.

Deputy G.P. Southern:

There was in our report.

The Minister for Social Security:

That we have seen.

Deputy G.P. Southern:

Because employees reported that they had been on these contracts for more than a year but they are working regular hours.

The Minister for Social Security:

Well, we have not seen that evidence. It was not produced. It was just in percentage. We have not seen any particular breakdown of it and I do feel that the Employment Law, if an employer were to abuse a zero-hour contract, if we were then to put in legislation to counter that, that would be some particular employer, which we have got to know evidence, would then find another way round it. So you are legislating against something for which there is no evidence to legislate.

Deputy G.P. Southern:

What would that other way round it be? Might it be, as your own department does, to not employ people on zero-hour contracts but to take on agency workers who are paid on zero-hour contracts and, yet, they are doing 9.00 to 5.00 full-time work, as is the practice of your department? Is that one of the ways around it?

The Minister for Social Security:

Perhaps the Chief Officer would like to answer that.

Chief Officer:

So I think firstly to answer ... perhaps put some context to what the Minister was suggesting. The panel are keen for us to understand what happened in the U.K. I think there is some evidence in the U.K. that some companies are offering up on one-hour or 10-hour week contracts, one-hour week contracts to avoid zero-hour contracts and so on. Firstly, the department does not employ anybody on zero-hour contracts. We do engage people through temporary agencies and have done and had this discussion a number of times. We do so on the basis that we have short-term requirements, typically project work, typically initiatives and pilots to try and improve the way we work, and we do so and we do so through temporary agencies and have done so, and I imagine will do so because they have been an effective way of improving the way the department works.

[10:30]

And we have had good success also in terms of other initiatives into things that make a real difference for customers and also for the individuals concerned, many of the temporary workers

who have worked with us have used that experience with us to secure work elsewhere or with the department or within the States.

Deputy G.P. Southern:

So you feel that is perfectly justified even though in your written answer to my question in the States recently only 12 of a significant number of some 40-odd agency workers were engaged on project work, is where you started your answer.

Chief Officer:

Yes, so in that answer there is a breakdown of the different areas of the department where the temporary workers have worked in the last 2 and a half years. There are 142 temporary workers we have had engaged through agencies in that period which shows there is a high level of turnover of people ...

Deputy G.P. Southern:

Why only 12 of those ...

Chief Officer:

Yes, I am coming to that.

Deputy G.P. Southern:

... are engaged in project work?

Chief Officer:

Within, for example, Back to Work, although there is a section called "Projects" within Back to Work, of course many of those are involved in different projects, initiatives within that category. Some of the individuals do not work in Back to Work, do not work in customer services, do not work in any other area, so we have lumped them together at the end to describe them as projects, because that is what you asked us to do to get a flavour of where people were working for the department.

Deputy G.P. Southern:

No, I wanted some straight answers, not a flavour. Why only 12 on projects?

Chief Officer:

It is not only 12 on projects. They do not work in any of the other sections so, for example, some of those people in that category have been working on communications pieces of work for us,

short-term pieces of communication, coming in to change our website. That is across all areas not just Back to Work, not just benefits, not just customer service.

Deputy G.P. Southern:

The reason for employing or using agency workers is what? What is the fundamental reasoning you have that that is appropriate?

Chief Officer:

So we do not have a permanent requirement. We have some work that we want to try or experiment with or initiate or clear up. We are unsure exactly how long that will take. Then we will seek to see who is available from the agencies who might be able to solve that work. We would also consider whether it is an opportunity for secondment internally within the department as well. We would utilise resources if it was available for a temporary worker to come in and complete that work for us. We also use fixed-term contracts as well, so where we have a piece of work that goes on for longer and that we are perhaps more sure about then we will offer a fixed-term contract. That is advantageous potentially to us in securing somebody to do that piece of work for a length of time. That is how we operate.

Deputy G.P. Southern:

What is the balance of whether you use somebody from an agency or ... what is the argument? How do you ... in this case to do a fixed-term contract, this time it is a permanent contract, what is the ...

Chief Officer:

So where we have a permanent requirement for a role and a role that we are going to continue to have then we will advertise for a permanent employee. If we have a role that is permanent or we might think we might be able to end the requirement for that particular piece of work we might just do a fixed-term contract, for example. Or if we think the piece of work is going to last a certain length of time, and we are pretty sure about the content of the work and how long it will last for, we can offer up a fixed-term contract rather than an ongoing contract or a permanent contract. If we have a piece of work where we think we know what it is we are going to be doing and we think we know how long it is going to last roughly, but not entirely sure, and we want potential development then we will use a temporary worker. Sometimes we have contact with temporary agencies and ask them specifically who they might have available to do some particular piece of work and we find somebody who can do something else that we had on our wish list we could do and we would utilise them for that, for example.

Deputy G.P. Southern:

The numbers that you use agency workers for, do those numbers appear on your headcount?

Chief Officer:

No. I think we said that quite clearly before that temporary workers do not appear on our headcount. The headcount issue is that the States departments have an official headcount number. The States departments also have a cash limit and we can utilise that cash limit as well as the F.T.E. (full-time equivalent) numbers to run our organisations, to deliver our objectives and, in our case, improving services to our customers.

Deputy G.P. Southern:

Can I move on? Within the department what is the feeling or what is the thinking as to why the number of zero-hour contracts is increasing by the degree that it is over time in the private sector? What do you think is happening that we need so many more zero-hour contracts in our workforce? What does that mean? Do you know?

Chief Officer:

I could comment from what I believe is happening but that is not ... that would not be official in that sense. It is not based on evidence. We have seen a change in the number of zero-hour contracts since they have been recorded. We do not know what happened before that time. The Jersey economy has gone through a number of years of perhaps imbalance. We have seen increasing numbers of unemployment. We have seen increasing shifts in the labour market and labour market for the last 5 or 6 years since 2008 has been very different to the preceding 8 years, which was in perhaps a more prosperous time and certainly from our perspective the impact of the loss of low value consignment relief, in particular, created a distortion in the labour market that meant businesses have to react and employees have to react. So that labour market is obviously imbalanced. I think it is probably more balanced now in terms of employee/employer than it was perhaps 5 years ago. That is my view. It is perhaps more difficult today to recruit people than it was perhaps 5 years ago when unemployment was ... or 3 years ago when unemployment was at its peak.

The Deputy of St. Ouen:

So, Minister, with those massive changes in the employment market that your Chief Officer has just outlined, is it not appropriate that we should consult on changes to the Employment Law?

The Minister for Social Security:

I never find any harm in consultation.

Deputy G.P. Southern:

You have just refused to consult as a result ...

The Deputy of St. Ouen:

Can we let the Minister answer please? You do not find any harm in consultation?

The Minister for Social Security:

In consultation generally speaking. If it is consultation with a review to legislation, that is a different matter. I mean some of your recommendations which we totally understand and accept and have put into action already were that there should be better communication, for instance, as to what the law allowed and what it did not, having said several times that zero hours does not come under legislation but what Employment Law allows. J.A.C.S have already put that up on their website, the information is already available under your recommendation.

The Deputy of St. Ouen:

Yes, but our recommendations were not an insistence, Minister, that the law be changed. It was consultation and, yes, we may have said "with a view to" because we have to say what we think there should be consultation about. But of course if that consultation comes back and says everything is hunky dory, there is no need for change, then surely that could form the basis of your report on a review into the Employment Law. But with the sort of changes we have heard about is it not right that we should be looking at whether our Employment Law, made in a time when the employment market was very different, whether that law is now adequate to protect the growing numbers of people who rely on zero-hour contracts as their main source of income. We have said: "Go out to consultation" but you have said: "No, because there is just no evidence it is needed", but you have shut down the conversation, it seems to me. Can you comment?

The Minister for Social Security:

I can comment but may I ask Kate, who is Policy Principal and responsible for Employment Law, to explain a little bit more about what that would involve on the consultation basis?

The Deputy of St. Ouen:

I know there would be a lot involved but can you comment on the principal why we should not consult in the light of the changes we have seen in the employment market; consult on better protection?

The Minister for Social Security:

At the risk of repeating myself, that is exactly what we did. Why we brought in a law last year to change the 8-hour contracts. So to give more protection to people who did not have contracts; if

they worked for 8-hours or less there was no contract. We have already changed this under consultation.

The Deputy of St. Ouen:

But we are concerned about people who are on zero-hour contract as their main source of income and they have uncertain income, they cannot plan their finances and that must impact on the benefit system also massively. So you said, for example, when we have asked to consult upon a suggestion that zero-hour contracts be reviewed after they have lost it for 6 months. You have just said there is insufficient evidence to go ahead and even consult. But why prejudge a consultation in that way?

The Minister for Social Security:

Well on the basis of our response there is insufficient evidence to say that people are suffering under the use of zero-hour contracts. Generally speaking the flexibility that they allow is pertinent and appreciated by both parties; by the employer and the employee. There is no evidence to suggest that a consultation would be necessary at this stage.

Deputy G.P. Southern:

There is a massive increase in the numbers on zero-hour contracts and you are saying there is no point in consulting on zero-hour contracts. Are you certain of your position?

The Minister for Social Security:

There is no point in consulting when there is no evidence to prove that people are unhappy with them.

Deputy G.P. Southern:

A quarter of the employees are saying they are unhappy with them.

Director, Policy and Strategy:

There are a number of themes in what you just described. You described the uncertainty of income associated with being on a zero-hour contract. Now changes to the Employment Law will not affect that; that is a different thing. That is to do with the economy. That is to do with how much employment is available, what opportunities there are for people, whether the employee feels confident enough with the labour market to hold out for better terms and conditions. We have talked about coming out of the recession on the employment ... the numbers of people employed in Jersey has been going up in the last few years. We are in a very, very good position compared to where we might be. If that employment includes some element of more flexible working then the alternative to that might be less employment altogether. So there is a concept of

having a job is better than not having a job. But we are not going to solve the problems ... I think you are very interested in solving the problems of people ... you feel that people are being disadvantaged by being required to work on zero-hour contracts and you associate that with changes in the Employment Law to give employees more protection. But those 2 things do not necessarily fit together very well. There are lots of ways which we can help people move away. We can have employers move away from the need to use zero-hour contracts by having more confidence in things and the economy being better, all sorts of things. Having more locals being employed, for example. The Employment Law, as the Minister has described, serves a purpose of creating a simple and understandable relationship between the employer and employee. It works for both sides. It is very important that if we make changes to the Employment Law we maintain that relationship of mutual benefit to both sides. We do not get ourselves into creating very complicated laws we do not understand because the employee must understand. It does not help the employee out in creating laws which put extra conditions on the employer. So you talk about a review. A review sounds like a nice thing but when you are talking about a law you have ... and you as a lawyer, you understand absolutely, that a law has to be extremely explicit on what words mean. What does the review mean? What does zero-hour contract mean? These things are not defined in legislation and our law would need extensive ... it would need to be a much bigger, more detailed law, more rules, more regulations, more things for people to get worried about, more things for people to not understand.

Deputy G.P. Southern:

One of the things we did find, if I may, is that employees said: "I am doing a zero-hour contract because that is all I can find." There are lots of jobs on zero-hour contracts, that appears to be all that is on offer. In particular, from your department, do you check that where zero-hour contracts are coming in, being advertised through your department for employees, that that is appropriate use of zero-hour contracts and it is justified? Because the key is if appropriately used zero-hour contracts can be beneficial to all, but the key is "if appropriately used". If they are zero-hour contracts to avoid, for example, paying holiday or sick pay or a pension scheme, then are they not inappropriately used? Do you check with the department that where you see zero-hour contracts coming forward that they are appropriately used? They are genuine zero hours and there is a need for flexible time, and they are not a coverall for jobs that are 9.00 to 5.00, 5 days a week, and should be a proper contract.

Director, Policy and Strategy:

Can I just make a point that obviously anybody with an employment contract has the right to statutory holiday pay? There is no evidence that that is being abused.

Deputy G.P. Southern:

And usually on zero-hour contracts that is an extra.

Director, Policy and Strategy:

Rolled up, yes.

Deputy G.P. Southern:

Two per cent.

Director, Policy and Strategy:

Four per cent.

Deputy G.P. Southern:

Four per cent a week in your pay.

The Deputy of St. Ouen:

But, Minister, you did not accept our recommendation that when your Back to Work team places people in zero-hour contracts the employer should confirm that they will observe the J.A.C.S. guidelines.

[10:45]

You did not feel it was appropriate to ask the employer even to confirm they would observe the guidelines that you speak so highly of.

The Minister for Social Security:

I do speak highly of them and, as I said before, they have been changed to fit your recommendations that you made.

The Deputy of St. Ouen:

Have they?

The Minister for Social Security:

Already been done in the communications side of things in the J.A.C.S. guide, yes. I think with the Back to Work team, which Deputy Southern is referring to, the monitoring and mentoring of people who get jobs through Back to Work is very constant. We cannot dictate, as I have said before, an employer's contract with that employee, so it would not be down to us to go out and inspect from the Back to Work team an employer's contract with an employee at that point of contact when they first get the job. But we do have inspectors from Social Security who are constantly ..

The Deputy of St. Ouen:

Minister, is that not where you could get the evidence that you say is lacking everywhere?

The Minister for Social Security:

We have, we have asked the inspectors and they have never come across any difficulty with a contract, so I am not quite sure what evidence you are expecting us to find.

The Deputy of St. Ouen:

Could you be more proactive and look at the hours, the person you placed in that zero-hour contract job is working after 6 months, and assess whether it has become a regular system of work which would be deserving of a more permanent contract?

Director, Policy and Strategy:

Again, you are very focused on zero hours as opposed to other forms of contracts.

The Deputy of St. Ouen:

This was the subject of our review.

Deputy G.P. Southern:

This review is zero hours. There are thousands of people on zero-hour contracts.

Director, Policy and Strategy:

Yes, but you are asking the whole Employment Law to be changed. The whole Employment Law applies to all employees and all employers in Jersey and if you create extra conditions within it you will make it more complicated and harder to use for everybody, more expensive to use, less accessible to the ordinary person.

The Deputy of St. Ouen:

Is that right, Mrs. Duhamel, it would affect only employers who use and choose to use zero-hour contracts?

Director, Policy and Strategy:

The Employment Law would get longer and people will go through the clauses just making sure that they were inside the law or outside the law.

The Deputy of St. Ouen:

Surely a good employer would not mind complying with adequate protection for his employees.

Director, Policy and Strategy:

So, again, what are you trying to achieve? A good employer is not the problem here, is it? It is the bad employer that is the problem here. We are not quite agreed as to how many bad employers there are, but if there are bad employers do you not think that they would seek to avoid any other ...

Deputy G.P. Southern:

So there is no point in doing anything in government because the baddies will always break the law?

Director, Policy and Strategy:

No, the ...

Deputy G.P. Southern:

That is a childish ...

The Deputy of St. Ouen:

Okay, let Mrs. Duhamel answer.

Director, Policy and Strategy:

I am sorry, it is also ... you have to think about the consequences of adding extra conditions to the Employment Law. In the U.K. there have been some extra conditions put against zero-hour contracts. They may not be very effective but one thing it has in the U.K. is a rise of going to self-employment. That is a far worse place for a person to be than in a zero-hour contract. You have to be aware of the consequences of pushing extra conditions on employees and employers who may in a very small number of cases seek to avoid their responsibilities. So you asked about why it is so and we should just give up and go home, and I am not saying that at all. I am saying we need to think of ways in which we can ensure that people in Jersey get the right kind of jobs, the right kind of employment, and that is across the government, and that is anybody that is employed, improving the markets in the Island, making sure that local youngsters get into the right kind of job to start with. That is what Back to Work is doing, getting people the right kind of jobs, the right kind of training. That is what we are all about.

Deputy G.P. Southern:

How many youngsters out there are in zero-hour contracts when they are desperately want to be in full-time proper work with a proper contract?

The Minister for Social Security:

Deputy, it is the first step ...

Deputy G.P. Southern:

How many parents out there seeing their children in dead-end jobs with the zero hours?

The Minister for Social Security:

But it is a first step in some cases to employment. When the employment situation is getting so much better now but has been dire, it is a step on the rung to getting a job. If somebody has never had a job before then any job is better than no job. I know that is a constant mantra but, for instance, the Chief Officer was talking earlier when you asked about the people employed in Social Security through agencies. One in 4 of the temporary staff that we took on have now got permanent employment. I think that just goes to show that it is a stepping stone in a lot of ways to getting permanent employment. So it is far preferable to having no job at all.

The Deputy of St. Ouen:

I suppose our concern is where it is not used as a stepping stone, Minister. So, yes, it comes back to the bad employers. You were saying: "Well, we are not going to control the bad employers because they might get even worse and find ways to avoid their obligations" so therefore we do not even consult on what we could do about it. Surely we need a wider discussion on how to prevent the misuse of these contracts and you are not permitting that.

The Minister for Social Security:

On the basis that there is no evidence of misuse of these contracts why would you initiate a consultation which is, and I think very worthy in a lot of cases, but in a case where there is absolutely no evidence to say that there is abuse of zero-hour contracts why would you initiate a very lengthy, normally 3 months, and expensive time-consuming consultation on the basis of no evidence?

The Deputy of St. Ouen:

Well, I think we pointed you to the evidence of our survey and we would even quote your own statistics of one in 4 people being dissatisfied with their contracts as a main source of income. We point out that Jersey is not alone in this. In the U.K., the Republic of Ireland have found it necessary to amend their legislation and introduce protection. They, it would appear, have a much lower prevalence of zero-hour contracts in their economy. So, Minister, does not the high prevalence of zero hours, in our economy, suggest to you that we really should address this question?

The Minister for Social Security:

I think the comparison with other jurisdictions is negligible. They have very different employment legislation laws to ours and ours does afford quite a good amount of protection for employees and, as Sue Duhamel has just said, that there is not a good reason to further complicate, which is a very good law.

Chief Officer:

Just a note on statistics, I think there was a difference in the collection statistics at the period of which we asked employers to count whether someone has worked. It is different in Jersey than it is in the U.K. I am not sure about Ireland, Kate might know if Ireland is different as well.

Policy Principal:

I am not sure. I do not have a number for Ireland.

Chief Officer:

The U.K., I think they ask for a week whereas we ask for 4 weeks. Now on the basis of probability that is obviously going to get a different outcome. So statistically we need to be careful about comparisons between Jersey and the U.K.

Deputy G.P. Southern:

But in terms of the rigour with which the questions are asked the likelihood is that our figures are more accurate, if anything, than the U.K.'s, for example.

Chief Officer:

Yes, so therefore the U.K. has probably under-counted and ...

Deputy G.P. Southern:

So we are talking about thousands of people.

Chief Officer:

When we talk about figures, the U.K. has probably undercounted so therefore when you say we have a higher propensity compared to the U.K. I think you have to be careful in that context for exactly the reason you described.

Deputy G.P. Southern:

Can I just read your response to our recommendation that you consult? "It is important to achieve a balance between providing more rights for employees than 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 its current scope of law.” If we have got thousands of people actually doing zero-hour contracts and some of which may be or are inappropriate then should we not be amending our Employment Law to make sure we have them covered and that protection is clearly and safely in place? Because if I am on a zero-hour contract, an employee, and I challenge and say: “I am taking you to the Tribunal” the likelihood is, or the fear is, that my job will not be there tomorrow. I will not be getting any hours as of tomorrow. There is one thing to challenge for unfair dismissal when you are an employee because you have lost your job you have nothing else left to lose. But if you are on a zero-hour contract and you know you could be receiving zero hours tomorrow if you challenge in a Tribunal then that is an extreme disincentive to risking your job, is it not? The absence of evidence is that we have got very few people challenging on zero hours because it could be zero hours as of tomorrow.

The Minister for Social Security:

But the Employment Tribunal to which you refer is not the first step. There is J.A.C.S. which is, by nature, a conciliatory advisory group and so that would be the first step to go and if you were out of court with your request to go to the Employment Tribunal they would advise you of that.

Deputy G.P. Southern:

And J.A.C.S. will go into an employer and do what?

The Minister for Social Security:

They can advise you as to whether your complaint would be justified or not against the employer.

Director, Policy and Strategy:

I think the Minister’s point is that obviously an employee can approach J.A.C.S. completely anonymously and without reference to the employer, and free, and therefore you would expect if there were ... I understand what you are saying about the Employment Tribunal although again I would make the point it applies to all forms of contracts, and all forms of employment relationship is that people would be worried about the consequences of making their case public. It does not just go to zero hours. But obviously with reference to J.A.C.S., it is not in the public eye, it can be done completely under the radar of the employer, and J.A.C.S. holds very detailed statistics on the type of inquiries that they receive and a minute proportion of all their inquiries relate to zero-hour issues. Therefore there is not an undercurrent of going to J.A.C.S. and not going any further ...

The Deputy of St. Ouen:

I am sure that is right but of course the reason is that you cannot remain anonymous. If you go to J.A.C.S. and say: "I think my contract is inappropriate" they have got to look at that contract with the employer. So the employer knows who the complainant is.

Policy Principal:

J.A.C.S. will only contact the employer with the employee's permission.

The Deputy of St. Ouen:

Yes.

Director, Policy and Strategy:

So you go to J.A.C.S. for advice and if you went to ... so good evidence will be that there are a significant number of inquiries from employees to J.A.C.S. which did not follow through to the Tribunal. That would be really good evidence, that there was a problem here. It was not followed through to the public eye - I understand why you are saying that is a real problem, I agree - but you would see the problem at the first stage where people just give the advice. If you do not see the problem there then you say: "Well, hang on a minute, they are not going to an independent free completely confidential advice service", why would they not do that?

The Deputy of St. Ouen:

I think as Deputy Southern said, it is because they know that tomorrow they could be short of ...

Director, Policy and Strategy:

No, they are going to get ... why do they not go to J.A.C.S. to get advice on what their rights are? It might be because they are cynical and they do not give ... I mean surely people would go.

Deputy G.P. Southern:

But you are using that as an absence of evidence to do anything.

Director, Policy and Strategy:

But I am saying that would be very ... this is a problem. Evidence is always a tricky thing. But the existence of evidence, if that did happen, that would be very strong evidence that there was a real problem and it was not being addressed by the current Employment Law because J.A.C.S. was ... and J.A.C.S. would tell us. J.A.C.S have in the past told us quite robustly when they are not happy with an element of the Employment Law and the Minister at various different time has made changes in response to J.A.C.S's worries about concerns in particular areas. This is obviously an area where ...

The Deputy of St. Ouen:

Are we not just saying that employees who are in a vulnerable position should nevertheless be bold enough to go and expose themselves to the risk of losing hours of their job? That is the ... because they are in a vulnerable position therefore they are not approaching J.A.C.S. and therefore we are saying there is no evidence. Should we not recognise that vulnerability in the first place without insisting that they approach J.A.C.S. and build up a body of evidence?

Director, Policy and Strategy:

But you are asking us to do consultation. Your report refers to some very specific areas where you want specific legal things added to our current simple law. We would have to do extensive work on the law to ... the law would have to understand what it meant by different types of contracts. I also feel that you would have to ... in order to protect vulnerable employees - I fully understand what you are trying to do - but you would need to go beyond the concept of zero hours... it would need to go to the vulnerability that employees face across the board. That might be something that we work in. That is an enormous project. We have ...

Deputy G.P. Southern:

Can I ask the Minister to respond? In her response she says: "There is currently no statutory concept of a zero-hour contract in the Employment Law." Do you not think perhaps since 7,000 people are on zero-hour contracts that we should have that recognition in the Employment Law?

[11:00]

Should we recognise the concept of a zero-hour contract not recognised in the Employment Law? Should you not be consulting? It might be a good idea to recognise that there is such a thing called zero-hour contract which may or may not be used inappropriately or appropriately.

The Minister for Social Security:

I think going back to what I said earlier about the change of law at the end of last year, which recognises now that anybody under 8 hours working, which is a short-term contract, whichever way you want to look at, whether it is zero hours, under 8 hours - there are so many different terminologies for contracts - that protection has already been given, which was not there before. So the answer ...

Deputy G.P. Southern:

Does that protect everybody?

The Minister for Social Security:

Yes. The unfair dismissal, holiday pay, because you get a 4 per cent, as was mentioned earlier, rolled up holiday pay on a zero-hour contract. This is totally different to the U.K. The U.K. does not have that sort of protection in legislation and continuity of service. So all that is now under that law, so it has been addressed.

Deputy G.P. Southern:

And that has solved any problems there might be?

The Minister for Social Security:

It is quite a new law obviously. But it has put people who did not have a contract, who worked less than 8 hours a week, it has given them protection, which they did not have before.

Deputy G.P. Southern:

And that is a fixed hours' contract presumably?

The Minister for Social Security:

There was no contract before.

Director, Policy and Strategy:

There was previously an exclusion so the Employment Law did not apply to people or it applied in very limited form for people who worked less than 8 hours a week. That exclusion has been removed and therefore everybody, where there is an employee/employer relationship, is an employee by law. It is not the same as the U.K. ...

Deputy G.P. Southern:

I will come back to your own words. "There is currently no statutory concept with a zero-hour contract in the Employment Law."

Director, Policy and Strategy:

Because ...

Deputy G.P. Southern:

Do you not think there should be?

Director, Policy and Strategy:

Because there is a concept of a contract of employment between an employer and an employee and that now applies to all forms of employees, zero hours, part-time, flexi-time, permanent, temporary, whatever you want to call it. They are all covered by the Employment Law. I would be

interested to understand what would be the benefit of then creating categories of employment within the Employment Law, so differentiate a zero-hour contract from other kinds of contracts. Jersey has a single definition of employee, unlike the U.K. where there are employees and workers. Zero-hour contracts in the U.K. refer mainly to workers who have significantly fewer rights under the U.K. legislation than employees do. We do not have that situation in Jersey. We have never had it and the one remaining barrier to everybody being employed by the Employment Law was removed by the Minister last year.

The Deputy of St. Ouen:

Minister, one of the reasons for your rejecting many of our recommendations was to do with timing. You said that if any additional legislation was to be considered it would take at least a year to complete, including consultation. You pointed out your current priorities, which are disability, discrimination and a review of family friendly employment rights. But it is the case, is it not, that we did not ask you to abandon your current priorities, we would encourage you to pursue them, but we did not suggest that you should drop everything and consult on employment legislation. So if a consultation on employment legislation was to follow your current commitments would you so consult?

The Minister for Social Security:

You are very aware, I think, having taken the time to meet the Chairman of the Employment Forum and the Policy Principal, the way the Employment Forum works. The Minister has to direct them for the next year of their work, which we have, the States ... asking us to review Family Friendly the year after it was brought in, so that is what they are going to do. That will take them a year to do that review because obviously it is a massive consultation because it affects the whole Island in one way or another. They also have to start work at the beginning of 2017 on the next minimum wage recommendation. So that work ... the Family Friendly work is going to be interrupted anyway by the new work on the minimum wage, which is ... the minimum wage recommendation for April 2017 is to come to us shortly from them. So they have a massive amount of work to do. It is not possible to take on an additional consultation in 2016/17. There is no reason why, when it comes to producing the Family Friendly review that we could not look at the Employment Law, but it would depend what else was available at the time. But it does take the Employment Forum a massive amount of time for consultation appraisal of the results of the consultation, then putting it into legislation, which then of course has to be approved; it is a change in statutory legislation.

The Deputy of St. Ouen:

We did not seek to deny that or criticise the Employment Forum in any way, but you specifically said that you have not got time within your current priorities, but when the current priorities have been discharged would you consider consultation on the Employment Law?

The Minister for Social Security:

We can consider it. If we have by then, in a year's time, obviously you cannot say what is going to happen with zero-hour contracts in a year's time. It may well be that they have dropped considerably and fixed-term contracts have taken their place. Who knows? But if there was evidence in a year's time that it was a problem, and there would have to be evidence to prove that, then there is no reason why we could not ask.

The Deputy of St. Ouen:

I see. We would have to wait for the evidence you say is lacking.

The Minister for Social Security:

It is lacking at present.

The Deputy of St. Ouen:

So in other words there is no suggestion that you would go out to consultation?

The Minister for Social Security:

We would have to appraise it and see whether it was feasible because there is no point, as I have said before, 3 months of consultation and all the work that involves if there is no evidence that there is a misuse of zero-hour contract.

The Deputy of St. Ouen:

We have been discussing zero-hour contracts for an hour, so unless there is anything pressing on zero-hour contracts perhaps we ought to move on.

Deputy T.A. McDonald:

I would like to move on, if I may, to something which I find is equally important, in my book anyway, and that is the Christmas Bonus regulation. P.85 of 2016 states that a Christmas Bonus will be available for people who have household savings of under £30,000, page 4 of 5, but in the Income Support guidelines, the capital disregard for those aged 65 or over is £22,718 for a couple. Could I ask why are the levels not consistent?

Director, Policy and Strategy:

So the Christmas Bonus is proposed to be reintroduced this year so certain groups that will get the new one, when it is the income gap in the coming Christmas Bonus. The Minister is very keen to target this money appropriately because we need to make sure that people who are needing help do get it. The 2 areas ... the most important area is undoubtedly that of income support claimants.

So this applies to pensioners but also to some other groups as well. So people with disabilities and informal carers will get a Christmas Bonus. So the income support capital ... the exemptions under income support are part of the calculation of income support, and the number you said, £22,000?

Deputy T.A. McDonald:

Yes, £22,718.

Director, Policy and Strategy:

That is per couple and it is a lower figure for a single person. That does not stop you from getting it completely, if you have got savings above that level but it reduces the amount of income support you get. So income support tapers out gradually, it does not sit on a cliff edge where here you get it and there is an increase of £100 so you do not get it. That number has been there for some time; that is within the income support system. The income support system works as a whole with these numbers in it and creates the appropriate support for pensioners. Pensioners do tend to have slightly higher savings than other people but the level of savings within income support pensioners is quite low. But those families have got a significantly lower income sufficient so that the States give them a weekly benefit and therefore it seems appropriate they should get a little bit extra at Christmas. The second set of people who are going to get a Christmas Bonus this year, and in future years, is limited to pensioners who have a connection with Jersey. So they are either claiming in Jersey a pension or they have entitled status under the new law. Then there are 2 tests. There is one test around income and one test around assets. This is not nearly as complicated as income support so the tests are that they do not pay income tax as a household and that they have no more than £30,000 of assets other than the value of their house. The £30,000 is taken from the 65-plus health scheme, so it is getting a bit complicated. We already have asset disregards in the 65-plus health scheme, the old version of which had a different value for single people and for couples, £20,000 for a single person, £30,000 for a couple. Under the new regulations the States has agreed for the new 65-plus health scheme it will be £30,000 per couple or single. We want to use the same figure for the Christmas Bonus. It makes it easier for people to apply so when you apply for your 65-plus you can apply for the Christmas Bonus at the same time. I think we believe that it was unfair to have a lower capital limit for a single person because you often with elderly couples get a situation where one partner dies and suddenly you had £25,000 in the bank you would be eligible as a couple, but suddenly you are not eligible as a single person. That was a bit unfair on that widow or widower. So that the 2 numbers come from slightly different places and they are used in slightly different ways, but that is the rationale for using the £30,000. It is being seen as an amount of money which if people have less than that they are going to be more restricted in their ability to draw on savings to meet heating bills, to meet health costs, to deal with the extra cost that people experience at Christmas.

Deputy T.A. McDonald:

That is fine.

Deputy G.P. Southern:

Can you just refresh our memories? What was the old Christmas Bonus; how much did that cost for your budget and what does the new one cost? What is the budget for it?

Director, Policy and Strategy:

It is about ... last year was about £1.6 million and the new one will be ... I cannot tell you this year's number, it will be £430,000 in 2019. So because the M.T.F.P. runs for 2017, 2018 and 2019 we need to have money to be able to afford in the last year of the M.T.F.P. so we built in some ... the demography, obviously there will be more pensioners by 2019. We have also built in a bit of extra for additional pensioners, realising they can apply for it. So the income support people it will happen automatically but the non-tax paying people will apply for, we would look to increase the number of people receiving that at the present time.

Deputy G.P. Southern:

Saving close to £1 million, say.

Director, Policy and Strategy:

Yes.

The Minister for Social Security:

But on that basis we are sort of putting £1 million back in really with the costs that you have just mentioned with the Christmas Bonus plus the £200,000 into the 65-plus health scheme, plus the Food Cost Bonus.

Deputy G.P. Southern:

The Food Cost Bonus already existed, did it not?

The Minister for Social Security:

It is on triennial regulations so it was due to finish, so we are renewing that for another 3 years.

Deputy G.P. Southern:

Because there is no policy decision taken to stop it.

The Minister for Social Security:

It would stop automatically. It is a law, it is only for 3 years.

Deputy G.P. Southern:

I know how triennial regulations work, they do stop unless somebody carries it through. But the need for the Food Bonus still exists in society. It is not new money.

The Minister for Social Security:

It is not new money, no. It is a growth bid.

Director, Policy and Strategy:

It is a growth bid, it was not ...

The Minister for Social Security:

So it was not within our budget. We had to bid for it in order to continue it because we felt it was appropriate at this stage in the economy to do so.

Director, Policy and Strategy:

Those propositions will be debated immediately after the ... assuming the M.T.F.P. is approved next week then there will be 3 sets of regulations to approve the 2 types of Christmas Bonus and the Food Cost Bonus because the money ... at that point the money will be secure. So if that goes through then there will be separate debates about those 3 next week.

The Deputy of St. Ouen:

Any more questions?

Deputy J.A. Hilton:

The next question about single parent component.

The Deputy of St. Ouen:

Very well.

Deputy J.A. Hilton:

I just wanted to raise this as an issue. I recently came into contact with a woman who was in a single parent component and her child returned from the U.K. She had been at college for 3 years and she returned and moved in with her mother temporarily because obviously she had been away for 3 years. My understanding is that the policy at the moment is that if an adult moves into an income support household where the single parent component is paid for more than 28 days it is stopped. I was quite shocked when I received a telephone call, and this individual had been told

her single parent component had stopped because her child, who had returned from university, had stayed within the family for longer than the 28 days, it was something like between 28 days and 35 days. To be quite frank with you I was quite shocked at that. It just seemed as though it was being taken to an extreme.

[11:15]

She did move out and moved in with another parent. So my question is: in this particular case, after an intervention by myself, her single parent component was reinstated. But what concerns me is, okay, this individual got in touch with me and raised the matter but how many other mothers are there who have been caught in this situation, which to me seems entirely unfair? When you have a returning child coming back from university you suddenly find that your single parent component has stopped because they have stayed a few days longer than over the 28 days.

The Minister for Social Security:

First of all I am not completely sure that we are supposed to discuss individual cases.

Deputy J.A. Hilton:

It is not; it is the generic. It is a generic question. I am just concerned at how many other families have been affected by what seems to me an extremely unfair rule.

The Minister for Social Security:

Like with everything in Income Support, there has to be rules because otherwise you will be setting precedents all over the place. There has to be rule. It happens to be 28 days in a case of lone parents. We are not aware of any others in that situation that you mentioned, which I think has been remedied, and also there is of course ministerial discretion, which can be used in cases of extreme difficulty or hardship. But as with everything, there has to be a rule and a threshold. Sometimes people just fall just a day or 2 days outside that threshold and of course it is difficult but there has to be a generic rule to adhere to.

Deputy J.A. Hilton:

I understand that but I was disappointed that the senior officer that I spoke to initially seemed to be sort of very black and white about it. He knew the circumstances and I suppose I was a little bit surprised that he had not possibly referred it to yourself. It required that individual to come to a States Member. But what concerns me is how many other single parent families have been caught out by this that do not say anything, they just accept it?

The Minister for Social Security:

Well it is a rule, a law.

Chief Officer:

I think perhaps to explain the principle, because the individual coming into the claim would have changed the amount of the claim in more than one way.

Director, Policy and Strategy:

The States last year agreed to phase out the lone parent component for people that were currently receiving it following 1st November last year. That phasing out will take another 2 or 3 years to complete; it is being taken very gradually. We are aware there is ... and your panel is well aware of the statistics that there are considerable churn in lone parent claims. That people do not remain as lone parents for very long because of the time, people do not ... and therefore we do need to have a way of understanding when somebody is a continuous lone parent remaining on lone parent for quite a long time and where their status has finished, has changed, because they have entered into a new relationship, children have grown up, something else has happened, they have got another job. So you have to have a rule to create the fairness for all claims. That rule, 28 days, is a very standard amount of time whereby if something has changed for more than 28 days, at least 28 days in our transition provisions, when we set our provisions to start with, is that the status has changed for more than 28 days, then when they come they came into the system from fresh again. You have to have a period. That is all that we are really saying is that, as I have no idea how many people ... but there will be a considerable number of people who were lone parents in November who are no longer lone parents and those people will not be getting the lone parent component. If in the future they were to become a lone parent again they would come in as a new claimant coming in at that stage.

Chief Officer:

But that adult coming back into the claim would also have been part of the claim as an adult.

Director, Policy and Strategy:

Yes.

Chief Officer:

And therefore receives ...

Director, Policy and Strategy:

Sorry, I see what you are saying. Of course that is right. In the situation ... we talked about an individual situation, but if an extra adult joins the claim then the whole claim gets more money because there is an extra adult on the claim. So, yes, the lone parent bit falls away but it is

replaced by a higher amount of money, which is the adult component for that extra adult. It is important ... I think the Minister has really explained the situation very well. It is important there are rules. The rules are very clear. The rules are written down. The rules were approved by the States last year. There is ministerial discretion. Ministerial discretions are only to be treated very seriously and is only applied in special circumstances. I think this particular case was resolved quite satisfactorily to the situation. But it is important that ... I think the particular situation you are describing is very unusual and therefore have other people had the same trouble; I think it is very unlikely to happen. Will there be people who have been lone parents who are no longer lone parents; that is undoubtedly true, yes.

Deputy J.A. Hilton:

I raise it ...

Deputy G.P. Southern:

The arrival of the second adult in the household will automatically trigger the loss of lone parent, does it not, no matter what the relationship is?

Director, Policy and Strategy:

Yes.

Deputy G.P. Southern:

Returning daughter does not affect the lone parent ...

Director, Policy and Strategy:

It depends on the age of people, yes. An adult under the age of 25 returning who is included within the household would be an extra adult in the household, the lone parent component would have fallen away in any event before the law changed. It would not have made any difference. When you have got 2 adults in a claim you can no longer claim the lone parent component because you would not be a lone parent anymore.

Deputy J.A. Hilton:

I just raise it because I was concerned how many other single parent families had been caught out and not challenged it. I am content that in this particular case the position was resolved. But we know that single parent families are the people in the Island who are most at risk from poverty. They are the ones who are really struggling to keep their heads above water and it just seemed like another kick, to be honest. It just seemed totally unfair to me. It was resolved but I am just concerned: has it happened before and have those individuals just accepted what they have been told?

Director, Policy and Strategy:

I think the particular case you are involved with is, as I say, very unusual, but in most cases something else would have happened to have removed the ... in other words, the lone parent component would have been removed anyway, so we are not taking them away in extra circumstances. Lone parent component would be removed if the child reached a certain age, because they are no longer a child. The parent gets a better job and no longer needed income support. A new partner moved in with the parent. In this particular situation, an unusual one, a young adult who was a member of the household moved back in the household and then received an adult component in their own right. So that is the most unusual set of circumstances. The other ones are going to be more ... In all of those circumstances the lone parent component would fall away as soon as the other situation happened, being increased income, the age of the child, a new partner. All we are saying is if that happens today and then the situation changes a second time, and you go back to being a lone parent, so obviously some of those ... so the child growing up obviously that will never ... a child cannot go backwards in age. Get a new job, hopefully you keep your job. Perhaps a partner does not last very long, in 6 months' time you are a lone parent again, I have no idea. In that case you would be assessed now under the new rules. So that is all we are really saying.

Deputy G.P. Southern:

And there would be no lone parent component because ...

Director, Policy and Strategy:

That is now as a new lone parent and therefore you have got the same amount of support as anybody else. You have got adult components. You have got a household component, which takes into account the extra cost of having a household, and you have got the component of the child.

The Minister for Social Security:

And the rental component.

Director, Policy and Strategy:

And the rental component, yes, which goes up in October.

Deputy G.P. Southern:

If you came back into the scheme as a lone parent you would be getting £40 less a week than you were previously.

Director, Policy and Strategy:

Yes, but for most people there would be some ...

Deputy G.P. Southern:

Yes.

Director, Policy and Strategy:

The Deputy's example is a very unusual one.

The Deputy of St. Ouen:

Minister, we had a question about the Back to Work team and to ask whether it had been involved following the closure of the BHS store.

The Minister for Social Security:

Yes, it had. It was involved before the closure of the BHS store because as soon as we are alerted to the fact that something might be happening then the team go in to sort of explain what is available, what can happen, and to follow that through. But there were far less people ... by the time that the closure had happened it was anticipated that, I think, 60 people would be made redundant; by the time it closed at least 30 had already got additional jobs which was marvellous. I think it was about 20 that came to us ...?

Chief Officer:

I have not got the ... roughly, yes.

The Minister for Social Security:

Who came to Back to Work for assistance in getting another job. I do not know what the latest figure is but certainly within a few weeks a large proportion of that number had got work.

The Deputy of St. Ouen:

That is encouraging to know.

The Minister for Social Security:

Also Back to Work helped to retrain, so it might not necessarily be in the same line of work. I know that a lot of employees had been there for a very long time so may have missed out on any digital training or anything that might have been different from the job they were doing and the Back to Work team will help them if they would like a change of career, for instance, to find something different. We have got vehicles, the JobFest going on at the moment at the Radisson; about 50 employers there.

The Deputy of St. Ouen:

Should we be concerned about the strength of the Back to Work team, as we know from the M.T.F.P. that you want to make staff reductions in that area and yet the recent Fiscal Policy Panel review suggests that really the economy in the Island is not going to grow over the term of the M.T.F.P. But there will still be, it seems, the same levels of employment and same need to train people. How are we going to achieve that if you are trying to reduce posts?

The Minister for Social Security:

On the basis that the Back to Work situation has been in place now for several years and has come up with all sort of different initiatives and their teams have become more concentrated because the work has become more apparent in the training sector of things ... do you want to say anything?

Chief Officer:

We had a long discussion about this with the previous panel.

The Deputy of St. Ouen:

We did.

Chief Officer:

Unemployment is still effectively going down and that is a good sign. We will be seeking to help encourage that and quicken it up as much as we can. At the same time we will be able to balance that activity with trying to help more people in Income Support into employment stream of work and balance those 2 over this period. That is our aim and that is what I outlined last time. I think the panel ... many are not convinced, but that is our aim and that is what we will hope to achieve.

Deputy G.P. Southern:

The F.P.P. (Fiscal Policy Panel) are not convinced because it is their prediction that employment growth will be zero given over years to 2019. We are talking about zero employment growth. Now you are saying we can deal with unemployment with 10 fewer F.T.E.s going back to work. Is that the case? If we are going to see no employment growth then the corollary for that is that unemployment might well be going up rather than coming down.

Chief Officer:

Our efforts will be focused on helping people who are registered as actively seeking work to get back into employment. As I said last time, overall our target is to deliver £3.5 million of savings. It is the departmental savings. We have estimated where that would be and if we have to flex that

as well then we will do. But overall we will deliver £3.5 million of savings. But we do believe even with the latest F.P.P. forecast that we will be able to still help people into employment, improve our service and also flex accordingly, depending on the local market provisions over the next few years, and reduce our expenditure by £3.5 million overall. I would still say today that roughly £2 million of that would be in areas around Back to Work.

Deputy G.P. Southern:

Despite the F.P.P. revising growth predictions downwards?

Chief Officer:

Yes.

Deputy G.P. Southern:

So what is it in there for?

Chief Officer:

The F.P.P. look at a macro ...

Deputy G.P. Southern:

What are the predictions for?

Chief Officer:

Yes, so the F.P.P. look at a macro level. We are looking at detailed individuals who are registered as unemployed, most of whom are on income support as well. We understand what our work streams are in terms of helping people who are looking for work and currently helping those people who perhaps are not required to look for work. That is the point I was trying to make previously. That we can flex that approach between the 2 and ensure we can still support people into the employment market. The employment growth could be zero but registered unemployment could still go down because if we are successful in helping people into employment. Likewise a growth could be either employment goes up but unemployment could go up. So those 2 things are not necessarily ...

Deputy G.P. Southern:

Whichever way it goes you can do it with 10 fewer people?

Chief Officer:

Overall we will deliver £3.5 million of savings, yes.

The Deputy of St. Ouen:

Any more questions from the panel?

Deputy J.A. Hilton:

Is this the final question?

The Deputy of St. Ouen:

Yes, it better be the final question.

Deputy J.A. Hilton:

You may choose not to answer this because it was not on the thing. It is something that has cropped up recently and it is cause for public concern; is the amount of money that it is costing or has costed to G.P.s (general practitioners) prescribing paracetamol.

[11:30]

I wanted to know what your reaction to that ... it was an F.O.I. (Freedom of Information) request, I believe. I am interested to know what your reaction is to that, especially when, bearing in mind you can go to any of the large chemists and get 16 paracetamol for about 35 pence.

The Minister for Social Security:

I think prescriptions, from what I recall, it was £4.40 or something.

Deputy J.A. Hilton:

It was over £1 million, I think.

The Minister for Social Security:

Yes, but for the individual one.

Deputy J.A. Hilton:

I cannot remember. But it was a huge sum of money being used to prescribe paracetamol which can be bought very cheaply over the counter. Do you think that this is a case that doctors, G.P.s, should be advised that they do not prescribe drugs like paracetamol that can be bought very cheaply by the patient over the counter?

Director, Policy and Strategy:

All G.P. prescribing is monitored by a specialist external adviser. Every G.P. gets an annual appraisal which includes their prescribing review. They are shown their results firstly against other

GPs in Jersey. There have been significant improvements in prescribing behaviour for the last few years. The G.P. is a professional and people have to allow professionals to exercise their professional judgment. Paracetamol is an interesting drug because obviously paracetamol is quite dangerous and, yes, it is an over-the-counter drug. There are significant numbers of people with liver poisoning from overdosing with paracetamol. Therefore when you buy paracetamol as a consumer you can only buy, I think, 16 pills at a time. So there are a few people who have medical conditions where they need ... paracetamol is an appropriate thing to do and they may need quantities of it and therefore there are reasons why you would want to prescribe paracetamol. We also have doctors who will prescribe over-the-counter drugs to increase compliance of the patient. So although it costs a bit more money to have it through the prescription the patient takes it more seriously. So the G.P. says: "Go and buy some pills from the local ..." "Take this prescription and go and get it and do what it says on the package" they will get better compliance from the patient. So there are a number of reasons why it is appropriate to maintain over-the-counter drugs on our prescribed list. But we do do that as a decision to do that, and that decision is currently under review at the minute, as to whether there should be less over the counter drugs on the prescribed list, which would mean that some of the things I just said it would be harder for people to do. So trying a different way of getting people to take the right pills at the right time. They would have to have another way of getting it to people perhaps more safely in large quantities. So there are 2 sides to the argument. I would say that the average drug cost in Jersey prescribed items is lower than that in the U.K., who has a very high rate of generic prescribing. Not so much paracetamol but things like statins and stuff where there are much cheaper versions of drugs and expensive versions of drugs, G.P.s are very good at prescribing cheaper versions over here so their behaviour is good. Antibiotic prescribing has gone down since last year, so that is also a good sign. So there are some good areas. There is more work to be done, as there always is. But paracetamol, it does look like a lot of money but you would not save all that money by stopping it overnight. You would have to solve a different problem instead.

Deputy J.A. Hilton:

But do you accept there are savings to be made there though? There has to be.

Director, Policy and Strategy:

I accept that it is an area that we are looking at and we are actively looking at, at the minute.

The Deputy of St. Ouen:

Is this under review?

Director, Policy and Strategy:

It is under review.

The Deputy of St. Ouen:

Minister, thank you for visiting us today and trying to answer our questions.

The Minister for Social Security:

Thank you, Chair.

The Deputy of St. Ouen:

That brings our hearing to an end.

[11:33]