

States of Jersey
States Assembly



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Health and Social Security Scrutiny Panel



Zero-Hour Contracts

Presented to the States on 11th July 2016

S.R.3/2016

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1. Executive Summary

Zero-hour contracts can be defined as an arrangement whereby an employee agrees to be available for work as and when required but no particular number of hours or times of work are specified. The Panel has undertaken a review of zero-hour contracts following a report presented by the Minister for Social Security. The report did not adequately address the impact zero-hour contracts have on employees and whether they are misused. In the light of this, the Panel agreed to investigate further the use of zero-hour contracts in Jersey.

The Panel has found whilst there can be negative attitudes to zero-hour contracts, they are in some cases taken on by choice. They can be a good option for some individuals such as students or those seeking an additional income. Employers can also benefit from employing individuals on a zero-hour contract, for example within the hospitality sector where extra staff can be hired as and when required. However, those who rely on a zero-hour contract as their only or main source of income, can face real challenges in meeting their living costs from fluctuating and uncertain wages. This insecurity is particularly acute for those on low pay and for those with family commitments.

The Panel has found that the use of zero-hour contracts has steadily increased in recent years, and they are used far more in Jersey than in the UK. The number of zero-hour contracts is now reducing within the public sector but is still increasing within the private sector. However, the public sector is the second largest employer by sector which means that there are still significant numbers of States employees on zero-hour contracts.

The Panel paid particular regard to the Social Security Department which uses staff engaged on zero-hour contracts through an agency. Some of these have been working in the Department for a year or more. This suggests to the Panel a need for those agency workers to be employed on a permanent basis because hours that are regular and remain that way for an extended period of time do not reflect a typical zero-hour contract. Furthermore, agency workers are denied the benefits of working for the States such as sick-pay and being eligible to contribute to the States earnings related pension scheme (PECRS).

The Panel examined the reasons why zero-hour contracts might be used and found that they offer a high degree of flexibility. For example, employees can choose when they work and are able to balance work and other commitments whilst employers are able to quickly adjust their staffing levels to suit their business needs. However, the case for flexibility on both sides can only be made if employees are free to turn down hours when they are offered.

An uncertain economy may also be another reason why zero-hour contracts are used. A recruitment agency in Jersey confirmed that employers have opted to use zero-hour contracts more frequently due to the changing and uncertain economy. The Panel is concerned that the number of zero-hour contracts is still rising despite signs of an upturn in the economy.

The Jersey Advisory and Conciliation Service (JACS) published a guide on zero-hour contracts to aid better understanding for both employers and employees. A survey undertaken by the Panel in 2015 showed that 77% of employee respondents had not seen

the guide, although 74% of employer respondents had. Therefore, it appears that important information on zero-hour contracts is not reaching a large number of employees.

Currently, there is no system in place to monitor the use of zero-hour contracts. Whilst the JACS guide encourages best practice, the results from the Panel's survey show that there are some circumstances where the contracts are being misused.

The JACS guide suggests that employers should schedule review periods for their employees on zero-hour contracts, for example, every 6 months. The Panel's survey found that 61% of employees employed under a zero-hour contract for at least one year had not had their contract reviewed by their employer. The Panel recommends that all zero-hour contracts should be reviewed after at least six months.

Employees should never be penalised by their employers when turning down hours. However, the Panel's survey revealed that 27% of employees said they were sometimes penalised and 12% said they were always penalised. This shows the vulnerability of employees as a significant number of employers move away from the fundamental principles of zero-hour contracts by requiring their employees to accept work when it is offered but declining to offer them any security of employment.

The Employment Law states that an employee is entitled to a statutory minimum of 2 weeks holiday pay. The practical effect of this is that employers should add 4% to the hourly rate of pay given to employees on zero-hour contracts to cover the 2 weeks paid leave. The Panel's survey showed that two thirds of the employee respondents believed they were not eligible to receive paid annual leave and only half of employer respondents said they provided paid annual leave. Therefore, better publicity and enforcement of the Law is required.

The Panel was concerned that many of those on a zero-hour contract may also be on a low income. Their hourly pay may be set at, or close to, the minimum wage which means they could be forced to find additional sources of income or turn to Income Support to survive. The Panel's report describes how a fluctuating and uncertain income can cause problems for someone drawing Income Support.

The Income Support Scheme normally requires claimants to be in full-time work or to be actively seeking work. In some cases the Social Security Department would deem a zero-hour contract job as suitable employment and insist that a jobseeker takes such work. This exposes a jobseeker to the risks inherent in being employed on a zero-hour contract. The Panel recommends that, in order to promote good employment practice, the Social Security Department should not require jobseekers to take zero-hour contract jobs unless the employer confirms that it will observe the guidance set out in the JACS guide.

Further difficulties for those on zero-hour contracts occur when their hours or earnings fall below a certain level in any quarter (Social Security contribution threshold). They may not be eligible to claim sickness benefit should they fall ill at a later date. With a surge of flexible working, the Panel believes the Social Security Department should urgently reassess the criteria for this benefit entitlement.

An employment sector of particular interest to the Panel was domiciliary care. Though not exclusively, a high number of carer jobs are undertaken on a zero-hour basis. Some care workers visit multiple clients in a day at various locations, however, the time taken to get to and from each location is not always taken into consideration when it comes to remuneration. The Panel believes this is a fundamental misuse of zero-hour contracts as it is unreasonable to expect carers not to be paid for the time spent travelling between clients.

Zero-hour contracts are used in a variety of circumstances. As was noted by most contributors to the Panel's review, some of them are entirely appropriate and benefit employer and employee alike. However, the results of the Panel's survey and other evidence suggest there are instances where zero-hour contracts are misused. Given the very high proportion of zero-hour contracts in the Jersey economy, the misuse is likely to affect a significant number of employees and the Panel believes it is time for the Government to take action to protect vulnerable employees. Ultimately this can only benefit the wider economic interests of the Island. The Panel hopes its review will contribute to this process and its recommendations will be adopted by the Minister for Social Security.

2. Key Findings

Key Finding 1: The proportion of zero-hour contracts is much higher in Jersey than in the UK and, in the private sector, the number of zero-hour contracts has grown by a third from December 2013 – December 2015.

Key Finding 2: Most people employed on zero-hour contracts are working in the following sectors: education, health and other services; hospitality; construction and employment agencies.

Key Finding 3: The Social Security Department uses staff engaged on a zero-hour contracts through an agency, some of which have been working in the Department for a year or more and predominantly work to the Department's hours of 8:30am – 5:00pm. This suggests to the Panel a need for those agency workers to be employed on a permanent basis by the Department because hours that are regular and remain that way for an extended period of time do not reflect a typical zero-hour contract. They are denied access to the benefits of working as a permanent member of staff for the States of Jersey to which they would otherwise be eligible, for example the States earnings related pension scheme (PECRS).

Key Finding 4: The Social Security Department uses agency staff as a mechanism to avoid the cap on staff numbers set by the States Employment Board.

Key Finding 5: Around 1,200 public sector workers are employed solely on zero-hour contracts.

Key Finding 6: Zero-hour contracts offer a degree of flexibility for both employers and employees. Employees can choose when they work and employers are able to adjust their staffing levels to suit their business needs. However, the case for flexibility on both sides can only be made if employees are free to turn down work when it is offered.

Key Finding 7: Some employers opt to use zero-hour contracts in response to the uncertain economy. However, despite signs of an upturn in the economy the number of zero-hour contracts in Jersey is still rising.

Key Finding 8: Zero-hour contracts can be beneficial for both employers and employees if used appropriately and correctly.

Key Finding 9: The Panel's survey found that a large proportion (77%) of employee respondents had not seen the guide published by JACS. Therefore, it appears that important information on zero-hour contracts is not reaching a large number of employees.

Key Finding 10: 61% of employees who reported being employed under a zero-hour contract for at least one year answered 'no' when asked if their contract had been reviewed. Therefore, the results from the Panel's employee survey suggest that the JACS guidelines, in some instances, are being ignored.

Key Finding 11: Where an employee has been engaged on a zero-hour contract for 6 months or more then it is possible that “mutuality of obligation” has been established and therefore a zero-hour contract would no longer be appropriate. A large number of survey respondents revealed that they had been in their zero-hour job for a year or more.

Key Finding 12: The Panel’s survey revealed that 60% of employee respondents are never penalised by their employer when turning down hours. However a significant number of employees (27%) said they were sometimes penalised and 12% said they were always penalised. According to the JACS guidelines, there should be no obligation on the employee to accept work when working on a zero-hour contract.

Key Finding 13: The Panel cannot see a benefit in the existence of exclusivity clauses. Abolishing such clauses would provide employees with the freedom to choose whether they would like to take on additional hours, thus potentially improving their financial situation, which at the moment for some is restricted.

Key Finding 14: Results from the Panel’s survey reveal that 39% of respondents report that they are paid less than those doing the exact same job who are not on a zero-hours contract.

Key Finding 15: Employers should add 4% to the hourly rate of pay given to employees on zero-hour contracts to cover the statutory minimum of two weeks paid leave. Two thirds of the employee respondents to the Panel’s survey believed they were not eligible to receive annual paid leave and only half of employer respondents said they provided annual paid leave. Therefore, better publicity of the Law is required either via JACS or Social Security.

Key Finding 16: Employees who have been engaged on zero-hour contracts for a long period of time should not be excluded from seeking a mortgage or loan. This is a further reason why zero-hour contracts should be reviewed and why employees should have the option of a permanent contract after six months if their work has been carried out on a regular basis.

Key Finding 17: It is unreasonable to expect carers to use their own time to travel to and from clients, when it is an essential part of the job of which they are expected to carry out. The Panel believes this is a fundamental misuse of zero-hour contracts.

3. Recommendations

Please note: Each recommendation is accompanied by a reference to that part of the report where further explanation and justification may be found.

Recommendation 1: Agency Workers who have been working in the Social Security Department for 12 months or more should be offered permanent positions [section 5].

Recommendation 2: The Minister should consult with a view to approving a Code of Practice on zero-hour contracts pursuant to Article 2A of the Employment (Jersey) Law 2003, in order to build on the foundations of the current Zero-Hour Contracts Guide, thereby giving greater emphasis and value/efficacy to its provisions. The Minister should report back to the States within 6 months [section 7].

Recommendation 3: The Minister should consult with a view to bringing forward proposals to amend the Employment (Jersey) Law 2003 to provide that a statement of terms of employment should be signed and agreed by both parties (or be deemed to be signed by both parties if one or both parties have failed to sign the statement after a specified period has elapsed following it being provided to the employee) [section 7].

Recommendation 4: In order to ensure employer/employee awareness of the current Zero-Hour Contracts Guide (pending the introduction of a code) the Social Security Department should send a copy of the Code or Guide to any employer engaging employees on zero-hour contracts (as declared in manpower returns) drawing it to their attention and requesting that copies be provided to employees [section 7].

Recommendation 5: The Minister should consult with a view to bringing forward proposals to amend the Employment (Jersey) Law 2003 to provide that where an employee is engaged on a zero-hour / variable hour / minimum hour contract, the employee should be provided with a copy of the Code of Practice or current guidelines or given information in writing as to where those documents may be accessed electronically [section 7].

Recommendation 6: In order to raise awareness of the Zero-Hour Contracts Guide (pending the introduction of a code) the Social Security Department should periodically run a short advertisement with a local radio station [section 7].

Recommendation 7: The Social Security Department should introduce an accreditation scheme for employers who wish to demonstrate their credentials as good employers by complying with any code or current guide: such a scheme possibly to be promoted through JACS [section 7].

Recommendation 8: The Social Security Department and its inspectors engaging with zero-hour contract employers should promote and encourage good employment practice in accordance with any code or current guide [section 7].

Recommendation 9: The Minister should consult with a view to bringing forward proposals to amend the Employment (Jersey) Law 2003 to provide that where an employee has been

working on a zero-hour / variable hour / minimum hour contract for a continuous period of six months and during that period he/she has worked for the employer on a regular basis (to be determined in legislation), the employer shall be obliged to conduct a review of the contract with the employee to determine whether it is an appropriate reflection of the hours worked in accordance with the Code of Practice or current guidelines [section 7].

Recommendation 10: The Minister should consult with a view to bringing forward proposals to amend the Employment (Jersey) Law 2003 to introduce a mechanism whereby a Social Security Officer might refer zero-hour contracts to the Employment Tribunal to determine whether the use of a zero-hour contract is appropriate [section 7].

Recommendation 11: The Minister should consult with a view to bringing forward proposals to amend the Employment (Jersey) Law 2003 to abolish exclusivity clauses [section 7].

Recommendation 12: The current Zero-Hours Contracts Guide should be amended to recommend that employers pay zero-hour employees at the same rate as permanent employees unless a differential in pay rates can be justified [section 7].

Recommendation 13: The current Zero-Hours Contracts Guide should be amended to recommend that employers give as much notice as possible to employees when offering work and also when cancelling pre-arranged work [section 7].

Recommendation 14: The Minister should consult with a view to bringing forward proposals to amend the Employment (Jersey) Law 2003 to provide for compensation to be paid to employees working on zero-hour contracts where pre-arranged work is cancelled at short notice, (drawing on the experience of the Republic of Ireland and New Zealand where such provision has been enacted) [section 7].

Recommendation 15: Inspectors employed by the Social Security Department must exercise increased vigilance to ensure that employees working on zero-hour contracts are paid their additional contractual holiday pay [section 7].

Recommendation 16: The Minister should actively monitor the increasing prevalence of zero-hour contracts in the economic life of our Island by making full use of the data available from Social Security and manpower returns, including actively engaging with employers using such contracts, to attempt to establish the reasons why such contracts are being used and whether they are appropriate in the circumstances. The Minister should include the findings from such monitoring in the Department's annual reports [section 7].

Recommendation 17: If, after a period of monitoring the increasing prevalence of zero-hour contracts, the Department considers that it was not receiving adequate co-operation from employers or considers that there might be misuse of zero-hour contracts among employers, then consideration should be given to further measures including legislative changes [section 7].

Recommendation 18: In recognition of a responsibility to promote best practice in employment, the Department (specifically the Income Support Section and Back to Work Scheme) should not require jobseekers to take zero-hour contract jobs unless the employer

confirms that it will observe the guidance set out in the Zero-Hour Contracts Guide. The Department should also monitor such observance and encourage a review of the employment contract after six months at most [section 8].

Recommendation 19: The Minister should investigate the prevalence of the potential harm caused to employees working on zero-hour contracts who may find that, despite being available for work, they have worked insufficient hours to meet the lower contribution threshold for Short Term Incapacity Benefit, particularly having regard to the likelihood that some of those employees would have been placed in work through the Department's Back to Work Scheme. The Minister should take action to remedy this situation and report back to the States within 6 months [section 8].

Recommendation 20: The Minister should urgently address the issue of domiciliary and care workers who may only be paid for contact time with clients and not travelling time between clients, possibly resulting in hourly rates of pay below the statutory minimum wage. The Minister should investigate whether such practices are in breach of employment legislation and in any event work with employers to promote more appropriate contracts e.g. variable hour contracts [section 9].

Recommendation 21: Similar standards to the UNISON Ethical Care Charter should be adopted in Jersey. The Charter aims to improve standards for both carers and their clients, for example by improved training, payment for travel time and no more zero-hour contracts [section 9].

4. Introduction

The Panel has undertaken a review of zero-hour contracts following on from a report presented by the Minister for Social Security. The Minister's report was in response to parts (a) and (b) of P.100/2013 (*Zero-Hour Contracts: Regulation*) as amended. The Panel note that the report did not address part (c) of the original proposition and therefore failed to examine what impact zero-hour contracts have on employees and whether they are misused. In the absence of this evidence, the Panel agreed to undertake a review to investigate further the use of zero-hour contracts in Jersey.

What are zero-hour contracts?

The guidelines published by the Jersey Advisory and Conciliation Service (JACS) define zero-hour contracts as follows:

“Zero hours contracts are arrangements where people agree to be available for work as and when required but no particular number of hours or times of work are specified”.¹

Another definition of a zero-hour contract is contained in a House of Commons briefing paper which describes them as *“a contract of service under which the worker is not guaranteed work and is paid only for work carried out.”²*

In normal employment, people generally need to secure a guaranteed level of income which comes with a guaranteed number of hours or amount of work that employers need in order to operate a business. In order for both the employer and the employee to have this guarantee there is a “mutuality of obligation” which means the employer must provide the work/hours and the employee must do the work/hours³.

JACS explains within its guide that the “mutuality of obligation” is removed when a zero-hour contract is in place, as the work is offered and accepted on a casual/ad hoc or ‘as and when’ basis.⁴

How are zero-hour contracts used?

Whilst there can be negative attitudes to zero-hour contracts, the Panel would like to highlight that they are, in some cases, taken on by choice. Zero-hour contracts can be a good option for some individuals such as students, the elderly and for those who seek an additional income. Some employees value the fact that they are not tied to work and therefore they have the flexibility to choose a shift or refuse it. However, if it is the employees primary source of earnings this could become problematic.

Zero-hour contracts are also beneficial for employers, such as those within the hospitality sector. Employers can hire extra staff as and when they need them, for example, if a hotel has a weekend function and needs additional employees.

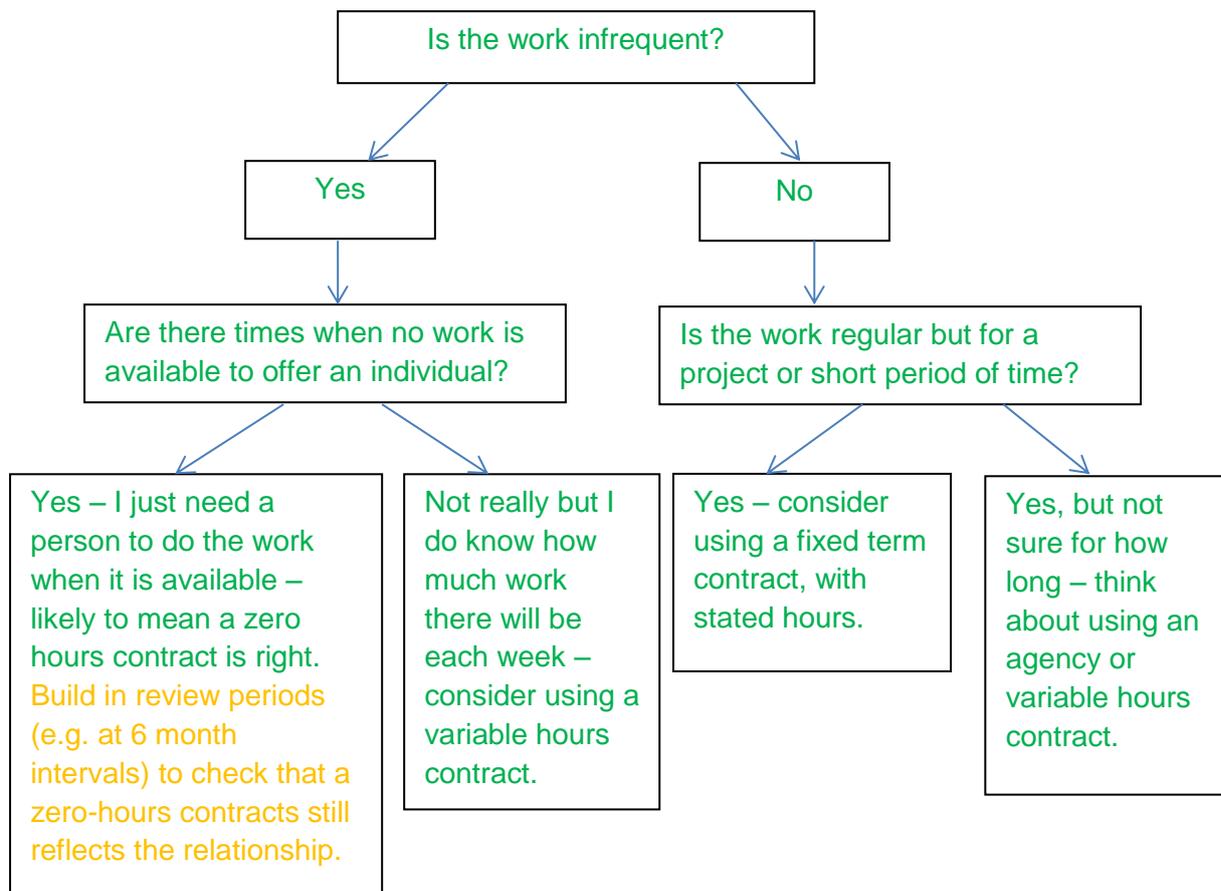
¹ JACS, “Zero-Hour Contracts Guide”, p.2

² House of Commons Briefing Paper, September 2015

³ JACS, “Zero-Hour Contracts Guide”, p.3

⁴ JACS, “Zero-Hour Contracts Guide”, p.3

The Panel notes that JACS is a good resource for both employers and employees, for example it provides a flow chart within its guidelines to assist employers in making the decision to use zero-hour contracts and to highlight good practice.



Numbers of zero-hour contracts – UK

Zero-hour contracts have been the subject of much recent debate in the UK. Uncertainty remains however about the extent of their use. The estimate from the Office for National Statistics (ONS) based on the Labour Force Survey for the last quarter of 2013 indicated that 583,000 people were employed on a zero-hour contract in the UK, or just under 2% of the workforce. This suggests a sharp increase in the use of zero-hour contracts since 2012.

More recent data published by the ONS on zero-hour contracts in March 2016 shows continuing growth in the UK.⁵

The chart below shows two different measures of the number of zero-hour contracts in the UK. The blue line is taken from the Labour Force Survey (LFS) and shows that in 2015 801,000 workers reported that they were on a zero-hour contract in the UK (2.5% of people in employment). This is a 15% increase on the previous year, an increase of 104,000⁶.

⁵ Website found at <https://www.ons.gov.uk/>

⁶ Resolution Foundation: “Zero-hours contracts: casual contracts are becoming a permanent feature of the UK economy”, March 2016

Zero hours contract workers and contracts with no guaranteed hours: various estimates (thousands)



An article published by the Resolution Foundation explains that the gold dots on the chart show that business surveys report a significantly higher number of zero-hour contracts than the Labour Force Survey. This shows that in November 2015 there were 1.7 million zero-hour contracts where work was carried out in the two week survey period. The primary explanation for the difference between the figures from the business and employee surveys is that the Labour Force Survey counts the number of employees on zero-hour contracts in their main job whereas the business surveys count the total number of zero-hour contracts and workers can also hold more than one contract at a time⁷.

A report by the Resolution Foundation (*Zeroing-in*) published in 2014 explained that existing evidence indicates there has been an increase in the number of people employed on zero-hour contracts in the UK over the last five years.⁸

The report goes on to explain that some of this increase is likely to be cyclical: “Employers may have managed their way through the unpredictable demand of a long downturn by reducing their payroll costs and only paying for staff as and when needed”⁹.

Numbers of zero-hour contracts – Jersey

The Jersey Labour Market Report (December 2015) published by the States of Jersey Statistics Unit reveals that 6,300 jobs out of a total of 57,720 were zero-hour contracts. That accounts for 10.9% of all jobs in the Island which is an increase on the previous year (10.4% in December 2014).

Data from the Jersey Labour Market Report¹⁰ has been recorded in the table below:

⁷ Resolution Foundation: “Zero-hours contracts: casual contracts are becoming a permanent feature of the UK economy”, March 2016

⁸ Resolution Foundation, *Zeroing In*, March 2014 p.6

⁹ Resolution Foundation, *Zeroing In*, March 2014 p.6

¹⁰ Statistics Unit: Jersey Labour Market Report, 2014, 2015 and 2016

	Dec-13	Jun-14	Dec-14	Jun-15	Dec-15
Private total	47,020	50,040	48,220	50,880	49,770
Private ZHC	4,260	5,330	5,130	5,790	5,790
Private %	9.1%	10.7%	10.6%	11.4%	11.6%
Public total	8,300	8,400	8,320	8,190	7,960
Public ZHC	760	760	730	650	510
Public %	9.2%	9.0%	8.8%	7.9%	6.4%

The figures show that the proportion of zero-hour contracts is much higher than in the UK, and in the private sector, the number of zero-hour contracts has grown by a third (December 2013 - December 2015) over this period. By contrast, the numbers in the public sector have reduced over the same period. This may be due to one or both of two factors:

- The general reduction of posts as part of the modernisation of the public sector
- A commitment to review the policy on zero-hour contracts to ensure that they are appropriate to the requirements of the post and not fixed term or variable hours contracts

The report¹¹ accompanying P.100/2013 (presented to the States in May 2015) stated that there were 5,522 people with at least one zero-hour contract. The Panel notes that of the 5,522 people, 3,794 had a zero-hour job as their primary source of income (68.7%). This equates to approximately 6.8% of the economically active population (55,039)¹².

KEY FINDING 1: The proportion of zero-hour contracts is much higher in Jersey than in the UK and, in the private sector, the number of zero-hour contracts has grown by a third from December 2013 – December 2015.

The Panel's Review

As mentioned in the introduction, a proposition lodged by Deputy Southern (P.100/2013) requested that the use of zero-hour contracts in Jersey should be investigated. Following this the Minister for Social Security lodged an amendment to the proposition which was agreed by the States Assembly.

The proposition (as amended) requested the Minister for Social Security to –

- investigate the extent to which zero-hours contracts are used across the various sectors of the economy;
- examine the impact of these contracts on employers and employees;

¹¹ R.52/2015: Zero-Hour Contracts: Response to P.100/2013 as amended, May 2015

¹² Report to States: Zero-ours Contracts, May 2015, page 6

- c) subject to the findings and conclusions of the investigations conducted in accordance with paragraphs (a) and (b), and subject to the outcome of consultation with stakeholders, to bring forward for approval such draft legislation as is deemed necessary to restrict any proven misuse of zero-hours contracts.

The Minister limited her report to parts (a) and (b) of the proposition and did not address part (c). The Minister's report accompanying the amendment to the proposition stated the following:

*"Whilst JACS input will be valuable, other stakeholders would be consulted, including trade unions and employers' associations."*¹³

The Panel note that consultation with the other stakeholders did not take place as suggested, and in the Panel's opinion the report failed to examine the impact the use of zero-hour contracts has on employees and whether any misuse was apparent.

The Minister's report following the consultation (published in May 2015) concluded the following:

"The Social Security Department does not intend to bring forward for approval any draft legislation relating to zero-hours contracts at this time."

*"A new zero-hours contracts guide has been prepared in conjunction with the Jersey Advisory and Conciliation Service (JACS) to provide clarity about the appropriate use of zero-hours contracts and the rights of individuals who are employed under such contracts".*¹⁴

One of the areas of the Panel's review is to assess the extent to which the JACS guide has been effective in informing employers and employees in relation to zero-hour contracts.

The Panel's Survey

To assist the Panel in better understanding the use of zero-hour contracts in Jersey, it compiled a survey covering both employers and employees, which was made available online via Survey Monkey. Hard copies were also made available at the Social Security Department, St. Thomas' Church and the Citizen's Advice Bureau.

The Panel received 59 employer responses and 264 employee responses. Of the employee responses:

- 61% were employed on a zero-hour contract for their main job
- 12% were employed on a zero-hour contract for a second job
- 26% had been previously employed on a zero-hour contract

The Panel was pleased with the number of surveys submitted and is grateful to those who took time to complete one.

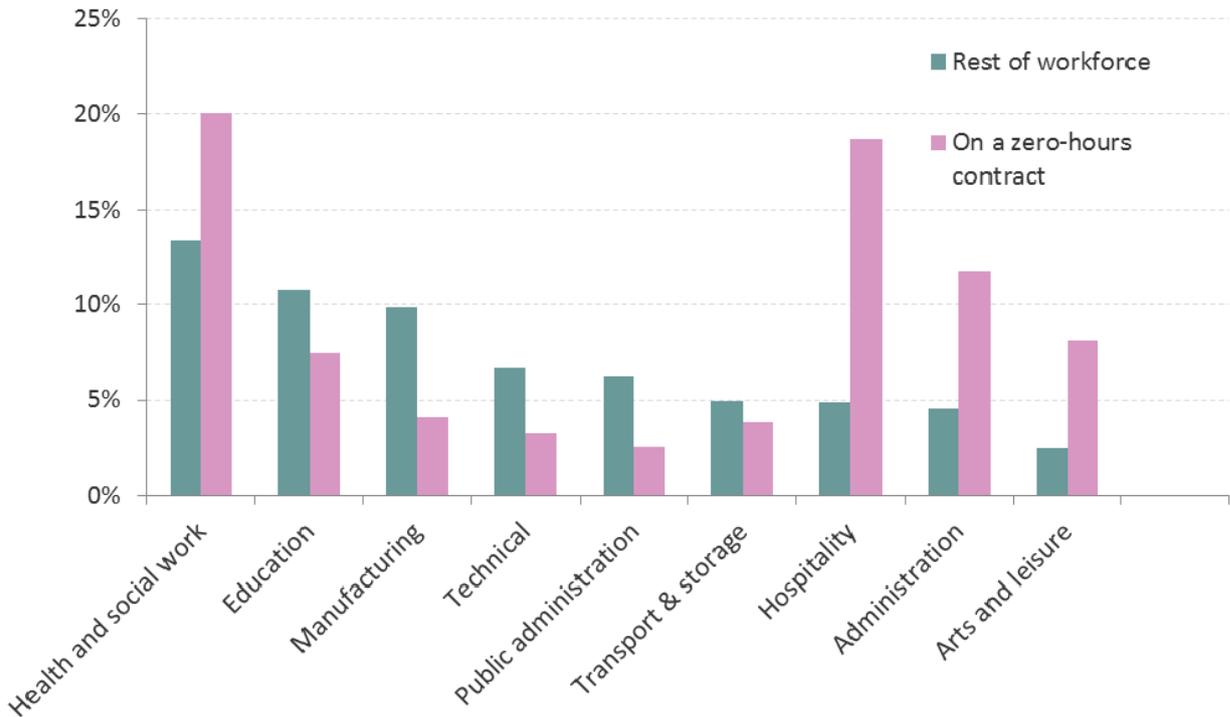
¹³ Zero-Hours Contracts: Regulation (P.100/2013) – Amendment, p.3

¹⁴ R.52/2015: Zero-Hour Contracts: Response to P.100/2013 as amended, May 2015

The Panel would like to highlight the limitations surrounding the survey in assessing the use of zero-hour contracts. For example, half of all employee responses came from the public sector and the finance industry. The Panel believes this is disproportionate to the numbers engaged in those sectors. This was further compounded by the very few responses received from the hospitality and agriculture sectors. Nevertheless, the Panel believes some useful indications can be drawn from the survey especially in comparison with UK surveys.

5. Zero-hour contracts by economic sector

The Resolution Foundation report (*Zeroing-in*) explains that the use of zero-hour contracts is concentrated in a small number of traditionally low-paid industries; health and social work, hospitality and administration account for over half of all workers on a zero-hour contract in the UK. For example the graph below shows that although less than 5% of the total non-zero-hour UK workforce is found in the hospitality industry, it contains nearly 19% of all zero-hour workers¹⁵.



Source: Resolution Foundation analysis of the Labour Force Survey Q4 2012

The Panel notes that the picture in Jersey is similar. The table below relates to the private sector in Jersey.

¹⁵ Resolution Foundation, *Zeroing In*, March 2014 p.7

Employment status of private sector headcount by sector, Jun-2014 to Jun-2015

	Jun-14				Jun-15			
	Full-time	Part-time	Zero-hours	Exempt	Full-time	Part-time	Zero-hours	Exempt
Agriculture and fishing	1,350	180	590	0	1,290	160	500	10
Manufacturing	830	130	110	+	810	110	130	+
Construction and quarrying	3,980	370	600	+	4,110	340	780	20
Electricity, gas and water	430	50	20	0	440	40	10	0
Wholesale and retail trades	5,540	1,760	450	10	5,490	1,790	520	20
Hotels, restaurants & bars	4,380	1,040	910	10	4,300	940	990	20
Transport, storage & communication	2,160	320	260	+	2,120	320	310	10
Computer and related activities	600	90	30	+	590	90	30	+
Financial and legal activities	11,450	1,030	70	10	11,770	950	80	30
Miscellaneous business activities	2,050	1,110	1,370	10	2,210	1,070	1,380	30
Education, health and other services	3,960	1,860	930	10	4,190	1,790	1,080	30
Total private sector headcount	36,730	7,930	5,330	50	37,320	7,600	5,790	170

+: non-zero less than 5

The Jersey Labour Market Survey (June 2015) allows the miscellaneous business activities sector to be broken down further:

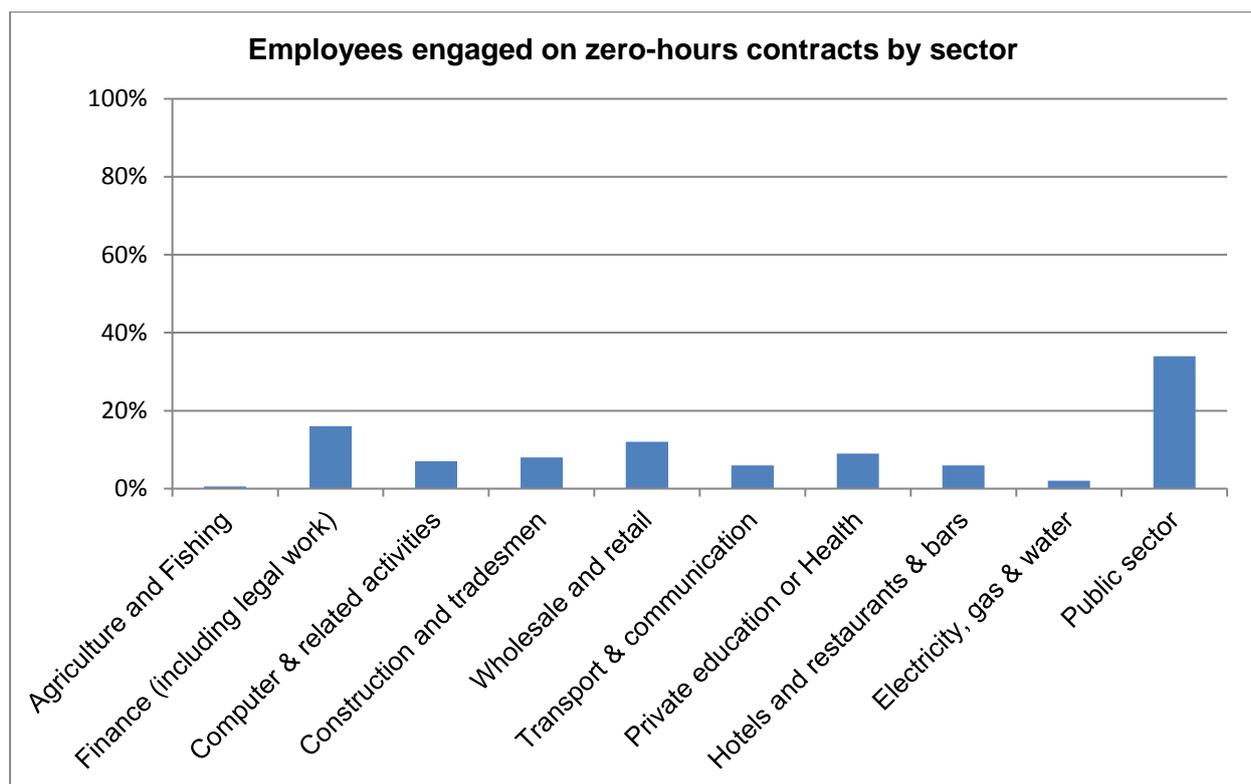
Development and selling of real estate, letting of own property, real estate activities on a fee or contract basis	10
Renting of automobiles, other transport equipment, other transport equipment, renting of personal and household goods not elsewhere classified	40
Research and development, other business activities, market research and public opinion polling, advertising	20
Business and management consultancy activities	40
Management activities of holding companies	50
Architectural and engineering activities and related technical consultancy	20
Labour recruitment and provision of personnel	760
Investigation and security activities	50
Industrial cleaning	340
Miscellaneous business activities not elsewhere classified, technical testing and analysis	40
Miscellaneous Business Activities	1,380

The tables above show that there are significant numbers of people on zero-hour contracts in the hospitality sector and in the education and health sector with lesser contributions from the construction and retail sectors. The greatest proportion (24%), however, is to be found in the sector labelled “miscellaneous business activities”. This reveals that this sector is dominated by employment agencies and industrial cleaning companies which accounts for 1,100 of the 1,380 posts.

KEY FINDING 2: Most people employed on zero-hour contracts are working in the following sectors: education, health and other services; hospitality; construction and employment agencies.

Zero-hour contracts in the public sector

The Jersey Labour Market Survey shows a lower proportion of zero-hour jobs within the public sector than exists in the private sector and that numbers have decreased over the past two years. However, as the island’s second largest employer by sector, this means that there are significant numbers of zero-hour contracts in the public sector. As is often the case with electronic surveys, the Panel’s survey shows that the public sector is over-represented with 34% employed by the public sector.



The Panel held a public hearing with ASL and Rowlands Recruitment (employment agencies) who said that the States of Jersey was their biggest client in terms of the number of staff on temporary contracts and they confirmed that the Social Security Department employed the highest number of agency staff within the States of Jersey.

During a hearing with the Social Security Department in November 2015 the Chief Officer explained that the Department does not employ staff on zero-hour contracts directly but did

at that time engage 40 staff who are employed by an agency. He went on to confirm that 11 out of those 40 had in fact been working within the Department for a year or more:

Deputy G.P. Southern:

“The 40 people you have said are currently employed through an agency. How long have they been employed for?”

Chief Officer, Social Security:

“I think the question you asked before was how many for over 12 months. We have 11 of those 40 have been engaged with the department for over 12 months. Examples there would be somebody who maybe works for 3 or 4 months on a particular project. At that end of that project we have another project over here, so they move from one role to the next.”¹⁶

It was confirmed by the Chief Officer that those engaged on zero-hour contracts through an agency predominantly work to the Department’s hours of 8.30 a.m. to 5.00 p.m.

The Panel considers that the use of agency staff for a year or more suggests a need for those employees to be employed on a permanent basis. Hours that are regular and remain that way for an extended period of time do not reflect a typical zero-hour contract. When hours do become steady, a zero-hour contract is usually no longer suitable. The JACS guidelines state: *“...the more regularly the individual works and is expected to attend the workplace, the more likely it is that the relationship has changed and is now operating on an employer and employee basis.”¹⁷*

The guidelines also suggest employers should build in review periods for zero-hour contracts to determine whether the work is still reflective of a zero-hour contract. The Panel is disappointed to find that the Social Security Department does not appear to be following best practice with some agency workers being engaged for a year or more.

The use of agency workers is revealed in the table below showing the position as of 30th November 2015. It shows that this practice is relatively rare in States Departments, apart from Social Security which accounts for almost one third of posts:

Department	Total
Chief Minister’s	19
Department for Community & Constitutional Affairs	13
Department for Economic Development, Tourism, Sport & Culture	1
Department for Education	3
Department for Environment	6
Department for Health & Social Services	27
Department for Infrastructure	13
Department for Social Security	45
Department for Treasury & Resources	9
Non Ministerial States Funded	21
Government House	6
Judicial Greffe	12
States Greffe	3
Viscounts	1
Total	157

¹⁶ Public Hearing with the Minister for Social Security, November 2015, p.14/15

¹⁷ JACS Zero-Hour Contracts Guide, p.4

In addition to the 27 agency workers listed in the table within Health and Social Services, there were a further 11 agency nurses working for the Department during that time. Out of the 45 agency workers within Social Security:

- 5 have been transferred to a fixed term contract
- 8 have been given permanent position within Social Security
- 8 have since left the organisation

The use of agency workers within the Social Security Department denies these employees many of the benefits of working for the States, for which they would otherwise be eligible. They will be working alongside States employees who will have the benefit of a sick-pay scheme and will be able to contribute to the States earnings related pension scheme (PECRS). Whilst the Department may not have to pay employers contributions towards the States pension scheme and towards PECRS, it will have to pay a premium rate to the recruitment agency so it may not mean budget savings overall.

KEY FINDING 3: The Social Security Department uses staff engaged on a zero-hour contracts through an agency, some of which have been working in the Department for a year or more and predominantly work to the Department's hours of 8:30am – 5:00pm. This suggests to the Panel a need for those agency workers to be employed on a permanent basis by the Department because hours that are regular and remain that way for an extended period of time do not reflect a typical zero-hour contract. They are denied access to the benefits of working as a permanent member of staff for the States of Jersey to which they would otherwise be eligible, for example the States earnings related pension scheme (PECRS).

RECOMMENDATION 1: Agency Workers who have been working in the Social Security Department for 12 months or more should be offered permanent positions.

The Panel notes a decision made by the Social Security Minister in September 2015 regarding a non-statutory "JobsFest Employer" incentive to provide financial support to employers to recruit locally qualified jobseekers for up to eight weeks at no financial cost. It is understood that many of these incentive schemes, whether aimed at employers or potential employees, have been repeated for three years. In the reports which accompany these Ministerial Decisions, the financial costs are outlined but the staffing costs rarely appear:

*"Resource Implications: An initial budget of £180,500 has been allocated, approximately enough for the recruitment of 74 individuals into posts for 35 hours per week during the period.... Support staff will be required so that the scheme operates in an effective and efficient manner, funding will be provided from the existing budget held by the Social Security Department for the Back to Work Programme."*¹⁸

Temporary staff employed via agencies do not appear on the headcount submitted to Human Resources¹⁹. Therefore the use of agency workers appears to be a mechanism to avoid the cap on staff numbers set by the States' Employment Board.

¹⁸ Ministerial Decision, Social Security Minister, September 2015 (MD-S-2015-0075)

¹⁹ Public Hearing with the Minister for Social Security, November 2015, p.19

KEY FINDING 4: The Social Security Department uses agency staff as a mechanism to avoid the cap on staff numbers set by the States Employment Board.

The Panel requested figures from the Chief Minister's Department which revealed that in December 2015 there were 2,729 zero-hour contracts, over 30% of the workforce, employed on zero-hour contracts by the States of Jersey. It is noted that Education, Sport and Culture (1,121) and Health and Social Services (1,558), employed the highest numbers of employees on such contracts.

Of this number, over 50% are States of Jersey employees who are already employed on permanent or fixed-term contracts. The additional zero-hour contracts are set up so that these workers can work extra hours to cover other posts during leave, absence or sickness²⁰.

This still leaves around 1,200 States workers (around 15% of the total) employed solely on zero-hour contracts. Whilst the use of zero-hour contracts can be justified in some instances such as in the hospital where zero-hour contracts are used for bank nurses doing overtime, or in Education for supply teachers, there are many posts throughout the public sector (see Appendix 2) where the Panel fails to understand the reasons why a zero-hour contract may be used. For example:

- Medical Secretaries within Health and Social Services
- Office cleaners within Transport and Technical Services
- Admin support within Education, Sport and Culture

In the UK, figures suggest that zero-hour contracts are more prevalent in the public and voluntary sectors than in the private sector. A CIPD survey found that 28% of employers in the public sector and 42% in the non-profit sector employ people on zero-hour contracts compared with 19% in the private sector²¹. Additionally, zero-hour contracts are used by private sector organisations that deliver publicly-funded services, notably in health, social care, education and government administration. The Panel notes that the use of zero-hour contracts is more prevalent in the private sector than in the public sector in Jersey.

KEY FINDING 5: Around 1,200 public sector workers are employed solely on zero-hour contracts.

²⁰ Letter received from States Employment Board, April 2015

²¹ CIPD, Zero-Hours Contracts Myth and Reality, November 2013, page 7

6. Reasons why zero-hour contracts are used

Overview

Making a comparison of Jersey with the UK is complicated by the distinction between worker and employee in UK Employment Law. An employee in the UK has more protection than a worker in terms of statutory employment rights. Some UK employers believe that this protection can be avoided with the zero-hour contracts for workers.

The Panel notes a report by Ian Brinkley “*Flexibility or Insecurity? Exploring the rise in zero-hours contracts*” which indicates that there are three primary reasons why zero-hour contracts might be used in the UK²²:

1. **Demands of the job:** where work is erratic and highly unpredictable, varying from day-to-day and week-to-week, they can be the most effective and cost-efficient way of matching labour demand and supply;
2. **Evading employment rights (attributed to UK only):** firms may designate individuals as workers rather than employees: workers are not entitled to protection against unfair dismissal, maternity rights, redundancy rights and rights under 'Transfer of Undertakings (Protection of Employment) Regulations 1981' (TUPE);
3. **Meeting individual flexibility:** for some employees, a zero-hour contract may be attractive in that they chose when and where they work, or it is a supplement to a main job, or the potential insecurity of income is not a major concern – for example, a retired person who wants to do some occasional work.

It is important to note that this distinction between worker and employee does not exist in Jersey. All employees are protected under the terms of the Employment (Jersey) Law 2003. An important test of whether a zero-hour contract is appropriate is the absence of “mutuality of obligation”, as defined by JACS guidelines. It is noted that JACS also examines the regularity of work.

The evidence gathered by the Panel showed that the most common reasons for the use of zero-hour contracts were:

EMPLOYER	EMPLOYEE
Pool of individuals to call upon if business demands rise	Only job available
To cover project work	Offers flexible working around other commitments e.g. a student or a carer
To assess a potential employee’s capabilities	Additional income stream if employee already has a job elsewhere.
No ongoing ‘employment relationship’ outside of the accepted hours/work.	Attractive for those nearing or in retirement
A way of increasing staff levels without infringing States controls on employment	Provides work/skills experience

²² I. Brinkley, The Work Foundation, “Flexibility or Insecurity? Exploring the rise in zero-hours contracts” August 2013

Flexibility

It is noted that employees can choose when they work, and balance work and other commitments, while employers can quickly adjust their staffing to suit their business needs. Central to whether or not zero-hour contracts work well for individuals as well as employers is the way in which the flexibility they offer is used. During its public hearings, the Panel heard that an argument in favour of zero-hour contracts was that they offer flexibility to both employers and employees. In particular, the Managing Director of Rowlands Recruitment agency gave the following example:

Managing Director, Rowlands Recruitment:

“I had one lady who wanted the flexibility. Her daughter was having a baby and she wanted some time off, and the company that she was working in at the time - she was our temp - said: “No, people are on holiday” and she just left, which is exactly what it is all about. She said: “This is too important. I am temping. I wanted flexibility. I am not tied in” and she just left. So that is a zero hour contract; that is how it should work.”²³

The Panel believe that the case for flexibility on both sides can be made only if employees are free to turn down hours when they are offered.

KEY FINDING 6: Zero-hour contracts offer a degree of flexibility for both employers and employees. Employees can choose when they work and employers are able to adjust their staffing levels to suit their business needs. However, the case for flexibility on both sides can only be made if employees are free to turn down work when it is offered.

Uncertain Economy

As mentioned previously, the growth in the use of zero-hour contracts both in the UK and Jersey has been significant over recent years. The Panel questions whether the increase will be a permanent feature in businesses or whether it is a response in order to reduce costs of doing business through the recession.

Certainly it has been put to the Panel that employers opted to use zero-hour contracts more frequently due to the changing and uncertain economy:

Managing Director, Rowlands Recruitment:

“.....through the recession the number of zero hour contracts definitely went up. We had a lot more temps.”²⁴

The Panel notes that numbers of zero-hour contracts in Jersey are still rising, as evidenced in the Jersey Labour Market report²⁵, despite signs of an upturn in the economy.

KEY FINDING 7: Some employers opt to use zero-hour contracts in response to the uncertain economy. However, despite signs of an upturn in the economy the number of zero-hour contracts in Jersey is still rising.

²³ Public Hearing with ASL and Rowlands Recruitment, November 2015, p.33

²⁴ Public Hearing with ASL and Rowlands Recruitment, November 2015, p.5

²⁵ Jersey Labour Market report, December 2015

Appropriate use of zero-hour contracts

Throughout the review, the Panel noted that most contributors emphasised that zero-hour contracts have their place if used appropriately or correctly. The following quotes have been taken from a number of public hearings the Panel held:

Chamber of Commerce

The Deputy of St. Ouen:

“Have you got a general view, as the Chamber of Commerce, on the use of those contracts?”

President, Jersey Chamber of Commerce:

“They are used predominantly by the hospitality, retail, construction industry, from the information we have gathered from our members. If they are used responsibly they work very well. They allow people to pick up time or people who want to work on a part-time basis. There can be irresponsible use but there is recourse for that, via J.A.C.S. (Jersey Advisory Conciliation Service), and for certain businesses they can work well if they are used properly.”²⁶

Chartered Institute of Personnel and Development

The Deputy of St. Ouen:

“Does the institute have a view or a policy on the use of zero hours contracts?”

Ms. N. Le Dain-Cyphes:

“.....the last time they did a review was in 2013 and they did come out with a survey. The recommendations that were coming out of the survey itself ... is that they [zero-hour contracts] encourage flexibility for the employer and the employee as long as they are used responsibly.”²⁷

KEY FINDING 8: Zero-hour contracts can be beneficial for both employers and employees if used appropriately and correctly.

²⁶ Public Hearing with the Chamber of Commerce, October 2015, p.1

²⁷ Public Hearing with CIPD, October 2015, p.4

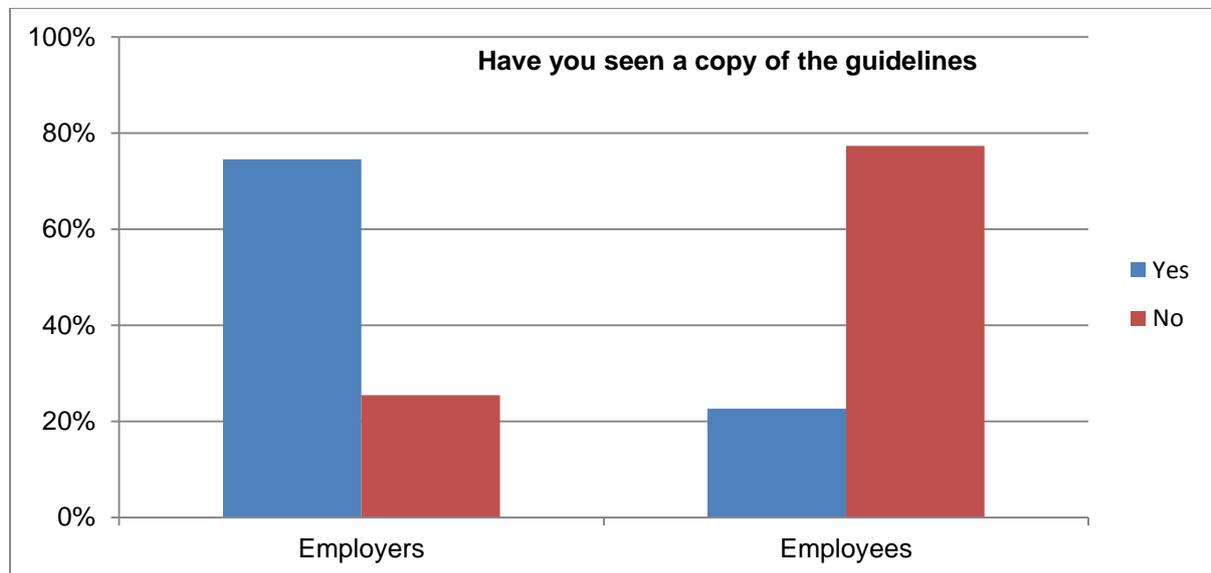
7. Zero-Hour Contracts: Issues

During the review the Panel has identified the following issues in relation to zero-hour contracts.

Knowledge of the JACS guide

The Minister's report in response to P.100/2013 states that: "*The Minister in conjunction with JACS, has ensured that information is available to Jersey employers to help the use appropriate contracts and reverse any poor practice*"²⁸. It then goes on to discuss the guide produced by JACS which aims to aid better understanding of zero-hour contracts for both employers and employees.

The Panel's survey showed that 77% of employee respondents had not seen the guide published by JACS. By contrast 74% of employer respondents had:



The Panel questions whether enough has been done to publicise this information. The report produced by the Minister highlights that information is being made available to employers but it appears relevant information on zero-hour contracts is not reaching a large number of employees.

KEY FINDING 9: The Panel's survey found that a large proportion (77%) of employee respondents had not seen the guide published by JACS. Therefore, it appears that important information on zero-hour contracts is not reaching a large number of employees.

RECOMMENDATION 2: The Minister should consult with a view to approving a Code of Practice on zero-hour contracts pursuant to Article 2A of the Employment (Jersey) Law 2003, in order to build on the foundations of the current Zero-Hour Contracts Guide, thereby giving greater emphasis and value/efficacy to its provisions. The Minister should report back to the States within 6 months.

²⁸ R.52/2015: Zero-Hours Contracts: Response to P.100/2013 as amended, Social Security Minister, May 2015 p.3

RECOMMENDATION 3: The Minister should consult with a view to bringing forward proposals to amend the Employment (Jersey) Law 2003 to provide that a statement of terms of employment should be signed and agreed by both parties (or be deemed to be signed by both parties if one or both parties have failed to sign the statement after a specified period has elapsed following it being provided to the employee).

RECOMMENDATION 4: In order to ensure employer/employee awareness of the current Zero-Hour Contracts Guide (pending the introduction of a code) the Social Security Department should send a copy of the Code or Guide to any employer engaging employees on zero-hour contracts (as declared in manpower returns) drawing it to their attention and requesting that copies be provided to employees.

RECOMMENDATION 5: The Minister should consult with a view to bringing forward proposals to amend the Employment (Jersey) Law 2003 to provide that where an employee is engaged on a zero-hour / variable hour / minimum hour contract, the employee should be provided with a copy of the Code of Practice or current guidelines or given information in writing as to where those documents may be accessed electronically.

RECOMMENDATION 6: In order to raise awareness of the Zero-Hour Contracts Guide (pending the introduction of a code) the Social Security Department should periodically run a short advertisement with a local radio station.

RECOMMENDATION 7: The Social Security Department should introduce an accreditation scheme for employers who wish to demonstrate their credentials as good employers by complying with any code or current guide: such a scheme possibly to be promoted through JACS.

RECOMMENDATION 8: The Social Security Department and its inspectors engaging with zero-hour contract employers should promote and encourage good employment practice in accordance with any code or current guide.

Knowledge of grievance matters

The Panel question how much people know about the process pertaining to raising a grievance matter. The Panel acknowledge that JACS provides the public with a lot of information and they are there for support if required but is concerned that some people may not know where to look.

Almost two thirds of employee respondents said they did not have confidence that complaints about zero-hour working arrangements to their employer would be addressed. This makes the awareness of JACS' even more important as nearly half said they would be confident issues would be addressed if taken to JACS.

As mentioned by the Chamber of Commerce there is legal recourse against employers who are not using zero-hour contracts in the right way. The Panel want to ensure that this information reaches those in vulnerable employment situations.

Reviewing zero-hour contracts

The Panel's view reflects that of the CIPD report: *Zero-Hours Contracts, Myth and Reality* in which the following recommendation was made:

“Employers should set out in the contract the employment status of those engaged on zero-hours contracts and regularly review (at least once a year) the working arrangements in practice to ensure the reality of the employment relationship reflects what is set out in the contract”²⁹

The JACS guidelines suggest scheduling review periods to make sure that each zero-hour contract is as flexible and irregular as the document itself indicates. The Minister for Social Security said that anybody on a zero-hour contract should be evaluated every 6 months:

The Minister for Social Security:

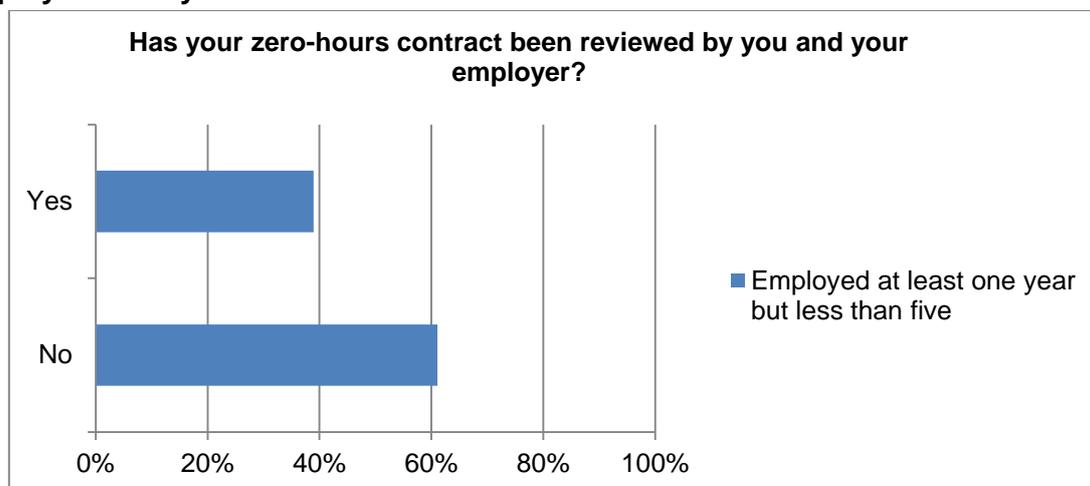
“I know J.A.C.S. certainly recommend that anybody on such a contract would be evaluated every 6 months, maximum, in order to ascertain whether this was a misuse of it, i.e. if it was permanent work, if it was sort of expected to be 30 hours a week then it should be, possibly, changed into another sort of contract....”

Policy Principal, Social Security:

“Yes, the J.A.C.S. have produced a new guide which specifically guides employers, if they decide that a zero hour contract is appropriate, that they do perform sort of a review mechanism every 6 months, just sometimes contracts can morph over time and people come to expect the work and the employer comes to expect the person to turn up, and that is when we try and see if an obligation comes in.”³⁰

In the Panel's survey 78% of employers stated that they had reviewed the terms of their employees' zero-hour contracts. In contrast, 61% of employees who reported being employed under a zero-hour contract for at least one year answered 'no' when asked if their contract had been reviewed. The results from the employee survey suggest the JACS guidelines, in some instances, are being ignored.

Employee Survey:



²⁹ CIPD Report: *Zero-Hours Contracts, Myth and Reality*, November 2013, p.40

³⁰ Public Hearing with the Minister for Social Security, November 2015, p.3

KEY FINDING 10: 61% of employees who reported being employed under a zero-hour contract for at least one year answered ‘no’ when asked if their contract had been reviewed. Therefore, the results from the Panel’s employee survey suggest that the JACS guidelines, in some instances, are being ignored.

KEY FINDING 11: Where an employee has been engaged on a zero-hour contract for 6 months or more then it is possible that “mutuality of obligation” has been established and therefore a zero-hour contract would no longer be appropriate. A large number of survey respondents revealed that they had been in their zero-hour job for a year or more.

RECOMMENDATION 9: The Minister should consult with a view to bringing forward proposals to amend the Employment (Jersey) Law 2003 to provide that where an employee has been working on a zero-hour / variable hour / minimum hour contract for a continuous period of six months and during that period he/she has worked for the employer on a regular basis (to be determined in legislation), the employer shall be obliged to conduct a review of the contract with the employee to determine whether it is an appropriate reflection of the hours worked in accordance with the Code of Practice or current guidelines.

Monitoring zero-hour contracts

Currently, there is not a system in place whereby the use of zero-hour contracts are monitored. Whilst JACS have a guide in place to encourage best practice, the results from the Panel’s survey show that there are some circumstances where the contracts are being misused. The Panel feel that more should be done to deter employers from exploiting their right to engage staff on zero-hour contracts and sanctions should be in put place when this does occur.

The Panel is aware that if an individual feels they have fallen victim to the misuse of these contracts that advice and help is available from JACS. JACS is a valuable service particularly in relation to advice about the Employment (Jersey) Law 2003. The Panel’s survey results suggest that there is a certain amount of fear when it comes to addressing contentious issues with employers. As previously mentioned, over half of employees said they would not feel confident that complaints would be dealt with by their employer. Complaints against employers may not be well received possibly resulting in being offered fewer hours or indeed no hours at all. A submission made by Unite the Union addressed this very issue:

“Workers are often put off raising any issues that may arise in the workplace for fear of being denied future work. This is not just happening in the private sector but also occurs in the public sector where one would expect best practice be adhered to in terms of employments rights are concerned.”³¹

The employee survey also revealed that 91% of employees did not belong to a Union. For those who do belong to a Union, they have support when it comes to confronting an employer about specific matters surrounding their employment. It is the Panel’s assumption that it is quite a daunting prospect to address difficult issues surrounding an individual’s employment without that support.

³¹ Written Submission from Unite the Union, received October 2015

The reluctance to make a complaint could also be contributed to the lack of knowledge an employee has about their rights. As mentioned earlier in the report, the majority of employee respondents were not aware of the guidelines provided by JACS which are very detailed in educating people about zero-hour contracts for both employees and employers.

If the use of zero-hour contracts were monitored, it may remove the anxiety some people have in tackling certain disputes.

During the public hearing with the Minister for Social Security it was revealed that Compliance Officers do carry out inspections when new businesses are established:

Deputy G.P. Southern:

“How does your compliance officer work and how regularly would they visit employers to inspect contracts?”

Policy Principal, Social Security:

“They routinely inspect all new businesses and they have cycles of visiting certain sectors at different times of the year and, obviously, if a complaint is made by a third party they would inspect in that situation as well. Where they find that things are missing they will ask the employer to put those things right and they will write to the employer to follow up on that.”³²

The Panel wonders whether more could be done in terms of increasing inspection and monitoring the use of zero-hour contracts to ensure they are being used appropriately and fairly.

A report by the Resolution Foundation ‘*Zeroing In: Balancing protection and flexibility in the reform of zero-hours contracts*’ highlighted the importance of having agencies in place to act as a spokesperson for employees and ‘improve proactive enforcement’. The report suggests that funding for enforcement agencies should be increased in order to aid individuals and relieve them of their responsibility to pursue a case and recover funds owed.

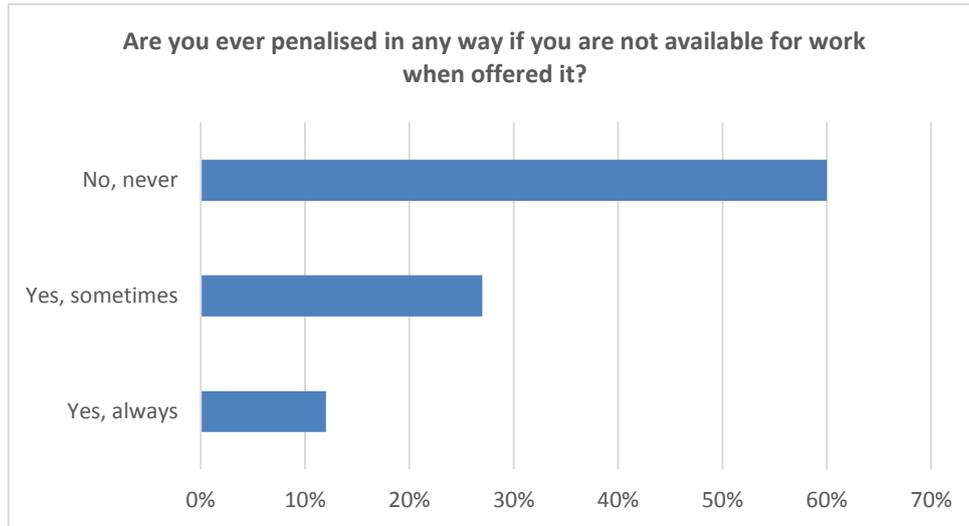
RECOMMENDATION 10: The Minister should consult with a view to bringing forward proposals to amend the Employment (Jersey) Law 2003 to introduce a mechanism whereby a Social Security Officer might refer zero-hour contracts to the Employment Tribunal to determine whether the use of a zero-hour contract is appropriate.

Obligation to accept work

The Panel’s survey reveals that 60% of employee respondents are never penalised by their employer when turning down hours. However a significant number of employees (27%) said they were sometimes penalised and 12% said they were always penalised:

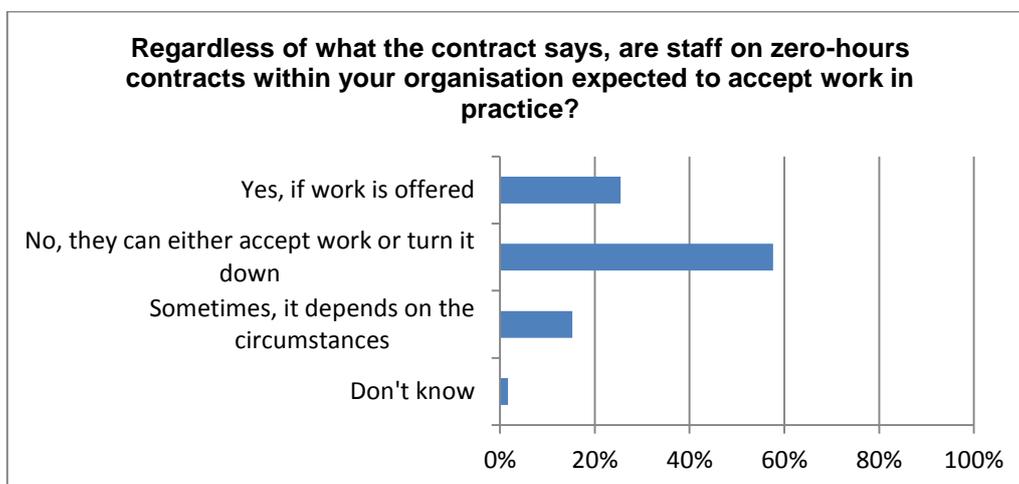
³² Public Hearing with the Minister for Social Security, November 2015, p.22

Employee Survey:



This 60/40 split is repeated in the figures below which reflect the attitudes of the employers. The Panel's survey revealed that 40% of employers said that if work was offered, they always or sometimes expect the employee to accept. For 1 in 4 employers it appears that regardless what is stated in the contract they do in fact expect employees to work the hours offered.

Employer Survey:



The CIPD survey³³ indicated that a fifth of UK workers reported that they were always or sometimes penalised for not accepting hours from their employer, and that nearly a third of employers expect staff on zero-hour contracts to be available for work despite not offering any guaranteed hours.

This shows the vulnerability of employees as a significant number of employers move away from the fundamental principles of zero-hour contracts and require their employee to accept work when it is offered. It appears many employees do not believe they have any choice when it comes to turning down work, through fear of not receiving offers of work in the future.

³³ CIPD Survey, "Zero-Hours Contracts: Myth and reality, November 2013

An employee should be able to exercise their right to turn down work without the fear of being penalised. Employers should follow the guidelines provided by JACS which state the following:

“It must be remembered, however, that in a zero hours contract there should be no obligation on the part of the business to offer work and no obligation on the individual to accept.”³⁴

KEY FINDING 12: The Panel’s survey revealed that 60% of employee respondents are never penalised by their employer when turning down hours. However a significant number of employees (27%) said they were sometimes penalised and 12% said they were always penalised. According to the JACS guidelines, there should be no obligation on the employee to accept work when working on a zero-hour contract.

Regular Pattern of Work

In the Panel’s survey, when questioned about the typical working hours of employees, the majority (51%) of employer respondents said that working hours are broadly the same each week. If there is a regular pattern of work being carried out and no one expects the individual to refuse to work, the employer should not be using a zero-hour contract but offering a permanent one. This is supported by the Jersey Chamber of Commerce who said:

The Chief Executive of the Jersey Chamber of Commerce:

“...but once there is a pattern to it and a reliance from either side, the worker or the employer, if either is relying on the other then you should be discussing a different type of contract, not a zero hours contract.”³⁵

The Resolution Foundation report (*Zeroing in*) reveals that one of the main arguments for employers using zero-hour contracts is for the flexibility they provide. The results from the Panel’s survey suggest that many employees on zero-hour contracts are working consistent hours. The report goes on to state *“where individuals are employed on a zero-hours contract and work a relatively consistent pattern of hours, the contract is probably being used inappropriately and a fixed hours contract would better suit their employment situation”³⁶*. The Report also says that a statutory right to a fixed hours contract should be created after one year for those who work consistent hours and want one.

The Report highlights the risk that employers may dismiss employees or change their hours prior to the one year mark. However, it argues *“this is a theoretical risk with any extension of rights but is likely to be outweighed by the benefits gained as the vast majority of employers would seek to comply”³⁷*.

The report also challenges the view that pursuing changes to the way zero-hour contracts are used is futile maintaining *“the objective should be to ensure that a greater number of individuals are offered a choice between a zero-hours and a fixed hours contract”³⁸*.

³⁴ JACS Zero-Hour Contracts Guide, p.2

³⁵ Public Hearing with the Jersey Chamber of Commerce, October 2015, p.9

³⁶ Resolution Foundation, *Zeroing In*, March 2014, p.15

³⁷ Resolution Foundation, *Zeroing In*, March 2014, p.16

³⁸ Resolution Foundation, *Zeroing In*, March 2014, p.9

Exclusivity Clauses

Exclusivity clauses are used to prevent an employee from working for another employer regardless of whether hours have been provided or not.

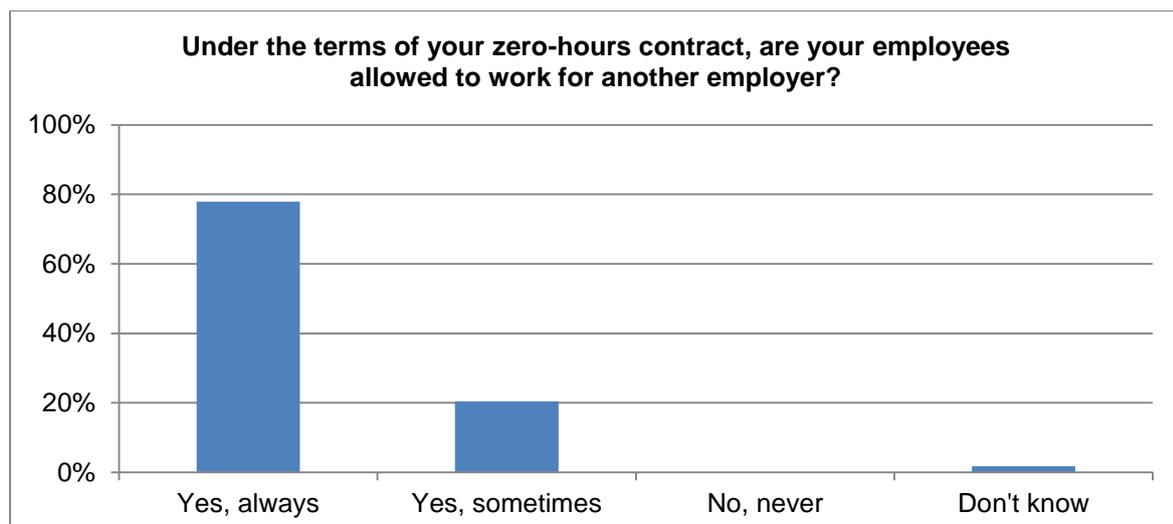
The issue over the use of exclusivity clauses within zero-hour contracts has been under recent scrutiny in the UK. Following consultation by the UK Government, as from 26th May 2015, exclusivity clauses in zero-hour contracts were made unenforceable. This applies to all contracts under which there is no guarantee of work.

The Panel notes that this was a step the UK had to take in order to prevent misuse of zero-hour contracts. Currently, in Jersey, zero-hour contracts are not referred to in legislation and the Panel was keen to consider whether there was a place for this kind of legislation in Jersey.

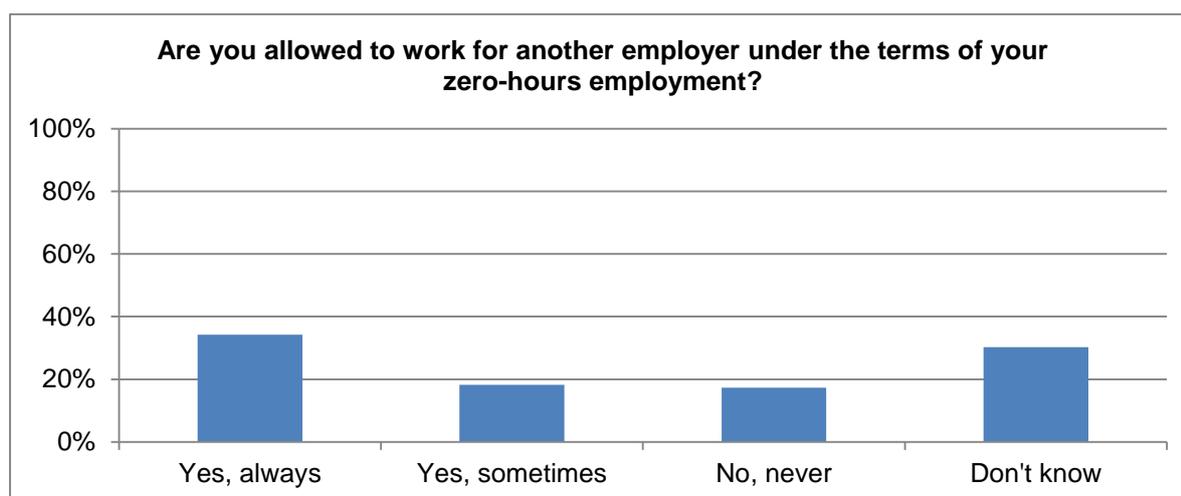
The Panel sought to establish to what extent these clauses were being implemented by businesses in Jersey. The Panel feels that it is important to encourage good practice and that the use of these clauses puts employees in a vulnerable position and undermines the choice and flexibility that these contracts, should in theory, offer. Given that hours are not guaranteed on zero-hour contracts, employees may sometimes need additional hours to top up their income.

The Panel's survey found some marked differences between the perceptions of employers and employees over exclusivity. While none of the employer respondents prohibit their zero-hour employees from seeking work from another employer, one third of employees thought they were always or sometimes prevented. A further third of the respondents did not know whether or not this was the case. Of the 90 employees that responded "yes" to wanting more hours, more than a quarter were unsure as to whether they were allowed to work for another employer under their zero-hour contract.

Employer Survey:



Employee Survey:



The report by the Resolution Foundation argues that preventing employees from working for another employer contradicts the prevailing argument that zero-hour contracts offer flexibility for both employers and employees. It asserts that “*complete or partial restrictions on taking up other jobs, whether through a prohibition on working elsewhere or a requirement to always be available for work, are not acceptable*”³⁹.

The Panel found that the Social Security Minister and representatives of both employers and employees are in total agreement on the use of exclusivity clauses:

Minister for Social Security:

*“I would not agree that there should be exclusivity.”*⁴⁰

Chief Executive, Jersey Chamber of Commerce:

*“I think in answer to your question, Deputy, we find it very difficult to justify or even support an exclusive zero-hours contract. I cannot think of a reason why one would think that would be acceptable. So in answer to your question: should we replicate U.K. legislation? I cannot think of a reason why we would not at the moment. They seem to be the ones that cause most public and moral outrage and I understand why.”*⁴¹

President, Jersey Chamber of Commerce:

*“They have been made illegal in the U.K. I would 100 per cent agree with that. That goes right against the fair concept of the zero-hours contract and if you have a zero-hours contract there should be no exclusivity contract in it.”*⁴²

A submission received from Prospect the Union stated that contracts must not contain a clause restricting employees from accepting work elsewhere:

Prospect Union:

“Our position is that we have serious concerns about the use of zero hour contracts and the impacts on full time staff. For example, the impact on pension rights and the

³⁹ Resolution Foundation: Zeroing In, March 2014, p.14

⁴⁰ Public Hearing with the Minister for Social Security, November 2015, p.25

⁴¹ Public Hearing with the Jersey Chamber of Commerce, October 2015, p.5

⁴² Public Hearing with the Jersey Chamber of Commerce, October 2015, p.5

ability to secure mortgages and loans. We believe use should be proportionate, relevant and only used when there was clear justification. In addition contracts must not contain a clause restricting employment (a "whole time and attention" clause) - you should be able to work for other employers."⁴³

The Panel wholeheartedly supports these views and cannot see any benefit in the existence of such clauses which it believes obstruct choice and flexibility.

KEY FINDING 13: The Panel cannot see a benefit in the existence of exclusivity clauses. Abolishing such clauses would provide employees with the freedom to choose whether they would like to take on additional hours, thus potentially improving their financial situation, which at the moment for some is restricted.

RECOMMENDATION 11: The Minister should consult with a view to bringing forward proposals to amend the Employment (Jersey) Law 2003 to abolish exclusivity clauses.

Rates of pay

One of the central issues around zero-hour contracts is the challenge of meeting everyday costs in the face of fluctuating wages particularly for those on low pay and for those with children and other family commitments⁴⁴.

Zero-hour contracts are often associated with lower pay, higher risk and fewer benefits. The Panel's research reveals that 7 in 10 of the employers who completed the survey do not pay their zero-hour employees differently to permanent employees. 3 in 10 report that rates of pay are actually higher than those they employ on permanent employment.

This was supported by the comments made in a public hearing with both ASL and Rowlands Recruitment agencies who confirmed the pay rate rarely differed in the case of agency workers:

Managing Director, Rowlands Recruitment:

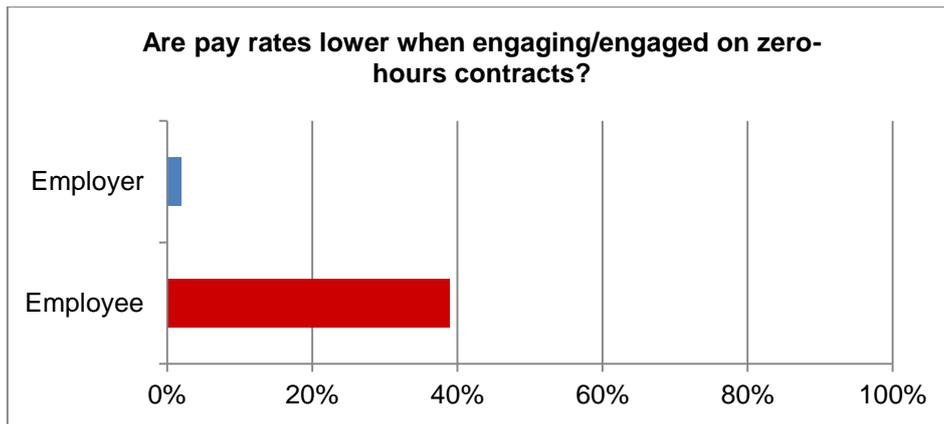
"You may have someone on a zero hour contract who would be sitting next to someone doing similar sort of work. Their pay is usually the same."⁴⁵

However, whilst 44% of respondents to the employee survey say that the pay rate does not differ from those employed on permanent contracts doing the same job, 39% report that they are paid less than those doing the exact same job. Out of the 39%, the majority of respondents were from the public sector, then the finance sector and closely followed by wholesale and retail and transport and communication.

⁴³ Written Submission received from Prospect Union, October 2015

⁴⁴ Resolution Foundation, Zeroing In, March 2014 p.8

⁴⁵ Public Hearing with ASL and Rowlands Recruitment, November 2015, p.5



KEY FINDING 14: Results from the Panel’s survey reveal that 39% of respondents report that they are paid less than those doing the exact same job who are not on zero-hour contracts.

RECOMMENDATION 12: The current Zero-Hours Contracts Guide should be amended to recommend that employers pay zero-hour employees at the same rate as permanent employees unless a differential in pay rates can be justified.

Notice when work is offered

The Panel’s research found that 1 in 3 employees are only given notice of 12 hours or less of any upcoming work. The absence of any guarantee of work and the short notice may create difficulties in arranging childcare for example and makes forward planning virtually impossible.

Notice when work is cancelled

When work is cancelled at the last minute, there appears to be little, if any, benefit to the employee. In this instance, regardless of whether an employee enjoys the flexibility such contracts provide, it is not ideal when shifts are cancelled or even arranged at the last minute. This is proving to be an issue for some employees engaged on zero-hour contracts in Jersey.

41% of employees said they receive two days’ notice or more when work is cancelled. A quarter said they are not told until the start of the shift. This may be unavoidable in some circumstances but it creates difficulties for employees who have made plans or budgeted based on the work that was offered.

47% of employers say they give 48 hours or more notice. Only 8% say they cancel work at the start of a shift. The majority (65%) of respondents in the employer survey said they did not have contractual provision in place when cancelling work which had been offered. 59% however, reported that they had a policy or standard practice. Despite employers having contractual provisions or a policy in place around 50% of zero-hours employees said that work is cancelled at the start of a shift (25%) or just 12 hours prior (20%).

Unlike in Jersey or the UK, Ireland provides a small amount of protection for those working on zero-hour contracts. If an employee has been requested to work or to be available for

work which is subsequently cancelled, they are entitled to payment of up to 25% of the time of which they were required to be available or 15 hours whichever is the lesser. This system gives employees added security so that if a shift is cancelled, they are compensated.

RECOMMENDATION 13: The current Zero-Hours Contracts Guide should be amended to recommend that employers give as much notice as possible to employees when offering work and also when cancelling pre-arranged work.

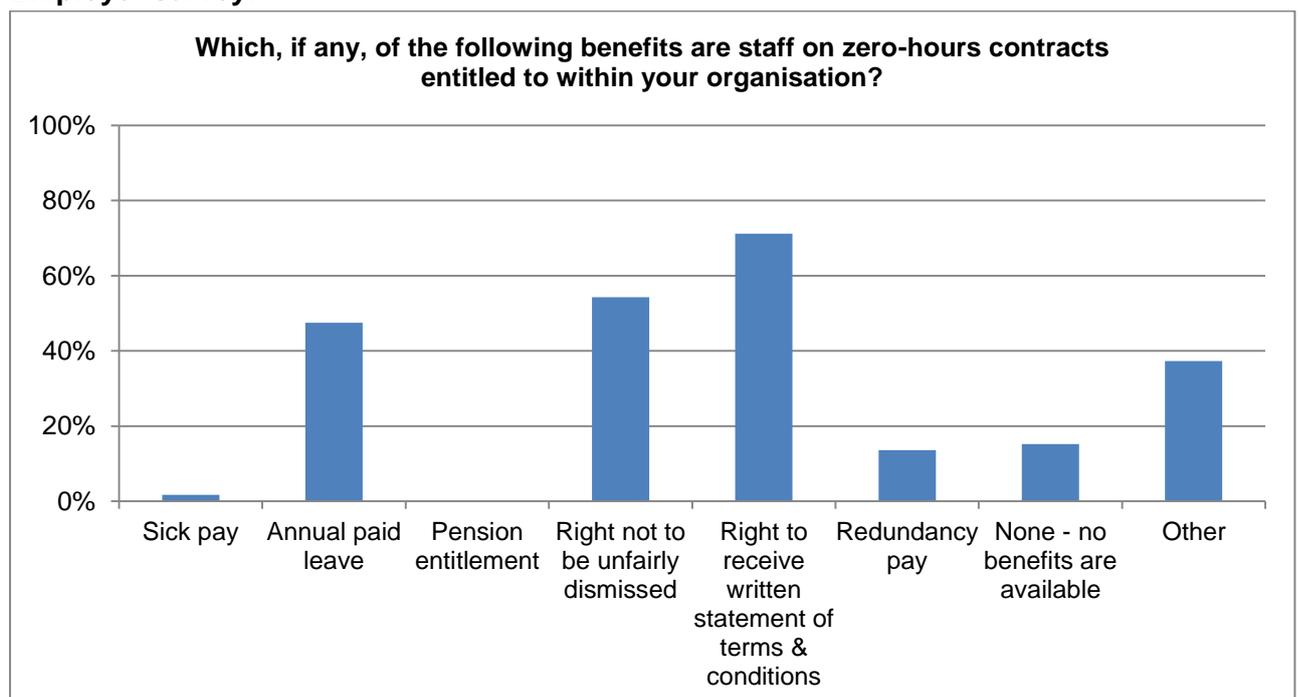
RECOMMENDATION 14: The Minister should consult with a view to bringing forward proposals to amend the Employment (Jersey) Law 2003 to provide for compensation to be paid to employees working on zero-hour contracts where pre-arranged work is cancelled at short notice, (drawing on the experience of the Republic of Ireland and New Zealand where such provision has been enacted).

Holiday Entitlement

The Employment (Jersey) Law 2003 states that an employee is entitled to be paid in respect of any period of leave which is a statutory minimum of 2 weeks. The practical effect of this is that employers should add 4% to the hourly rate of pay given to employees on zero-hour contracts to cover the statutory minimum of two weeks paid leave. The Panel was concerned to learn that two thirds of the employee respondents to its survey believed they were not eligible to receive annual paid leave. The results from the Panel's survey show that only half of employer respondents provide annual paid leave.

The figures suggest that some employers are not paying annual leave, meaning requirements of the Law are not being met. It is noted that some may be doing so and their employees do not realise they are receiving rolled up holiday pay. Both instances mean better publicity of the Law is required either via JACS or Social Security.

Employer survey:



KEY FINDING 15: Employers should add 4% to the hourly rate of pay given to employees on zero-hour contracts to cover the statutory minimum of two weeks paid leave. Two thirds of the employee respondents to the Panel's survey believed they were not eligible to receive annual paid leave and only half of employer respondents said they provided annual paid leave. Therefore, better publicity of the Law is required either via JACS or Social Security.

RECOMMENDATION 15: Inspectors employed by the Social Security Department must exercise increased vigilance to ensure that employees working on zero-hour contracts are paid their additional contractual holiday pay.

Obtaining credit

The Panel note that not being able to obtain a mortgage or other loan is a common difficulty for those with a fluctuating and unreliable income. 42% of employee respondents to the Panel's survey reported that they could not obtain a mortgage or loan as a direct result of being engaged on a zero-hour contract.

Over half of employee respondents who completed the survey had been on a zero-hour contract for a year or more. This would suggest that they are a valued and required member of staff. This further highlights the necessity for zero-hour contracts to be reviewed after at least a year. To not do so is eliminating their prospect of obtaining credit, short-term loan or becoming a homeowner, should they wish to do so.

KEY FINDING 16: Employees who have been engaged on zero-hour contracts for a long period of time should not be excluded from seeking a mortgage or loan. This is a further reason why zero-hour contracts should be reviewed and why employees should have the option of a permanent contract after six months if their work has been carried out on a regular basis.

Compliance in the use of zero-hour contracts

As the Panel's survey findings show, a number of zero-hour employees are not receiving annual paid leave. With the confusion around whether they are entitled to it or not, they would benefit from the support an investigative and professional body could offer in these types of circumstances.

Under the Employment Law the Social Security Inspectors have powers to enter premises and inspect employment records including contracts and payslips, but they only have the power to directly enforce the minimum wage. The Panel suggests issuing further powers to ensure zero-hour contracts are being used correctly and that those engaged on them are not being exploited in any way.

The Panel believe that sanctions should be imposed for those who are not operating zero-hour contracts correctly. As previously discussed in the report, a worrying number of employees are not receiving benefits for which they are entitled to by Law. This issue further highlights the need for deterrents so employees receive what they are legally entitled to and the prospect of employers being taken to Tribunal is avoided.

Employment Restrictions

Part of the rise in the use of zero-hour contracts could potentially be attributed to the changes to the Control of Housing and Work Law which came into force on 1st July 2013. Restrictions have been placed on the number of licences that businesses are being allocated. The Law was put in place in an attempt for the States to control the number of licences that were held by businesses for registered staff. The Panel question whether the Control of Housing and Work Law is generating the practice of using agency staff.

In response to the survey question of why employers used zero-hour contracts, one respondent stated the following: *'Justify head count for perm staff /due to lack of residentially qualified candidates'*.

It was also alluded to in a public hearing with the CIPD that some businesses are forced to use agencies to employ their staff due to the new restrictions on licences.

Ms. N. Le Dain-Cyples:

*"...some people may find that if they cannot get the licence that they require that they may have to resort to using an agency because they have no other option but to use an agency because they need that staff member."*⁴⁶

Evidence from the Jersey Labour Market Report shows that the second largest sector employing staff on zero-hour contracts is "miscellaneous business activities" which includes employment agencies. Because staff remain employees of the agency this means that agency staff are sometimes used to get around fixed headcount either imposed by head office of a company or States of Jersey. As agency staff are normally employed on a zero-hour contract, this may account for the greater use.

RECOMMENDATION 16: The Minister should actively monitor the increasing prevalence of zero-hour contracts in the economic life of our Island by making full use of the data available from Social Security and manpower returns, including actively engaging with employers using such contracts, to attempt to establish the reasons why such contracts are being used and whether they are appropriate in the circumstances. The Minister should include the findings from such monitoring in the Department's annual reports.

RECOMMENDATION 17: If, after a period of monitoring the increasing prevalence of zero-hour contracts, the Department considers that it was not receiving adequate co-operation from employers or considers that there might be misuse of zero-hour contracts among employers, then consideration should be given to further measures including legislative changes.

⁴⁶ Public Hearing with CIPD, October 2015, P.12

8. Zero-Hour Contracts and Income Support

A fluctuating and uncertain income, if it is an employee's primary source of income, can cause difficulty when trying to budget properly. The Panel are concerned that many of those on a zero-hour contract may also be on a low income. Their zero-hour contracts may be set at, or close to, the minimum hourly rate which means they could be forced to find additional sources of income. This may be to seek a second (or third) zero-hour job or turn to income support to survive.

The Income Support Policy guidelines explain that the Income Support scheme is a financial safety net for those in need, but also designed to encourage people to become self-sufficient as far as possible. The Income Support (Jersey) Law 2007 includes a requirement for all eligible adults to be in full-time work (defined as 35 hours per week), or to be actively seeking work⁴⁷.

The amount an individual may claim is calculated through a series of components (including adult, child, rent and so on) and is normally paid weekly in advance.

It is understood that employees on zero-hour contracts have the responsibility to advise the Social Security Department of the hours they are expecting to work in any given week in order that an "average" income can be estimated. Wide variation in income when someone is on a zero-hour contract, which is not uncommon, can cause problems.

Over/underpayments

The Social Security Department reassured the Panel that adjustments to a person's income support can be done efficiently and can be adjusted immediately.

The system is straightforward when someone's hours remain fairly similar but, as the Chief Officer of Social Security admits, adjusting claims becomes difficult when a person's hours are reduced suddenly when work is cancelled:

Chief Officer, Social Security:

"Income support is paid in advance as well so that they may have already been paid for that week when they find they have not got very many hours and that is where the system becomes, perhaps, more complicated in adjusting for that but we would just be in there adjusting their income support claim going forward based upon the hours they think they are going to get....."

"Really the issue is where, I am sure everyone will appreciate, someone's hours reduce unexpectedly. If there is no work for some particular reason then we would not say: "No, sorry, you cannot come in for another 4 weeks", they would come in."⁴⁸

The reference to "4 weeks" in this quote reflects previous practice outlined by the former Minister that a "change of circumstances" (like a change of income) could be reviewed every 5 weeks for those on zero-hours.⁴⁹

⁴⁷ Income Support Policy Guidelines, January 2016, p.15

⁴⁸ Public Hearing with the Social Security Minister, November 2016, p.6

The Panel believes that the increase in the number zero-hour contracts in recent years has, amongst other factors, led to the need to reduce the turnaround time required to deal with income changes.

The Panel also notes that ministerial answers in the States on 26th June 2012, revealed that of the 11,000 adjustments to Income Support claims annually, over 6,200 were changes to payments of which over 40% were overpayments to a median value of £138. These overpayments were claimed back at a minimum rate of £21 per week.

Deputy G.P. Southern:

“I thank the Minister for Social Security for his answer. A supplementary: can he clarify for me in terms of overpayments, when the Social Security Department reclaims those overpayments is it the case that the rate that you collect any payment is at £3 per day, a maximum of £21 a week, or is it the case, as he stated this year, the minimum amount that we will collect is £3 a day or £21 a week; however, the maximum amount is £6.50 a day? Is the collection of £3 a day or £21 a week a maximum or a minimum?”

Senator F. du H. Le Gresley:

“Minimum.”⁵⁰

When the former Social Security Minister was asked whether a reduction of £21 per week from someone on income support would cause hardship the Minister responded by saying *“every case is different”⁵¹*. The Panel is of the opinion that the claiming back of overpayments at this rate may well do so, especially given that the £138 is a median figure and that 50% of overpayments are greater than this and subject to even higher rates of reclaim. It is understood that when the Income Support Scheme was implemented in 2008 the minimum payback was set at a lower rate in order not to cause hardship.

Sanctions

A further difficulty particularly associated with those on zero-hour contracts is the issue of sanctions. In 2013, P.101/2013 was adopted which created a system where people who repeatedly breached the conditions of their job-seeking agreement would first be warned and if they failed to heed this warning, they would face increasingly longer cuts to their benefit, followed by the eventual removal of benefit altogether. Penalties were also introduced for those people who left paid work without a good reason and wished to claim Income Support⁵².

As mentioned previously, a significant number of individuals on zero-hour contracts said that they were the only positions available when they sought employment. In some cases the Social Security Department would deem a zero-hours job as “suitable employment” and insists that an applicant for income support takes such work. Should the variability of payments prove to be so variable as to be impossible to handle, the employee may decide to

⁴⁹ Written question to the Minister for Social Security by Deputy Southern, 15th May 2012

⁵⁰ 7.10 Deputy G.P. Southern of the Minister for Social Security regarding the numbers of under and overpayments of Income Support, supplementary question to written question on 26th June 2012

⁵¹ 7.10 Deputy G.P. Southern of the Minister for Social Security regarding the numbers of under and overpayments of Income Support, supplementary question to written question on 26th June 2012

⁵² P.101/2013: Draft Income Support (Miscellaneous Provisions) (Jersey) Regulations 201-

resign. In such cases this leaves the individual open to sanction. The Guide to Income Support Policy states the following on the subject [made bold by the Panel]:

*“An individual who **leaves work without any good reason** is not able to claim the adult component of income support for a 13 week period. This period is extended if the individual fails to undertake job-seeking activities during that time, and applies both to people on Income Support and people who claim Income Support after they have left their job.*

People who have multiple part-time jobs and give up one of them may be considered to be leaving work without a good reason.”⁵³

Those employed on zero-hours will be encouraged by the Social Security Department to find full-time employment (35+ hours). The Panel’s survey shows that a large number of Jersey’s workforce would rather be employed under unreliable circumstances than not work at all. The Social Security Department confirmed in a public hearing that walking out of a job may constitute “leaving work without good reason.”

Chief Officer, Social Security

“If somebody walks out of a role where they have hours available to them and they are receiving hours then we would look at that within the giving up work voluntary sanctions: yes, we would. The outcome would depend upon the situation but of course we would be looking at why has that person walked out when they potentially have the opportunity for hours?”⁵⁴

Until recently in the UK, if a person claiming Job Seekers Allowance (JSA) refused a zero-hours job, they were not sanctioned. However, with the new Universal credit being introduced this is no longer the case. Like Jersey’s Income Support system, Universal Credit will replace a large number of benefits which includes JSA. However, Universal Credit is designed to have instant computer access to cope with changes of circumstances and will automatically adjust the level of benefits someone receives depending on the number of hours they work. Under the new system an individual who refuses to accept a zero-hour contract could face possible sanctions, including loss of benefits.

In the Panel’s survey 71% of zero-hour employees reported they did not have difficulties in accessing income support, which still leaves almost 1 in 3 who have had some problems.

RECOMMENDATION 18: In recognition of a responsibility to promote best practice in employment, the Department (specifically the Income Support Section and Back to Work Scheme) should not require jobseekers to take zero-hour contract jobs unless the employer confirms that it will observe the guidance set out in the Zero-Hour Contracts Guide. The Department should also monitor such observance and encourage a review of the employment contract after six months at most.

⁵³ Income Support Policy Guidelines, January 2016, p.24

⁵⁴ Public Hearing with the Minister for Social Security, November 2015, p.7

Short-Term Incapacity Allowance (STIA)

There is a further potential problem for those on zero-hour contracts in that if their hours or earnings fall below a certain level in any quarter (lower contribution threshold), they may not be eligible to claim sickness benefit should they fall ill later. In order to qualify to claim sickness benefit (STIA) an individual must have paid or been credited with enough contributions for each of the months in the relevant quarter. The relevant quarter is the quarter ending 6 months before the date of the sickness claim⁵⁵.

For example, if an individual becomes ill in September for two weeks, he or she must have paid contributions during January, February and March of the same year to receive the full amount of Short-Term Incapacity Allowance. If an employee has not paid sufficient contributions, he or she may be able to get a reduced rate of STIA if they have some but not all of the three months fully covered by contributions or credits. For example, if they have only one month fully covered by contributions or credits, the Department will give a third of the full rate.

The threshold for eligibility for full sickness benefit currently stands at £864 per month⁵⁶, or £216 weekly. For an employee on zero-hours, paid at or close to the minimum wage, if in any week the hours of work drop below 30 hours, this will result in reduced support should they fall ill 6 months later. While the numbers of those on zero-hours who may be caught by this threshold is low, the Panel believe further growth in the use of zero-hour contracts may add to the need to revise the Social Security contribution and benefits scheme to ensure that employees do not fall out of receiving sickness benefits.

During a hearing with the Minister for Social Security, the Panel suggested that when the criteria for assessing such benefits was agreed it was done so at a time when permanent employment was at its peak. However, with a surge of flexible working, it may be appropriate to reassess benefit entitlements to reflect today's job market.

It was confirmed that the Department was due to review the Social Security Fund, to be started in 2016 and that criteria to access benefits would be looked at:

Policy Director, Social Security

*"However, we are going to start and make a review of the Social Security Fund next year and that will include the way in which we ... that may well include the rules around various benefits. You are quite right the rules were set a long time ago and it is good to review them on a regular basis so that will certainly be ... whether our initial scope ... we will have to decide ... the review has got a lot in it, one has to decide in what order things are done. Undoubtedly the role of the lower earnings limit, the rules around how people qualify for benefits; those things will be part of the overall review. I cannot promise we will do everything next year but we will certainly be looking at that over the next few years."*⁵⁷

⁵⁵ Information accessed at <http://www.gov.je/Benefits/SicknessInjury/Pages/OffWorkSick.aspx>

⁵⁶ Website accessed at <http://www.gov.je/working/contributions/pages/contributionlevels.aspx>

⁵⁷ Public Hearing with the Minister for Social Security, November 2015, p.8

RECOMMENDATION 19: The Minister should investigate the prevalence of the potential harm caused to employees working on zero-hour contracts who may find that, despite being available for work, they have worked insufficient hours to meet the lower contribution threshold for Short Term Incapacity Benefit, particularly having regard to the likelihood that some of those employees would have been placed in work through the Department's Back to Work Scheme. The Minister should take action to remedy this situation and report back to the States within 6 months.

9. Zero-Hour Contracts and Domiciliary care

The Resolution Foundation report states that within publicly-funded services in the UK, the use of zero-hour contracts in social care is of particular concern. The Panel notes that “Skills for Care” (the sector skills body for UK care services) estimates that 307,000 adult social workers in England are employed on zero-hour contracts as of May 2013, equivalent to 30% of all adult social workers⁵⁸. It also notes that among domiciliary care workers in the UK, 61% are employed on zero-hour contracts⁵⁹.

This trend in the UK is reflected in the latest figures from the Jersey Labour Market Report which reveals growing numbers of zero-hour contracts in the education and health sector, up to 1,140⁶⁰, almost 20% of zero-hour jobs in the private sector.

The Resolution Foundation report explains that the increase in the use of zero-hour contracts in publicly-funded sectors is due to a greater perceived need among employers for flexibility. However, it goes on to explain that: “*the underlying drivers are somewhat different. Significant cuts to public spending since 2010 are likely to be the most significant driver of the greater use of zero-hour contracts*”⁶¹. In Jersey, however, the funding mechanism for domiciliary care, namely the Long-Term Care fund, is already in place and this should enable a smooth transition to deliver the desired outcomes described in P.82/2012:

- Reduced hospital admissions and readmissions
- Reduced hospital length of stay
- Delayed need for institutional care
- Increased number of service users/patients being cared for outside a hospital or residential care setting

The Resolution Foundation report says: “*In many ways, the consequences of zero-hours contracts in the delivery of public services are more significant than in many other sectors in terms of the potential impact of workforce insecurity on the quality of life and well-being of service recipients. It is highly likely that the way in which zero-hours contracts impact on individuals who receive services has a cost elsewhere in the public sector.*”⁶²

The Resolution Foundation Report also explains that: “*in the domiciliary care part of the sector, zero-hour contracts have become standard and predate the current period of austerity. Widespread use of zero-hours contracts has been common for over a decade.*”⁶³

The report goes on to say that increased zero-hour contracts are associated with low pay, low skills and low status, creating a vulnerable workforce and that for some, receiving the UK National Minimum Wage is not guaranteed due to the failure to adequately cover travel time between clients.⁶⁴ The Panel’s next section explains travel time for carers in relation to Jersey.

⁵⁸ House of Commons, Scottish Affairs Committee “Zero-hours contracts in Scotland: Interim report”.

⁵⁹ Resolution Foundation: Zeroing-In, 2014, p.7

⁶⁰ Statistics Unit, Jersey Labour Market Report, December 2015, p.15

⁶¹ Resolution Foundation: Zeroing-In, 2014, p.17

⁶² Resolution Foundation: Zeroing-In, 2014, p.18

⁶³ Resolution Foundation: Zeroing-In, 2014, p.18

⁶⁴ Resolution Foundation: Zeroing-In, 2014, p.18

The Panel agrees with the Resolution Foundation report which states that: *“this poorly paid, insecure workforce delivers care to some of the most vulnerable older and disabled people in society, under conditions that make it difficult to provide high quality, consistent care to clients”*⁶⁵.

The Panel endorses all of the above extracts from the Resolution Foundation report and believes that they are equally as applicable in Jersey.

Travel time and the minimum wage

The issue of travel time for carers is of interest to the Panel. Though not exclusively, a high number of carer jobs are undertaken on a zero-hours basis. Some care workers visit multiple clients in a day, at various locations, however, the time taken to get to and from each destination is not always taken into consideration when it comes to remuneration because it is not counted as time spent working.

As mentioned in P.82/2012, the more people staying at home to receive care, equates to more pressure being placed on those caring for them. This is likely to have a knock on effect for those carers who do need to travel to carry out their job. Travel time and fuel costs are likely to increase along with insurance.

The Resolution Foundation report states: *“There is increasing disquiet about the impact of zero-hours contracts on the care provided to some of the most vulnerable in society and a growing realisation that high quality care demands greater investment in the workforce that delivers that care”*⁶⁶. *“The recent Cavendish Review into healthcare assistants and support workers in the NHS and social care highlighted the limitations of delivering the kind of health and social care system the country wants and needs under current workforce terms and conditions”*.⁶⁷

While the Panel has found no evidence that the practice of some UK local authorities of commissioning care in short (15 minute) units of time exists in Jersey, (15 minute visits are restricted to medication and safeguarding checks only) it is understood that domiciliary care companies rely on the combination of zero-hour contracts and payment only for contact time. The Panel received several timesheets in confidence from a domiciliary care worker which raised a number of issues:

- Domiciliary carers can be required to work long hours and to be away from home for even longer daily hours for example the timesheets provided showed a 15 hour day with 12 hours contact time.
- Payment only for contact time and not travel time can result in hourly rates below the minimum wage rate for example 3 out of 11 timesheets showed an hourly rate as low as £5.00.

Despite having put the funding mechanism in place for Long-Term Care in Jersey, it is concerning to see the worst of UK practice, being adopted in Jersey. The Panel believes that

⁶⁵ Resolution Foundation: Zeroing-In, 2014, p.18

⁶⁶ Resolution Foundation: Zeroing-In, 2014, p.18

⁶⁷ Resolution Foundation: Zeroing-In, 2014, p.19

in these instances the use of zero-hour contracts is entirely inappropriate. Hours are variable, but not widely so and the typical working week will usually consist of over 40 hours contact time therefore, a minimum hours contract would be more appropriate. Consistency of care is also important. As the Cavendish review states: *“At its core, caring is about building relationships. Caring properly takes time. Some low paid HCAs and support workers will heroically keep going as long as they feel they are still giving good care. But the advent of zero hours contracts, fee cuts and no payment for travel time is making it financially prohibitive for some domiciliary care workers to struggle on. Attrition rates are already dangerously high: and they will only increase when carers feel that they can no longer even give good care... It is also questionable whether long shifts, of 12 hours and more, are conducive to compassionate care”*⁶⁸

Not only does the lack of payment for travel time bring the hourly earnings rate down, in some cases below the minimum wage, but increasingly a culture of long hours can only be detrimental to the quality of care delivered. The Panel question whether a health care worker could remain quite as compassionate in dispensing care and attention after spending 15 hours at work or travelling to work.

KEY FINDING 17: It is unreasonable to expect carers to use their own time to travel to and from clients, when it is an essential part of the job of which they are expected to carry out. The Panel believes this is a fundamental misuse of zero-hour contracts.

RECOMMENDATION 20: The Minister should urgently address the issue of domiciliary and care workers who may only be paid for contact time with clients and not travelling time between clients, possibly resulting in hourly rates of pay below the statutory minimum wage. The Minister should investigate whether such practices are in breach of employment legislation and in any event work with employers to promote more appropriate contracts e.g. variable hour contracts.

Competitive outsourcing

The use of competitive tendering in the outsourcing of care services, which by their very nature are labour intensive, is likely to bring downward pressure on the terms and conditions of care workers. This may have profoundly negative consequences for the sector. Traditionally in Jersey, care services in the home have been delivered by Family Nursing & Home Care (FNHC). Following renegotiation of their service level agreement with the Health and Social Services Department, FNHC recently had to withdraw its domestic support services.

When asked about this in the States, the Health Minister responded:

*“There are a number of companies in Jersey who provide cleaning services. Individuals are able to choose from these providers, and it is likely that people will not make their choice based on price alone, but will also consider issues such as quality of service, personal recommendation and convenience.”*⁶⁹

⁶⁸ The Cavendish Review: An Independent Review into Healthcare Assistants and Support Workers in the NHS and Social Care setting, July 2013 p.78

⁶⁹ States of Jersey Hansard, 5th October 2015, p.9

Whilst this has had no impact yet on the delivery of those more personal care services considered here (for example feeding, bathing, toileting, medication), the Panel is concerned that Ministers will seek increased outsourcing as the means to reduce departmental budgets, which may result in a subsequent reduction in standards.

FNHC have the following standards⁷⁰:

- FNHC offers care staff terms and conditions in line with States of Jersey employees.
- FNHC staff all receive a comprehensive induction programme which includes safeguarding, infection control, confidentiality, respect and dignity, data protection, record keeping and the delivery of person centred care. All staff require mandatory updates.
- Care staff are trained and supported by trained nursing staff on patient specific areas of care.
- FNHC retention levels for the last three years has been <3% annual employee turnover.

The Panel notes that the Approved Provider Framework Agreement for the provision of Home Care Services 2014 contains no mention of any terms or conditions to protect care workers in the course of their duties, except the following⁷¹:

8.4 Training and development

The provider will adhere to a code of ethics and good practice with the relevant qualified and experienced staff, and maintain professional registration where appropriate.

8.5 Recruitment

The provider will conduct fair and open recruitment in accordance with best practice and JACS recommendations.

During a Quarterly Hearing with the Minister for Health and Social Services in 2015, the Minister explained that the terms and conditions of care assistants is a matter between the employee and the employer. The Panel believe that the long hours culture, when combined with the absence of payment for travelling time, can mean hourly rates below the minimum wage:

Deputy G.P. Southern:

“Can I take you on to a different area of long-term care in the community? Terms and conditions of the companies that are bidding for care in the community in looking after people, are you aware that in some cases travel time is not paid and that people are seriously questioning the terms and conditions as happened in the U.K. in many cases. It appears to repeating itself here.”

The Minister for Health and Social Services:

“Terms and conditions must be entirely a matter between the employer and the employee. The sort of things that we would be wanting to ensure take place is they do pay the minimum wage or the appropriate wage but no less than the minimum

⁷⁰ Written Submission from Panel's Respite Care for Adults Review: Family Nursing and Home Care, February 2015

⁷¹ Approved Provider Framework Agreement for the Provision of Home Care Services, 2014, p.22

wage Other matters of employment issues in terms of when they are paid, whether they get travel payment, whether they get paid meal breaks or not, is entirely a matter between the employee and the employer.”⁷²

What is to be done?

The Resolution Foundation report explains that the EU Procurement Directive makes it clear that: *“procurement should take into consideration the wider economic, social and environmental impacts of the provider contract, not just price and quality. This approach to public procurement echoes the position set out in the 2012 Public Services (social value) Act.”⁷³*

The report goes on to explain that:

“The Act places a requirement on local authorities when entering into public procurement contracts to give greater consideration to economic, social and environmental wellbeing during the pre-procurement stage. It supports a move away from a narrow view of best value that has often dominated procurement decisions. The Public Services Act has yet to be widely used but a number of local authorities, for example Croydon Council, are experimenting with this new way of commissioning services.”⁷⁴

“Currently, the potential relevance of these new approaches as drivers to improve workforce terms and conditions are being overlooked. Where they are being used, economic, social and environmental considerations are being taken on board in a more direct and conventional way, for example using providers who employ former users of services in the NHS or former offenders in the probation service. But using social value as a means to favour care providers who offer choice over zero-hours contracts, make less use of 15 minute visits and pay travel time would be equally important and have positive impacts on local economies.”⁷⁵

In an attempt to tackle issues faced by carers in the UK, UNISON conducted a survey in 2012 of home care staff to find 58% were not paid for the traveling time between home visits⁷⁶. Following the survey, UNISON published an Ethical Care Charter to which Councils in England, Scotland and Wales were requested to subscribe. The Charter was designed to improve standards for both the carers and those being cared for. It sets out principles for Councils to commit to such as; more improved levels of training for the workforce, continuity of care, no more zero-hour contracts, payment for travel time and at least a living wage.⁷⁷

RECOMMENDATION 21: Similar standards to the UNISON Ethical Care Charter should be adopted in Jersey. The Charter aims to improve standards for both carers and their clients, for example by improved training, payment for travel time and no more zero-hour contracts.

⁷² Quarterly Hearing with the Minister for Health and Social Services, 9th July 2015, p.38

⁷³ Resolution Foundation: Zeroing-In, 2014, p.21

⁷⁴ Resolution Foundation: Zeroing-In, 2014, p.21

⁷⁵ Resolution Foundation: Zeroing-In, 2014, p.21

⁷⁶ Time to Care: A UNISON report into homecare, 2012, p.19

⁷⁷ UNISON's ethical care charter, 2013

10. Conclusion

The Panel is grateful to the many people and organisations who have contributed to its review. It hopes the recommendations made in this report will be taken forward by the Minister for Social Security. They seek to strike a better balance in respect of zero-hour contracts, providing protection and choice for employees whilst ensuring flexibility is maintained where required by employers.

11. Appendix 1

Panel Membership

Deputy Richard Renouf, Chairman

Deputy Geoff Southern, Vice-Chairman

Deputy Terry McDonald

Deputy Jackie Hilton [joined the Panel on 12th April 2016 and therefore did not partake in the review]

Terms of Reference

1. To question the Minister for Social Security publicly on the Department's response to P.100/2013 amd.
2. To examine the circumstances in which zero-hour contracts are being used in the public and private sectors.
3. To determine whether any misuse of zero-hour contracts has taken place in Jersey and, if so, the extent of the misuse.
4. To determine whether there is a disparity between UK statistics and Jersey statistics regarding the use of zero-hour contracts and the reasons why this might be so.
5. To fully consult with stakeholders, particularly employers and employees and their representative bodies, over the benefits and disadvantages of zero-hour contracts.
6. To examine how the use of zero-hour contracts interact with the income support system and sickness benefit thresholds.
7. To consider whether the current practice of using zero-hour contracts could be improved.

Evidence Considered

Public Hearings

- 12th October 2015: Chamber of Commerce
- 15th October 2015: Jersey Famer's Union
- 16th October 2015: Chartered Institute of Personnel and Development Policy
- 5th November 2015: ASL and Rowlands Recruitment agencies
- 5th November 2015: Minister for Social Security
Assistant Minister for Social Security
Chief Officer, Social Security
Policy Director, Social Security
Policy Principal, Social Security

12. Appendix 2: Chief Minister's Response



Deputy R J Renouf
Chairman
Health and Social Security Scrutiny Panel
States of Jersey

5th April 2016

Dear Deputy Renouf

Re: Zero-Hours Contracts

In response to your letter dated 21st March 2016, please find below the responses to your questions as requested.

1. Below is a table showing the amount of agency staff working within departments as of 30th November 2015, the below information is provided from our 3 main preferred suppliers of temporary workers:
 - a. 1st Recruitment
 - b. ASL Recruitment
 - c. Rowlands Recruitment

Department	Total
Chief Minister's	16
Department for Community & Constitutional Affairs	13
Department for Economic Development, Tourism, Sport & Culture	1
Department for Education	3
Department for Environment	6
Department for Health & Social Services	27
Department for Infrastructure	13
Department for Social Security	45
Department for Treasury & Resources	9
Non Ministerial States Funded	21
Government House	6
Judicial Greffe	12
States Greffe	3
Viscounts	1
Total	157

In addition to the 27 agency workers listed above in Health & Social Services, there were a further 11 agency nurses working for the department during that time.

Please note that out of the 45 agency workers within Social Security:

1. 5 have been transferred to a fixed term contract
2. 8 have been given permanent positions within Social Security
3. 8 have since left the organisation

There were also 2 agency workers within Government House who did not work in the month of November.

2. The below table provides the reasons why particular roles are being covered by zero hour agreements

Job Role	Reason for Zero Hour Agreement
Admin Support (83)	Providing absence / annual leave cover when required, Data cleanse within HSSD and Education is on-going.
Leisure Assistants (29)	
Medical Secretaries (43)	
Senior and General Physiotherapists (10)	

Appendix A

Department Description	Post Description	Agreements
Chief Minister's Department	Administrators (HR / Projects / Statistics Interviewers)	3
Total		3

Department Description	Post Description	Agreements
Department of the Environment	Helm	3
Department of the Environment	Meteorologist Assistant	3
Total		6

Department Description	Post Description	Agreements
Education, Sport & Culture	Admin Support	83
Education, Sport & Culture	Adult Ed Tutor - General and Non Vocational	96
Education, Sport & Culture	Coaches (Sports - Community / School / Development)	33
Education, Sport & Culture	Customer Services Assistant / Sales Advisors (Active)	2
Education, Sport & Culture	Education Supply CS*	254
Education, Sport & Culture	Education Supply MW*	34
Education, Sport & Culture	Education Supply Teacher	201
Education, Sport & Culture	EYCP Co-ordinator	1
Education, Sport & Culture	Leisure Assistant - Fort Regent / Havre des Pas Pool / Les Q	29
Education, Sport & Culture	Library Assistant	5
Education, Sport & Culture	Mentor - Apprenticeship Scheme	2
Education, Sport & Culture	Minibus Driver / Escort - Mont a l'Abbe	14
Education, Sport & Culture	Parenting Facilitator	7
Education, Sport & Culture	Special Education Needs Supply	55
Education, Sport & Culture	Senior Education Welfare Officer	2
Education, Sport & Culture	Sessional Youth Workers	105
Education, Sport & Culture	Special Needs Keyworker - Autism / MAL	25
Education, Sport & Culture	Sports Centre Casual Staff - Concerts & Shows	15
Education, Sport & Culture	Supply Teachers / Lecturers	108
Education, Sport & Culture	Supply Transport Manager / Mini Bus Trainer	2
Education, Sport & Culture	Teacher - Lunchtime Cover - various schools	48
Total		1,121

N.B. The Non Teaching Supply staff (marked with an *) are where an existing employee works additional hours to cover the the post of someone on leave / sickness / other absence. They are required to be set up on a Zero-Hours contract for payment purposes.

Department Description	Post Description	Agreements
Home Affairs	Arrest Referral Worker	1
Home Affairs	Dry Riser Testing	9
Home Affairs	Fire Service Course Tutor	15
Home Affairs	Fleet Signage Officer	1
Home Affairs	PE Manager	1
Home Affairs	Prison Messenger	1
Total		28

Department Description	Post Description	Agreements
Non Ministerial States Funded	Case Management Assistant	1
Non Ministerial States Funded	Community Service Supervisor	1
Non Ministerial States Funded	Legal Adviser	1
Total		3

Department Description	Post Description	Agreements
Transport and Technical Services	Office Cleaner	9
Total		9

Department Description	Post Description	Agreements
Treasury and Resources	Assistant Energy Officer	1
Total		1

Department Description	Post Description	Agreements
Health & Social Services	Administrative Assistant / Administrators / Officers / Clerks	15
Health & Social Services	Ambulance Care Assistant / Technicians & Paramedics	10
Health & Social Services	Crematorium Technician	1
Health & Social Services	Dental Various (Nurses / Officers / Receptionists)	11
Health & Social Services	Dietician	2
Health & Social Services	GP Assistant / Receptionist	10
Health & Social Services	Housekeeping Assistant	1
Health & Social Services	Language Services Assistant	23
Health & Social Services	Locum Consultants / Staff Grades / Clinical Fellows	6
Health & Social Services	Medical Secretary	43
Health & Social Services	Newborn Hearing Screener	3
Health & Social Services	Occupational Health Assistant / O.T. Technicians	8
Health & Social Services	Orthopaedic Practitioner	1
Health & Social Services	Pathology Technicians / Biomedical Scientist	4
Health & Social Services	Patient Transport Services - Control / Inflight Co-Ordinator / Travel Officers	5
Health & Social Services	Radiology Assistant	1
Health & Social Services	Residential Child Care Officers	252
Health & Social Services	Senior and General Health Care Assistants	677
Health & Social Services	Senior and General Physiotherapists	10
Health & Social Services	Senior Clinical Physiologist	1
Health & Social Services	Senior Pharmacy Technicians and Pharmacy Assistants	4
Health & Social Services	Senior Sister / Charge Nurses	7
Health & Social Services	Social Worker	1
Health & Social Services	Speech & Language Therapy Assistant	1
Health & Social Services	Staff Midwives	27
Health & Social Services	Staff Nurses	434
Total		1,558