



Health and Social Security Scrutiny Panel

Zero Hours Contracts

THURSDAY, 5th NOVEMBER 2015

Panel:

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

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

Deputy T.A. McDonald of St. Saviour

Witnesses:

The Minister for Social Security

Assistant Minister for Social Security

Chief Officer, Social Security

Policy Director, Social Security

Policy Principal, Social Security

[11:20]

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

Minister, Assistant Minister and team, thank you for coming to join us. As you know, we are a bit formal for the purposes of recording this meeting. So this is a public hearing of the Health and Social Security Scrutiny Panel, which is investigating the use of zero hour contracts in the Island. For the purposes of introductions, I am Deputy Richard Renouf and I am Chairman of the panel.

The Deputy of St. Ouen:

Okay, and we are joined by Leah Stoodley, who is our Scrutiny Officer. Minister, we have been looking at some U.K. (United Kingdom) statistics on the use of zero hours contracts and they seem to vary between 3 to 6 per cent of the workforce. The recent Jersey Labour Market Survey suggests

that there are 6,450 jobs in Jersey filled on zero hour contracts, which is 11 per cent of all jobs and that percentage has increased over the last year. Do you accept those figures?

The Minister for Social Security:

Yes, I think ... sorry, I have got a very sore throat so I might have to give up halfway through. I think in our reports we did not have quite as many figures as we would have liked to answer the questions and subsequently we do have the figures, and it is quite a high percentage and a high number of people on zero hours contracts which we do not necessarily see as a negative situation at all. I think comparison with the U.K. is difficult from a lot of circumstances because the U.K. seemed to have attached rather a negative attitude to zero hours contracts. In the 2014 J.A.S.S. (Jersey Annual Social Survey) specifically said that 76 per cent of the people surveyed were either very satisfied or satisfied with them so I think we have to move away from the negativity side of it. They just work for a huge amount of people; flexibility, as we have said consistently, that it is far better to be in work, any work, than not working at all. The flexibility of the zero hours contracts, I think, allow that for people with young children, just returning to work, people who have not worked for a while, wanting to get back into the workforce. So we see it as quite a positive way of dealing with things, which I think everybody will accept, a sort of gradual increase in the economy; it is progressing. I think we are out of the dip that we were in and possibly a lot of these short-term zero hours contracts will become permanent contracts when employers have more faith in the future of the economy.

The Deputy of St. Ouen:

But nevertheless because it is a significant proportion of our working population do you believe it is important that the department should be actively monitoring the use of zero hours contracts?

The Minister for Social Security:

It is very difficult to monitor and I understand the reports that we did, because the numbers that we managed to obtain did not break it all down into nationality and gender and whatever but we monitor it as far as we can but we await your report.

The Deputy of St. Ouen:

Okay, and we will attempt to persist in our report, of course, but would you agree there are possible risks for the Jersey economy, for our society, in having a larger proportion of people who are on contracts without guaranteed work? Do you accept there might be risks?

The Minister for Social Security:

I think there are only risks where the employer may, and there is no evidence to show that, I do not know what your reports will show but we have not seen any huge evidence of misuse of these contracts, and generally speaking, from the point of view of the flexibility of work, as I have just said,

that people appreciate them. The sort of temping situation; moving from one job to another is what a lot of people want to do so the risk would only be if the employer were to misuse the facility, if you like, and I think that J.A.C.S. (Jersey Advisory and Conciliatory Service) was ... 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, either a short-term contract or whatever, and J.A.C.S. advised on that. I think Kate may be able to give you some more information on the J.A.C.S.'s advice.

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.

The Deputy of St. Ouen:

As you know, we have conducted a survey and we have had 264 responses from employees. Now, the greatest proportion of those had been employed for more than a year on a zero hours contract and yet most of the people who responded said that their employer never reviewed their contract with them. So that does seem to suggest that the J.A.C.S.'s guidelines are not being followed. Would you agree and what could be done?

The Minister for Social Security:

Well, the J.A.C.S.'s report ...

Policy Principal, Social Security:

The guide is quite recent.

The Minister for Social Security:

Yes, so it is difficult to get a response to that. We do not know because the J.A.C.S.'s report is ...

The Deputy of St. Ouen:

What steps could you, as a Minister, take to ensure that the J.A.C.S.'s guidelines are followed, are brought to people's attention in the first place?

The Minister for Social Security:

It has to be either the employer or the employee that would ask J.A.C.S. for advice, which they do. They have advised, I think, to date about 220 small businesses; of course, because 80 per cent of business in Jersey is small businesses, i.e. 5 employees or under. They have an outreach team which will go at the business's request, so it could be in the evening as opposed to during a working day, to advise them on the contracts and how to fill it in and take copies of contracts so that they can talk them through and advise them on this. So they are doing as much as they can. You cannot force it on people. They have to ask for the advice.

The Deputy of St. Ouen:

Of course, if it is just advice, indeed. Are there implications for your department though because I can say our survey indicated that the greater proportion of people on zero hours jobs took those jobs because there was no other alternative, there was not a permanent job available for them, so that is perhaps suggesting they did not have too much choice at the time they took the job. If that means they have an uncertain income does that not have implications for your department in that if their income falls short of what they are expecting, their needs, they might be visiting you for support?

The Minister for Social Security:

Yes, and of course the whole income support system fluctuates wildly which is why it is difficult to give an up-to-date report on any part of the 14 components of income support because it changes by the day. If someone, for instance, on a zero hours contract were earning £400 a week, for instance, and the work stopped and they came to Income Support, they may have been working in previous months on less than that if they had done less hours but the situation would be evaluated on their last working week's income so it does fluctuate, yes. So it does not make it very easy for the officers ...

Deputy G.P. Southern:

Where wages do markedly fluctuate from one week to the next between, let us say, 8 hours and 25 hours, that sort of range, which we have seen in our survey, should that person require or should be eligible for income support, what arrangements are in place at the moment? The previous Minister said that they could come in once every 5 weeks and adjust their payments. Is that still the practice or what is happening?

Chief Officer, Social Security:

It is probably easier to use an example, perhaps, just to explain what takes place. So the individual who maybe has just secured a zero hour contract, expects over the next few weeks to get 20 hours a week work, we would adjust their claim when they advise us, based upon what they believe is

going to happen, but if after 2 weeks there is no work, they will, of course, come back in and ask us to reassess their claim. One of the improvements we have made in the last 18 months or so is to enable those changes to take place very quickly.

[11:30]

Previously there would be a, perhaps, 10-day turnaround time at worst case scenario but now they can come in and we can do it straightaway for them in Income Support and that means we can change their claim to accommodate a change in circumstances. Clearly, where their incomes are down, it is very important that that change is made, whether they have got a few extra hours we, perhaps, would then look at it on a more rolling basis, every 5 weeks or so. It just depends upon the individual circumstances, how long they think they are going to be working for, what is the certainty of hours they might be getting but we will make adjustments. Clearly, we do not want people coming every day, they would not want to come in every day, but if somebody has a shortfall in income absolutely they should come in and we will adjust their claim. 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.

Deputy G.P. Southern:

If their hours have gone up you would ...

Chief Officer, Social Security:

If their hours have gone up ... if they advise us their hours have gone up, perhaps they are planning on working more hours in the next few weeks, we would also adjust their claim but we work within certain tolerances in terms of how important that is, in terms of adjusting their claim period. Where people come in very quickly is where they have no hours or their hours have been reduced because where they have a financial need and income support is there to help them in that safety net.

The Deputy of St. Ouen:

Are you saying they can come to you at the end of their first working week, and particularly at the beginning of a contract on a weekly basis, just to ...

Chief Officer, Social Security:

If their hours are changing, yes.

The Deputy of St. Ouen:

Yes, if their hours are changing.

Chief Officer, Social Security:

If they think their hours are going to change roughly then we would set their income support claim up based upon the number of hours they think they are going to be receiving and if that is indeed the case then that is absolutely fine. We might just check in every 5 weeks or so, ask them to come back every 5 weeks just to make sure. 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.

The Deputy of St. Ouen:

In terms of getting a payment to that person, because they have not got an income, or very little income, can you do it that week or do they have to wait for a month, for the roll of the computer or something?

Chief Officer, Social Security:

No. Income support is paid on a weekly basis and we would make the amendments to the person's claim. So it is paid in advance so they would already have been paid plenty in advance and we would then make an adjustment for the next claim but if somebody needed emergency money then we would also look at that as well. Clearly, if someone's hours had dropped off and there was no prospect of the hours going back up again we would be providing them support in terms of helping them get more further employment as well so there is a package of things, not just about the income support adjustment. We would also be trying to help them find more work. Even if they had a zero hour contract with the expected hours of 20 hours a week we would still be saying to them: "Perhaps we can help you get more hours or move towards a permanent post."

Deputy G.P. Southern:

If the person who had this zero hours contract said: "I cannot cope with this anymore. I cannot know from one week to the next what my wage is going to be and I want to quit it", would that be grounds for sanctions?

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? Why should they just fall back on the benefit system? Why should they forego their obligation to work? It is part of the income support

system. We would look at that. I am not saying it would be a sanction because it would depend upon the circumstances but it would be considered in the round, most certainly.

Deputy G.P. Southern:

Okay.

The Deputy of St. Ouen:

Minister, one of the possible difficulties we have come across is that somebody employed on a zero hours contract may work insufficient hours in certain weeks and months and 6 months down the line will not be eligible for sickness benefits because their contributions will have been insufficient to meet the threshold. It strikes me that the qualification/criteria for assessing these benefits was arrived at at a time when permanent fixed employment was the norm but now when so many people are working on these sort of zero hours or flexible contracts is there not that risk that their benefits, benefit entitlement, might be affected and what can we do about that because this would impact on them perhaps much later, 6 months afterwards?

The Minister for Social Security:

There is no legal requirement for an employer to pay sickness benefit of course as Graham will ...

Assistant Minister for Social Security:

For the record I am an employer and have not paid sickness to my staff over the years and it has not really been an issue. In fact we have had very little sickness since we introduced that measure but just for this point ...

The Deputy of St. Ouen:

Yes, but if somebody falls ill and receives a doctor's certificate they will receive the social security benefits.

Assistant Minister for Social Security:

Yes, indeed. So that is the point you are making, is it not?

The Deputy of St. Ouen:

Provided they have had sufficient earnings 6 months previously.

Deputy G.P. Southern:

Three months previously.

The Deputy of St. Ouen:

Three months previously?

Policy Director, Social Security:

In terms of the benefits, you are quite right that people have to make contributions 6 months beforehand to qualify and that rule will hit all sorts of people, not just people on zero hours contracts. 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.

Deputy G.P. Southern:

The next 2 years.

Policy Director, Social Security:

The next few years.

Deputy G.P. Southern:

Few years?

Policy Director, Social Security:

Yes. If you think about it pensions have got to be the key thing to sort out. However, working age benefits are also important and we will make sure that we schedule in time to do all the things we need to do.

Deputy G.P. Southern:

Just for clarity, the emphasis is on the pension scheme effectively. Is that where you are going to start?

Policy Director, Social Security:

The Social Security Fund is not viable in the medium term to pay pensions. Jersey, as a whole, needs to address that problem. That is its biggest problem, yes.

Deputy G.P. Southern:

Yes, sure.

Policy Director, Social Security:

Working age benefits is important and part of that might be a part of the solution to the pension problem. Some changes to the way that working age benefits are paid. Undoubtedly it is time to review some of those rather historic rules around how our benefit eligibility is determined. You are right, the rules are quite rigid at the minute but one of the things about the rigid rules is they are very fair, you know exactly where you are if it applied or not applied to you however there might be ways in which you could make them more flexible.

The Deputy of St. Ouen:

In terms of workplace pensions, Minister, it is obviously the Government's policy to encourage people to take out their own pensions, and we have seen that recently in comments that have been made by you. With such a large proportion of people on zero hours contracts it is unlikely that they would be in a position, or they cannot access an employer's pension, and it seems unlikely they would be in a position to take out their own pension plan. Now, is that of concern to you?

The Minister for Social Security:

This is not necessarily just pertinent to zero hours contracts. I mean look at G.P.s (general practitioners) for instance. They use their initial investment into a surgery, into a practice, as their retirement, their pension. So that when they retire they sell their original investment and that is their pension. So people have very different ways of approaching pensions and, yes, much encouragement needs to be done to get people to sort out their own pensions. They cannot just rely on the State.

The Deputy of St. Ouen:

Yes, but G.P.s, Minister, self-employed professional persons. Most people ...

The Minister for Social Security:

Well, politicians.

The Deputy of St. Ouen:

Indeed. Yes, but most people, I would suggest, on zero hour contracts are in a position where the business which employs them is really wanting their labour but not to pay the benefit such as pensions, and in relatively low paid work they are not able to access their own private pension scheme.

Policy Director, Social Security:

You made a point about your survey and suggested that many people who were on zero hours contracts did not have any choice as to the type of employment available to them and therefore, to a certain extent, what we are measuring is the health of the economy, yes? So, you are right, it would be really quite hard for a real zero hours contract, which is occasional work every now and then, probably a pension would not be at all appropriate. The person that you are talking about is now in employment, on a zero hours contact, as opposed to being not in employment, unemployed, not having any income at all. So that is, first of all, an improvement on their financial situation. Then being in that zero hours job is more likely to lead to a permanent position, which will likely lead to a workplace pension. So it is the continuum. So you have got to think about what the zero hours job is doing to that person. It is first of all helping our economy recover. It is also helping that person stay in the workplace, keep their skills up to date and move into a permanent job where they might be able to get a pension from that next job. So it is sometimes a stepping stone to something else as opposed to an end in itself.

The Deputy of St. Ouen:

It might be but the fact that the number of zero hours jobs is increasing would suggest that employers are choosing to put people on zero hours jobs as they are recruiting rather than on permanent contracts.

Policy Director, Social Security:

I think from the figures it is a lot of new jobs and new businesses are now being set up and that, again, is part of the ... one of the features of this improving economy, is that you are getting lots of entrepreneurs now setting up businesses. They are taking people on. They are not quite sure what demand, they have the staff so staff is zero hours contract. Hopefully, in a year or 2's time the economic situation is healthier and more stable and those jobs will convert into permanent fulltime jobs. We are seeing what Jersey looks like coming out of a long hard recession. Certainly we are not used to having it down here locally.

Deputy G.P. Southern:

So you are saying that the new jobs are with new businesses? Have you got the evidence for that anywhere? Where is that sourced from?

Chief Officer, Social Security:

I am not entirely sure what document that was from but the ...

Policy Director, Social Security:

Sorry, not hard evidence, just the general growth in new businesses is being accompanied by growth in.

Chief Officer, Social Security:

That is what we believe but I am not entirely sure where that advice has come from, I will be honest, off the top of my head but there has been a ... a point to clarify perhaps, if that is okay, in terms of the labour market report the question that is on the manpower return is, how many people ... is this person on a zero hour contract, have they worked in the last month? So June and December are both peak times, one would expect, for zero hour contracts and in June this year of course we had the Island Games so there would have been a lot more people being called in on zero hour contracts to work for the Island Games because it was a short term couple of weeks, glorious weather, lots of extra demand and that would have also, therefore, had an impact on the figures. How much of an impact I would not like to say but you would imagine that would have, therefore, been exactly the usage of zero hours contracts and giving people extra hours, extra work, needing more cover in to probably even cover people who were competing. So one of those sorts of events can have an impact in these numbers. They are not the average for 6 months.

The Minister for Social Security:

It has since Christmas time because people take off.

Deputy G.P. Southern:

But they are comparable from 1st June to the previous June or from 1st December to the previous December ...

Chief Officer, Social Security:

Subject to whether an event ...

Deputy G.P. Southern:

... and the overall trend is that the numbers of zero hours jobs is going up if you compare across the ... it is only a short timescale so far but, yes, they are.

Chief Officer, Social Security:

Yes.

Deputy G.P. Southern:

If you come across the document that you are referring to that says the new jobs are from new starts, we would be grateful to receive it.

Chief Officer, Social Security:

It may be that an opinion has been expressed rather than a document.

The Minister for Social Security:

Yes. I am sorry that is probably ...

Deputy G.P. Southern:

That is perhaps what I thought.

The Minister for Social Security:

Well, also from the point of view of H.A.W.A.G. (Housing and Work Advisory Group), we see quite a lot of applications going through the Population Office for licences for new businesses so there is that evidence, loosely termed, if you like.

Deputy G.P. Southern:

But it is not evidence if it is not ...

The Minister for Social Security:

It is not really done, no, but ...

The Deputy of St. Ouen:

If new businesses are being established and are taking on staff you would have a record of that in Social Security, would you not, because they are having to pay contributions for their staff?

Chief Officer, Social Security:

We would, yes, but we would not know if they were on zero hour contracts or if they were on fixed term contracts.

The Deputy of St. Ouen:

No, but you would know the rates of new businesses being registered.

Chief Officer, Social Security:

Yes, we would.

The Deputy of St. Ouen:

Yes, and with employees, yes, you would not know the nature of the contracts?

Deputy G.P. Southern:

In the past you used to use agency workers for particular projects. I think I have asked this before. I do not know if I have got an answer. Do you still have zero hours workers in the department, though agencies?

The Minister for Social Security:

We have agency staff, not direct zero hours contracts with staff ourselves but we have done ... I think it is about 40, Ian?

[11:45]

Chief Officer, Social Security:

Yes, we currently ... just to confirm what the Minister said, we have no employees at Social Security on zero hour contracts directly employed ourselves. We currently are engaging with agencies and have 40 colleagues working within the department; that fluctuates depending on what activities. Most of those staff are working on Back to Work programmes which, of course, by their very nature maybe, for example, we bring people in to help support currently JobsFest which is a 2-month long campaign of employment and also events. So we bring people in for that and then at the end of that we would release them back into the labour market but it means we can move very quickly, very agile to respond to employers' needs as well with a good example, great news for the Island that Barclays are recruiting 65 staff. We would bring in people to help us support and prepare unemployed individuals to apply for those roles and if it is something that suddenly occurred, we can respond very quickly and make that happen. Whereas previously we may have been limited in terms of our capacity to move our permanent resources around so we do use temporary staff and it has been a great success for the department over the last few years in being able to try new things, pilot ideas and make improvements and obviously reduce overall the number of unemployed people who are registered with the department.

The Minister for Social Security:

There has also been quite a few situations where the temporary agency staff has been taken on as full-time staff.

Chief Officer, Social Security:

Yes, but at the moment we have got, end of September, I think 237 permanent staff and about one in 4 of those were previously temporary in the department.

The Deputy of St. Ouen:

Is it only in the Back to Work team that you employ temporary staff? So where else?

Chief Officer, Social Security:

No, across the department but we are trying to change the organisation and create bandwidth so we can make things better for our customers. We also have about 18 staff on secondment. So permanent staff are doing jobs that are not their jobs, their actual assigned jobs, and so we often move people around and bring in temporary agency staff to help us provide bandwidth cover for the people who had perhaps been working on projects and so on. So we are quite agile in that sense. We also have our foundations programme as part of Back to Work and that foundations programme is there to help support people with long-term unemployment or particular barriers to work, who have not worked for quite a long time. We do use agency contracts for about 48 unemployed individuals to work and be paid at minimum wage while doing work for the community. Examples of that are at the St. Brelade's railway walk, Island Games, Fort Regent and so on. So while they are doing that they are working, they are getting paid more than they would be getting just on benefits, they are getting used to, again, the principles of work. They are also training at the same time and learning skills while on the job and being supervised and they still have time. So that is about 4 days' worth of activities and they get paid for 4 days and the fifth day they are looking for work, applying for jobs as well and it does vary because they might have interviews, they might have assessment centres to go on and so on, so it means the zero hour contract through the temporary agency, in that sense, allows us to flex their income and also the benefits at the same time.

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. I am very comfortable that those individuals have been moving from one role to the other, taking the opportunities as they arise, and they are not people who have been sat there doing the same job for long periods.

The Deputy of St. Ouen:

But does that not indicate the department has a need for a person to do project work on a permanent basis?

Chief Officer, Social Security:

The projects we are doing are potentially very different skillsets. We may recruit somebody who was perhaps unemployed, who had worked in a particular industry before. They can help us support people to move into that industry, like construction. It may be that is as far as that goes and they move back into the labour market. We may have somebody else with administrative skills who can help us on one project and then something else over here tidying up some data or perhaps something else, and then something over there and so on. If we had a role for that then it would be a more difficult process for us to be able to respond to the emerging project need by having a job description that would cover that. The flexibility and agility we have is really quite important.

Deputy G.P. Southern:

It certainly sounds like it gives you great scope for agility and flexibility and is a great advantage for the employer. However, are those jobs, while they are working, 9.00 a.m. to 5.00 p.m. jobs, 5 days a week, by and large?

Chief Officer, Social Security:

It does vary, but predominantly we are open 8.30 a.m. to 5.00 p.m. and the work is centred around those hours.

Deputy G.P. Southern:

You mentioned that they might be pulled in or might be recruited to do a particular project and you mentioned a project that lasted 2 months but flexibly they may move on to something else. Why then do you not use a temporary contract?

The Deputy of St. Ouen:

A temporary fixed-term contract, 2 or 3 months.

Deputy G.P. Southern:

A fixed-term contract, 2 or 3 months, whatever it is you want.

Chief Officer, Social Security:

We do not always know how long something will last.

Deputy G.P. Southern:

You just said: "We have got a project which we know lasts 2 months."

Chief Officer, Social Security:

It is faster for us from a business perspective and, as you can see, we have had a good success using agency staff. Many of them have taken the opportunity and then moved to become permanent employees of the department.

Deputy G.P. Southern:

Sure, but some have been there for 12 months.

Chief Officer, Social Security:

Yes, and are happy to do so. They can always apply for roles in the department if they wish. They have access to apply for jobs within the States, but they are happy continuing to work. Through the agency arrangements, the Government has, the States as the employer has with the agencies, is that there is virtually no notice period whatsoever. So if someone is looking for work and they can find employment, they can leave. We find most staff are quite comfortable to give us some notice when they move on, and that is absolutely fine.

The Deputy of St. Ouen:

Yes, but even if they are engaged on different projects which might have needed different skillsets, still you have found those skillsets in one person who has been engaged on a number of sequential projects. That seems to indicate to me that there is a role within Social Security for a project worker which has been filled by one person for more than 12 months. Does that not indicate that that is a permanent role that should be converted into a permanent contract?

The Minister for Social Security:

As the Chief Officer said, they can ask for that.

Deputy G.P. Southern:

But it is not your normal practice? Your normal practice is to keep those people on zero hours contracts through an agency. They do not get similar conditions to the other people in the department. They do not, for example, I presume, get into the pension scheme or into the sick scheme, do they or not?

Chief Officer, Social Security:

No.

Deputy G.P. Southern:

No, they do not. So their terms and conditions are worse than the people they are working alongside, and that suits you as an employer. It does not necessarily suit them as employees, surely.

Chief Officer, Social Security:

At the moment I think, for example, we are recruiting for a pensions officer. We have an established need within the Social Security Department for a pensions team and we are looking to replace somebody there. An established need; that is a permanent contract. Where we do not have established needs they are not permanent contracts, and we may be trying to not replace that particular role or we may be trying to do a piece of work that will allow us to move forward on a particular area. Our understanding of that would be either a fixed-term contract position or a permanent position. We are generally keen to recruit people on fixed-term contracts or on permanent staff because there are advantages for us as an employer as well as the individual in terms of retention and perhaps the calibre of people we can sometimes recruit. Likewise, we do find we can get very good people with extra skills beyond those that we perhaps needed through temporary agencies.

Deputy G.P. Southern:

Do you consider that these, I think you said, 11 people who have been employed by the agency and used by you for over a year ... is there a mutuality of obligation there, do you think? Have you read the J.A.C.S. guidelines as to when zero hours contracts are appropriate? It seems to me that your practice with those 11 people goes against the guidelines.

Policy Principal, Social Security:

I have not seen the contracts that the agency use with the individuals but I think it is quite likely that most of them are not zero-hour contracts. An agency often offers a fixed-term contract. If there is a defined period of time, the agency will offer a fixed job for a period of time. If they are zero-hour contracts, the agency is the employer and they will be providing the terms and conditions that they offer to their staff.

Chief Officer, Social Security:

The individual could easily work for us for 3 months with the agency and then they could carry on working for somebody else for 3 months with the agency.

Deputy G.P. Southern:

We are talking about 11 people who have been with you doing ...

Chief Officer, Social Security:

Various work.

Deputy G.P. Southern:

... various work for over 12 months and you do not think there is mutuality of obligation there?

Chief Officer, Social Security:

No.

Deputy G.P. Southern:

So if they did not turn up tomorrow ...

Policy Principal, Social Security:

There is between the agency and the employee.

Deputy G.P. Southern:

Of course there is.

Policy Director, Social Security:

We do not have the evidence today to say that those 11 people are employed on zero hours contracts. We do not know that. That is the point we have just made.

Policy Principal, Social Security:

There may well be mutuality of obligation between the agency and ...

Deputy G.P. Southern:

We said this is an inquiry into zero hours contracts and you did not prepare for it. Come on.

Policy Director, Social Security:

You asked us about agency workers. Kate is making the point that we do not have sight of the contracts that the agencies sign with the staff. Our contracts are with the agency, the contract provides us with services which happen to be in the form of somebody who comes to work for us, but if there was a zero hours contract the person who is working for the agency could tomorrow just not come to us and there is no comeback on that person because ...

Chief Officer, Social Security:

We would expect to get somebody else from the agency.

Deputy G.P. Southern:

I think you are sidestepping the issue; you are ignoring the issue. But never mind, I will return to it later.

Deputy T.A. McDonald:

Could I just ask, the use of the agency makes life a lot easier for you, as it does for the person. Obviously there is vetting involved, especially with a department like Social Security. Once the agency has supplied you with somebody, I am assuming or presuming that there is further vetting of those people before they are allowed to get on to the workforce.

Chief Officer, Social Security:

It does depend upon the role, the level of vetting that is required, of course, yes. But it does depend upon the role and not all those roles will be necessarily customer-facing. Some roles are customer-facing, in which case those same roles would apply for permanent, fixed-term contract or agency staff. We also, of course, would be training people before they had relevant customer contact, although some of the people you might recruit may have done very similar roles before and have very great skills so involve very minimal training to be able to deliver a good standard of service to our customers. Some colleagues will need more training in specifics, often around income support and social security benefits.

Deputy T.A. McDonald:

That is fine, thank you.

Deputy G.P. Southern:

Does the practice that you use of employing ... not employing, of using agency workers have anything to do with the headcount you are supposed to stick to? Do they go on the headcount? When we see the figures in your annual report, does that include the ...

Chief Officer, Social Security:

No, they do not go on the headcount. The department has, at the moment, an establishment of 260.5 F.T.E. (full-time equivalent). That is our headcount limit that I think the Deputy is referring to. We also have funds available for the engagement of project work. They could be consultants, could be temporary staff, to make things happen. If we experiment with a piloting role or are trying to do something to avoid replacing a post and we need some work to take place, then we also have the staff salary which we may not have used to recruit or employ a permanent staff, we can use that for something else that might help us in our overall drive to improve service and maintain a value for money service.

The Minister for Social Security:

Also, for instance, the legal advice that we have to have with the introduction of discrimination law. So we have got to have that flexibility to have consultants in some cases.

Deputy G.P. Southern:

They are not on zero hours contracts?

The Minister for Social Security:

No, that is consultants.

Deputy G.P. Southern:

Do you not think it is appropriate that after 12 months using an agency worker you sit down with them and say: "Let us review your contract"? Should you not ...

Chief Officer, Social Security:

We are, of course, always considering the risk to achieve our business objectives, the business plan, to deliver the promises that have been made on behalf of the department, and we will look at the resources we have, the opportunities we have, and whether we can move permanent staff into secondments, whether we can invest in the people we have who are already employees of the organisation to give them greater opportunity to do even more for the organisation.

[12:00]

In that round we will also consider what resources we have, engage with temporary agency staff, how we might be able to use them and how long we need them for. We do not recruit temporary agency staff thinking they will be here in 12 months' time.

Deputy G.P. Southern:

Did you review these 11 people who have been with you for 12 months?

Chief Officer, Social Security:

I can confirm we have, yes. We have considered throughout the period. We would not have recruited any of them thinking they will still be here in 12 months. So, every time that the piece of work is nearing completion or it is extended or it is not extended, we will be considering about what next before we ...

Deputy G.P. Southern:

What next? Let us make this person actually employed by us in the additional positions.

Chief Officer, Social Security:

So, we have one in 4 people in the organisation who has previously worked as a temporary member of staff within Social Security, engaged through an agency. That is one in 4, so that is quite good. That is in excess of 60 people currently working in the department, being employed by an agency, engaged with the department, have ended up either applying for the role they may have been doing or have moved into a different role within the department when the permanent vacancies have come up. I think that is quite a good message to say there is opportunity for people who come and work on a short-term basis for us either to continue working through an agency or to get a permanent post.

Deputy G.P. Southern:

I hear what you are saying.

The Deputy of St. Ouen:

Minister, I would like to talk about holiday pay for zero-hour contract workers. A large number of zero hour contract employees who responded to our survey say that they are not being paid holiday pay by their employer. They are due holiday pay; it is an entitlement to them.

The Minister for Social Security:

Two weeks minimum.

The Deputy of St. Ouen:

Two weeks minimum, that is right. Is this something you are aware of? What could be done to enforce the law here?

The Minister for Social Security:

I do not know what could be done to enforce the law on it but businesses are expected to provide 2 weeks holiday pay and also to pay the employee 4 per cent above the minimum wage is the expectation. I am not sure about enforcement of it. Kate?

Policy Principal, Social Security:

J.A.C.S. have not indicated to us any particular problem with employers not paying holiday pay. Obviously it is rolled up that they pay with their zero hours.

Deputy G.P. Southern:

Have they asked? Have J.A.C.S. asked?

Policy Principal, Social Security:

You would expect people to go to them if they have got a problem and they want to find out what they can do about it. J.A.C.S. do not proactively go out to ask employees if they are getting what they are entitled to.

Deputy G.P. Southern:

No, nobody does, do they? Neither your officers nor J.A.C.S. inspect, apart from: "Are you paying the minimum wage?" and you can go in and have a look at the books and satisfy yourself that the minimum wage is being paid. But apart from that there is no officer, there is no enforcement, there is no monitoring taking place about terms and conditions, is there?

Policy Principal, Social Security:

Compliance inspectors, if they were inspecting contracts and there was a zero hours contract, they would see if the rolled-up holiday pay was being included or not, and if it was not then they would advise people that they need to pay that.

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.

Deputy G.P. Southern:

One of the things that we found in our survey is that many employees, although they are on zero hours contracts or have been on zero hours contracts, are not very aware of, for example, what constitutes good practice and what their rights are. Is there scope, do you think, for exposing the guidelines for zero-hour contracts produced by that more widely? There seems to be evidence that says that you are not getting to the employees to inform them properly of what they might be asking you about saying: "Hang on, this is not happening."

The Minister for Social Security:

Well J.A.C.S. have produced the guidelines, as we said, fairly recently but they have advertised the fact that they have produced the guidelines. There was an outreach person, as I mentioned earlier,

who would go and see employees and employers, and a website and so I am not quite sure how much more one can put the information out there.

Deputy G.P. Southern:

If I was to say to you that it appears from the evidence that we are gathering that employers are paying attention and are now reasonably well informed but the employees are not. Can you suggest ways in which you would improve that because you are relying on people making complaints when things are going wrong and if they are not aware of what is going wrong then they are not going to make complaints? It is a little circle, is it not?

Policy Principal, Social Security:

I mean it is unfortunate, obviously there have been quite a few reports in the media recently that employees working under these sorts of contracts are not entitled to holiday pay particularly, so that also does not help because people will believe that and not realise that they are entitled to holiday pay.

Deputy G.P. Southern:

There is misinformation going around now, I missed that.

Policy Principal, Social Security:

Yes.

Deputy G.P. Southern:

Was it in the press?

Policy Principal, Social Security:

The *J.E.P. (Jersey Evening Post)* and Channel news in the last couple of months.

The Deputy of St. Ouen:

There has been quite a bit in the *J.E.P.*

Deputy G.P. Southern:

No comment, they make certain mistakes editing.

The Deputy of St. Ouen:

Minister, 45 of the employees who responded to our survey said that they are not permitted to work for any other employer while they are on zero hours contracts. What is your view on that sort of prohibition?

The Minister for Social Security:

We do not have exclusivity clauses in Jersey, it is a U.K. thing. There is, I think, only one company that maintains that but generally speaking we do not have them.

The Deputy of St. Ouen:

How do we know that? How do we know that, Minister?

Policy and Strategy Director, Social Security:

Your surveys are asking questions that are new questions, so we did ask. It was put in the J.A.S.S. survey and did collect a small positive response.

Policy Principal, Social Security:

It was a similar percentage. I think it was 2 per cent or 6 per cent said that it was a significant problem for them.

Policy and Strategy Director, Social Security:

Yes.

The Deputy of St. Ouen:

Yes, I think your survey said 2 per cent. It was a problem for 45 of our respondents, which is 17 per cent of the survey number. That suggests there might well be a problem out there. Of course, in the U.K. now they have legislated against this and should we be doing the same, Minister?

The Minister for Social Security:

I think it is very difficult to say, we will all sort of wait for your report really and if that is one of the recommendations then undoubtedly we will have to look into it. You cannot just do legislation on a survey, there has to be significant evidence to provide that there is a problem in order to implement legislation, which, as you will very well know, is a complicated move.

The Deputy of St. Ouen:

But do you have a view on whether a person should be prevented from working for another employer while on a zero hours contract?

The Minister for Social Security:

Do I have a view on it? I do not think you should. I think people should be able to have as many jobs as they wish to undertake.

The Deputy of St. Ouen:

It does seem to undermine the choice and flexibility that zero hours contracts are meant to provide, would you agree?

The Minister for Social Security:

If there was exclusivity clause. I would not agree that there should be exclusivity.

The Deputy of St. Ouen:

Okay, thank you.

Policy and Strategy Director, Social Security:

Can we just make the point about the narrow concept of a zero hours contract? You could equally have a fixed-term contract that had very similar sort of hours a week in it, which would be 5 hours a week on it or something. If that is an exclusive contract that would also be some element that kind of bans it, so you have to think about the broader picture. The legislation to remedy that might be quite difficult to achieve the thing you are trying to stop happening. We are not sure the U.K. solution is perhaps going to be particularly effective and there are quite easy ways around it.

Policy Principal, Social Security:

The U.K. has not got there yet, they have banned exclusivity clauses but you could simply create a contract for one hour a year and then the ban on exclusivity does not apply. They need to bring in regulations around that but they are clearly having some difficulty because they brought in the initial ban on exclusivity without the surrounding protection for other types of contracts. It is not simple.

The Deputy of St. Ouen:

I can see from her reading it is not simple but at least they have put down the marker. I am pleased to hear the Minister does not approve of that practice as a rule. But for the employers that you engage with in the work zone, do you check that they do not apply an exclusivity clause within Back to Work?

Chief Officer Social Security:

Within Back to Work we are very keen for people to take any role and we do not check those contracts for people; that is their responsibility between themselves and the employer. We are keen though to help people increase the number of hours they work to get paid more money and move off benefits ultimately. That is the aim in terms of financial independence that we are working to.

The Deputy of St. Ouen:

But I mean there does seem to be a general agreement in the U.K. Parliament and from the Chamber of Commerce here and professional bodies that exclusivity clauses are not the right thing to do. It stultifies choice and flexibility. But is there a risk that some of the employers who are engaging with you might be including this in your contracts? Would it not be right to check that they are not doing so?

Chief Officer Social Security:

Anyone on income support, somebody without younger children, will be expected to work 35 hours a week and I have no evidence to show that has been a barrier for people working 35 hours a week from an income support and Back to Work perspective. That is not something that we have experienced. To extrapolate the example, you have said that we have somebody who is working who has received money from a zero hours contract, then gets paid no money at all for a zero-hour contract but cannot work anywhere else and that is the example you are saying.

The Deputy of St. Ouen:

Yes, yes.

Assistant Minister for Social Security:

Then that will be clearly an issue that will affect that individual working 35 hours a week. We have had no evidence that that has been the case.

The Deputy of St. Ouen:

Okay, thank you.

Deputy G.P. Southern:

Okay, but then you do not check?

Chief Officer for Social Security:

No, but the individual will have been asked to work 35 hours a week and will say: "I cannot because I have this contract" and we have not had that example ...

Deputy G.P. Southern:

But you just said earlier you do not check whether there is an exclusivity clause ...

Chief Officer Social Security:

No, we do not.

Deputy G.P. Southern:

... on a zero-hours job that you are promoting somebody to take and be sanctioned if they leave it.

Chief Officer Social Security:

But if somebody was in that situation then they would be preventing them working their obliged 35 hours a week within income support and that will be an issue that would be identified but I have no evidence to say that has happened.

Policy Principal, Social Security:

Can I add, J.A.C.S. are not receiving complaints about exclusivity clauses and the Chamber of Commerce, while they have been reported as being against exclusivity, are not aware of any employers using them, certainly among their own membership. While in principle they might be against it they are not aware of anybody using them in practice.

Deputy G.P. Southern:

There are significant numbers on a survey of employees that think they are on exclusivity clauses and that they are not allowed to take anything else but we will come to that. We will publish and explore that.

The Deputy of St. Ouen:

Yes, I think that is right. I think it is probably the difficulties about the power imbalance between employers and employees that the employees believe they are not allowed to work for anyone else because of probably the attitude their employer uses, whereas the employer might say ... and I think the survey we have done with the employers suggests that very few would use that exclusivity clause. But, nonetheless, it comes across in the way that they treat their employees and to come back again, what better education can we put out there so that people on zero-hour contracts know that they are free to move? Any ideas, Minister, on how we can better ...?

The Minister for Social Security:

This is, again, not sort of passing the responsibility but this is largely what J.A.C.S. do, this is the advice they give to employers and employees, that is what they are there to do. As I say, their guidelines have only recently been published, so it is probably too early to say why people are not receiving the message.

Policy Principal, Social Security:

J.A.C.S. will be keen to do anything they can ...

The Minister for Social Security:

Absolutely.

Policy Principal, Social Security:

... to help get the information out there. We set up the outreach service specifically to deal with the particular issues like this that was raised and small employers not knowing what they were meant to be doing. J.A.C.S. reacted very quickly and set that scheme up ...

The Deputy of St. Ouen:

Yes, and we have spoken to J.A.C.S. and they have been helpful and clearly they are keen to help the employees.

Deputy T.A. McDonald:

Just looking over that and you were saying outreach, that is where J.A.C.S. goes with new employers and then obviously it is times in the year and everything else but they try and get back to these different employers at various times of the year. That is about the only vetting in the true sense that is done with ...

Policy and Strategy Director, Social Security:

There are 2 different things, right. J.A.C.S. is an advice service.

Deputy T.A. McDonald:

Yes.

Policy and Strategy Director, Social Security:

Yes, so they are independent and so the response that they had to the perceived issues you are pointing out was to employ somebody who would be able to go and ask in the evenings to employers. This is a service for the employer and the employers are asking for it.

[12:15]

It is not a statutory thing, it is a help and advice thing and they will sit down with the employer, wherever is convenient to the employer and they will have a template contract, it is very simple stuff, that the employer can use to help promote good practice. What we do through our inspectors is we do make statutory visits to employers. That is what we are talking about, new employers will get a visit to make sure they understand the rules around social security contributions and employment law, they set their contracts up correctly. This is slightly different, there are 2 different things happening. The inspectors go out to new businesses and then they would also target a particular

sector or there will be particular reasons why they do it at least 2 times a year. The outreach people, it is basically you can ask for help and just turn up and somebody will come around and come and talk to you, they are just different things.

The Deputy of St. Ouen:

Minister, some jurisdictions have introduced legislation or are thinking of introducing legislation to require employers to pay compensation when shifts given to their zero-hour contract workers are cancelled at short notice and the employee might have incurred childcare costs or travel costs. Has any consideration been given to those sort of difficulties in Jersey and what is your view?

The Minister for Social Security:

I am not aware there is any legislation around these, is there, Kate, do you know?

The Deputy of St. Ouen:

There is none in Jersey I think, yes, but ...

Policy Principal, Social Security:

No, I do not think the U.K. is planning anything at the moment.

The Deputy of St. Ouen:

In the Republic of Ireland they have recently introduced that rule and I think ...

The Minister for Social Security:

What is it for?

The Deputy of St. Ouen:

For employers to provide compensation for late cancellation of a shift in recognition that the employee has incurred time and perhaps expense and is thus not available to work elsewhere.

The Minister for Social Security:

Again, it is a sort of I think unreasonable comparison with a country like Ireland or England, whereas somebody might have to travel miles to get to prospective employment and then be told that there is not the work for them to do. It is not quite the same situation over here. I am not aware of any situation where that has happened.

Deputy G.P. Southern:

Can I take you on to just one example of zero hours contracts used for care workers who do not have a central base that they work from, who will visit people in their homes? I have seen rosters

where someone would be working from 7 o'clock in the morning until 10 o'clock at night and, effectively, paid for 8 hours. Is there anything in that practice that you think your department should be aware of and perhaps protecting employees from because you are 17 hours or whatever away from home or committed to work but travelling time, a little break here, and then you are on to the next care home? Is there anything we can do about that because it just seemed to me to be eminently bad practice and yet one that will increasingly occur as we outsource our home care?

The Minister for Social Security:

There is a big difference because a lot of care agencies are U.K.-based and so the care workers are U.K.-based, come over here for 6 weeks and then swap with another care worker.

Deputy G.P. Southern:

I was not aware of that.

The Minister for Social Security:

I would not know how you would be able to ...

Deputy G.P. Southern:

It sounds awful.

The Minister for Social Security:

Sorry?

Deputy G.P. Southern:

It sounds awful, you have somebody in your home and they swap after 6 weeks.

The Deputy of St. Ouen:

Those tend to be the live-in carers but the peripatetic carers who visit somebody in St. Ouen, the first duty of the morning and then they have to travel down to St. Brelade, they are paid for the time they spend in each home but not the journey time in between. They have tended to be local people working for local agencies, I suggest. Have you a view on that sort of practice?

The Minister for Social Security:

It is very difficult to monitor. How would we be able to ... unless the employee, the care worker, said to us that they were being exploited, I am not sure how we would be able to monitor those hours and timings.

Policy and Strategy Director, Social Security:

Again, it is an issue in the U.K. and some of the financial constraints on local councils in the U.K. are really quite severe and there has been downward pressure on the amount of money that is available for social care costs through councils. The Long-Term Care Scheme in Jersey has really kind of taken that issue out of the way and said: "We are ring-fencing money for long-term care and we will make sure that there are decent hourly rates available to support people for care needs at home." While that is not a direct answer to your question about the care workers, it is a kind of reassurance that there is money available in the system in Jersey to make sure that agencies do get paid sufficient to make sure they can pay their workers sufficient. If there were individual cases and obviously the care agencies ... at the minute the care agencies are approved through the Health and Social Services Department in advance, if the regulation of care law should come in probably in a year or so's time, and that would, again, give you some regulatory kind of relationship with the care agencies.

Deputy G.P. Southern:

Not according to the Minister for Health and Social Services, who steadfastly refuses to say that the terms and conditions for care workers is none of his business.

The Deputy of St. Ouen:

But that is a different department.

Policy and Strategy Director, Social Security:

I go back to the Long-Term Care Scheme, it is obviously funded by the decision of the States and so there is the ability of politicians to influence the level of money that goes into that part of the economy.

The Deputy of St. Ouen:

Okay. Minister, I think we have reached the end of our time, so thank you very much to you and to your team and the Assistant Minister for assisting us.

The Minister for Social Security:

Thank you.

The Deputy of St. Ouen:

We have had some interesting evidence and we are going to be working to put together our report, which we hope you will receive and consider.

The Minister for Social Security:

Have you any idea of timeframe?

Deputy T.A. McDonald:

Less than 2 years. [Laughter]

The Deputy of St. Ouen:

Within years.

The Minister for Social Security:

Within years.

The Deputy of St. Ouen:

Not at the moment, Minister, no, we would probably raise expectations.

The Minister for Social Security:

No, thank you for ...

The Deputy of St. Ouen:

Thank you for coming and joining us. This is the end of the public hearing.

[12:22]