



Health and Social Security Scrutiny Panel

Zero Hours Contract

FRIDAY, 16th OCTOBER 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:

Ms. N. Le Dain-Cyples (Chartered Institute of Personnel and Development Policy Committee)

Ms. C. Riddett (Chartered Institute of Personnel and Development Policy Committee)

Ms. C. Reynard (Chartered Institute of Personnel and Development Policy Committee)

[13:30]

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

Was it Natasha who sat in yesterday?

Ms. N. Le Dain-Cyples:

Yes.

The Deputy of St. Ouen:

You may have given your colleagues an idea of how terrible we might be.

Ms. N. Le Dain-Cyples:

Not at all.

The Deputy of St. Ouen:

We are grateful. So just to explain, this is a recorded meeting because it is part of our evidence-taking of a review we are doing into zero hours contracts. Because there is that formality about recording it I will just, in a minute, proceed by announcing ourselves and then if I could pass over to you and ask you to say who you are and who you represent and then we will ask you questions, and we would like you to feel as relaxed as you can be. Just answer and tell us all that you feel is relevant. I am Deputy Richard Renouf and I am Chairman of the Health and Social Security Scrutiny Panel.

The Deputy of St. Ouen:

Thank you very much. Can you begin generally by telling us about C.I.P.D. and its aims and what it does in Jersey?

Ms. N. Le Dain-Cyples:

Absolutely. I have prepared a little something. So the Chartered Institute of Personnel and Development is a leading human resources standard in global best practice. Our aim is to drive sustained organisation performance through H.R. (human resources), shaping thinking, meeting practice and building H.R. capability. Our mission is to play an integral role in the development and promotion of H.R. management and best practice on the Island and to positively influence the development of local employment, legislation and employment best practices. So we act as H.R. ambassadors for all Jersey sectors with approximately membership of about 300-plus H.R. professionals. In fact it is not just H.R. professionals. We have people who are on the C.I.P.D. as members who are in the legal profession and various other professions and we represent, as a whole, a significant share of the Island's employees and employers. Anything else to add, ladies?

Ms. C. Reynard:

No.

Ms. C. Riddett:

No, that was good.

Deputy G.P. Southern:

Are you largely in the business sector, in the finance sector?

Ms. N. Le Dain-Cyples:

All sectors, to be honest with you. I mean our day jobs are in hospitality, in the I.T. (information technology) sector, finance sector but we have H.R. ... we have C.I.P.D. members across everything, from agricultural, construction.

Deputy G.P. Southern:

Predominantly largish companies that have H.R. people?

Ms. N. Le Dain-Cyples:

All sizes, to be honest with you. It could be, as I call it, your “Mom and Pop” shop with maybe less than 5 employees and they have external H.R. advisers, up to the 300-plus people in the larger businesses, as your banks, financial institutions.

The Deputy of St. Ouen:

If it is that small business that you mentioned with 5 employees with advisers, how would they be represented on the C.I.P.D.?

Ms. N. Le Dain-Cyples:

They would either have someone who may be a C.I.P.D. member themselves or they could look to a C.I.P.D. member who is within an organisation that would advise. I worked for a local company that advise a lot of employers on the Island about H.R. best practice and all the people that worked there were C.I.P.D. employees. There is also the C.I.P.D. meetings where people can, via social media, ask us questions. We are very active in social media where we go out not just to our membership but to the wider local community saying: “Do you want to participate? We want to hear your voice.”

Deputy T.A. McDonald:

So you encapsulate a lot of people really.

Ms. N. Le Dain-Cyples:

We try our best.

Deputy G.P. Southern:

The number of your members is what?

Ms. N. Le Dain-Cyples:

In Jersey I believe it is 326.

Ms. C. Reynard:

Yes.

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-Cyples:

There is a ... the last time that the C.I.P.D. as a whole ... worldwide there is about 140,000 members, 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 ... sorry, give me a moment, I will just pop into what they did say at the end of it. Is that they encourage flexibility for the employer and the employee as long as they are used responsibly. That was one of their major outcomes along with their recommendations.

Deputy G.P. Southern:

And “responsibly”, would you like to give us a version of what responsible use is?

Ms. N. Le Dain-Cyples:

Making sure that they are exercised with reasonable judgment, that they are fair, that they are not abused. I mean anything generally is open to abuse. It only takes one person to or one environment, whether it is employer or employee, to abuse that trust relationship. Because you are on a contract and the underlying theme is contract law when you are dealing with anything with zero hours, so there is that trust by both the employee and the employer. So if they are used responsibly it means that you are acting in good faith. So as an employee towards your employer by saying: “Yes, I will be available if I can be” as an employer by calling up those people when you do have work for them and making sure that you are not abusing those contracts by saying: “Well, I am not allowing you to not work elsewhere. I am not allowing you to do this X, Y, Z.” So making sure it is fair for both the employer and the employee.

The Deputy of St. Ouen:

Did that report identify concerns about the misuse of zero hours contracts?

Ms. N. Le Dain-Cyples:

Of course. It would be remiss if it did not identify areas where there may be some concerns that are going on. What it tried to get across more so was where it is beneficial, where there might be some areas for looking further ... to look to further by A.C.A.S. (Advisory, Conciliation and Arbitration Service) in the U.K. (United Kingdom). I guess we would be looking at J.A.C.S. (Jersey Advisory Conciliation Service) here. But the general position was that about approximately 70-plus per cent of people who were on the zero hours contracts were quite happy with the way they were.

The Deputy of St. Ouen:

We watch with interest. Did it make any recommendations as to how the situation might be improved in cases where it was not working so well?

Ms. N. Le Dain-Cyples:

Perhaps. I think it took more of a ... because it was quite a comprehensive report I think the recommendations they set them out for employers and there was - just at a glance - there is probably about a dozen here. I could just highlight a couple of bits ...

The Deputy of St. Ouen:

Which are the main ones?

Ms. N. Le Dain-Cyples:

I highlighted them all, to be fair. **[Laughter]** I think they are, you know: They generally use with them where flexibility inherent in these types of arrangements suits the organisation and the individual. Consider whether it is appropriate or if they have any alternative types of contracts that they might be offering, depending on the situation." Yesterday there was a discussion over fixed-term contracts and permanent contracts. So whether that is appropriate for what the work is on offer, the duration and maybe the skill sets. I think it is a wider consideration of what you need at that time.

Deputy G.P. Southern:

Or, for example, variable hours or minimum hours contract, so there is a certain core and you may have extra.

Ms. N. Le Dain-Cyples:

Sure, I mean my experience with anything that says that there are hours available has been more of an annualised hours contract, which is something that I was very familiar with, with the education and people working on term time, et cetera. So I mean the variable hours, my interpretation and my opinion, is that it is a variable hours contract where there may be zero and there may be some. While I know there was some debate yesterday about the interpretation ...

Deputy G.P. Southern:

Are you saying that the variable hours effectively may well be zero hours?

Ms. N. Le Dain-Cyples:

Absolutely. I think they are one and the same. I think the terminology has probably evolved a little bit that we have just started referring to them as zero hours contracts, and that is a widely

accepted term. "The zero hours work lends itself to situations where the workload is irregular and there is not a constant need for staff" and we find that in a lot of industries. A little bit later we will go into some of the trends that we have noticed at the C.I.P.D. Definitely recommending that everyone receives a written copy of their terms and conditions. That they are actually aware of what they say and that it is in their own language, where necessary. Now that ownership will definitely be on the employer. It is a cost to the employer, we recognise that it is a cost to the employer, but making sure that it is professionally translated because one word in the contract can mean different things. I think we all have experience of that. "The contracts or the employment status of those engaged on the zero hours contracts is reviewed at least annually. Employers provide training guidance for line managers", that they are managing those zero hours workers. I guess in some respects that could extend to making sure that they are treated fairly. As an employee I have heard stories sometimes where people who run zero hours are not treated the same. You know, if there is a birthday party in the office: "Oh well, they are zero hours." But I do not find that happens a lot in Jersey. I think people, because we are in a smaller environment, they always say: "You are in the office, you are obviously working here, we are all the same objectives." So bringing it very much into that type of proverbial hug, I guess, for lack of a better term.

Deputy G.P. Southern:

Can I just interrupt there? Beyond whether they are getting invited to a birthday celebration, it is other things like eligibility for sick pay or are they in the pension scheme? You could be working alongside people who are permanently employed doing similar jobs, the same jobs, and not have some of the fringe benefits. So it is not just the birthday party, is it?

Ms. N. Le Dain-Cyples:

Sure. I mean it is up to the employer if they want to extend those types of terms to a zero hours employee. The general experiences that if they are offering zero hours that is probably what they have available at that time. The recession was difficult on everyone, depending on how hard you were hit. I find that there is more financial services taking on people in that sort of way, on zero hours, because they are saying: "Well, we have the work but are we going to spend right now? Let us see if that work is going to be consistent before we start spending a lot more" because as each type of benefit or there is more added into what an employer has to do for the employees with maternity, redundancy and the other employment rights that go along with it, while fair, there are costs, especially for the smaller guys.

Ms. C. Reynard:

It is not just the smaller guys who employ. A huge amount at Seymour Hotels, it is a huge cost for us. For us for zero hours it is really for functions whereas if we have got to do it at Watersplash we

might need 60 people, normally we only employ 19 there. So again do you say no to business because you do not have the staff, or do you take them on zero hours? For the first time ever this year we have had an issue at Watersplash, if I can put it that way, of ... we have had seasonal contracts but the staff have not wanted them. The local staff have said: "No, we do not want them because we want to go off to Glastonbury, we want to go and do something" and we were like ... never heard of that. "You do not want it?" Because for us you have to train more people. You have to interview more people. We have got to get more uniforms. It is more for the payroll, so in fact it adds to us and that is the first time we have ever had that. That is because we are finding people want flexibility.

The Deputy of St. Ouen:

That is interesting. I can understand a need to meet the peaks and troughs of establishment like the Watersplash but in a case where in a professional office work might be picking up but they choose to employ somebody on zero hours contracts rather than on a permanent basis, but they might be there from 9.00 a.m. to 5.00 p.m. 5 days a week and then it will just be continuing. Is that the right use of the zero hours contract?

Ms. N. Le Dain-Cyples:

That is when your H.R. adviser or department or whomever would be responsible for that would look at it saying: "Is this consistent? What is the duration? Is the future need going to be a permanent position?" You would, you would transfer that individual on to a permanent contract if they wanted that. Then along with the permanent contract comes the fringe benefits. So it is something that you can say: "I am guaranteed that the work is there, here it is. Do you want this type of work?" It is up to the employee to say: "Actually I kind of like the flexibility and my hours."

The Deputy of St. Ouen:

But from the start the workers have identified as being there to meet a peak in demand. It is an office and you need a new secretary, who will take this person on but he or she is on a different contract to the secretary might be next to them.

Ms. N. Le Dain-Cyples:

That is more ... I appreciate what you are saying. I do think that employers, depending on their needs, they would be educated on whether they are going to take on a permanent person. I do not think that there is - and solely again my opinion - that someone is going to say: "Well, I need a secretary, I will put them on zero hours because it is better for me because it is low cost." You know that when you are hiring somebody that if you want to have that person engaged in your business, you want the commitment from them back and forth, you will be providing them with the

same type of contract to have that longevity and that employer/employee trust relationship. I think zero hours has its uses.

[13:45]

The Deputy of St. Ouen:

But do you know what is actually happening in the offices? Some people tell us that there are people engaged in professional offices on zero hours contracts for what seems to be normal sort of jobs, there for the long term.

Ms. N. Le Dain-Cyples:

There have been, in my personal experience, when F.A.T.C.A (Foreign Account Tax Compliance Act) started impacting the financial services industry there was a rise in bringing on zero hours people because we needed the specialist skills and a pool of specialist skills. There was such a ramp up, especially before the U.S. (United States) deadline for reporting, so you would have a few more individuals in the financial-type environment of a certain level, but they were skilled and capable individuals and they wanted that ad hoc work going: "That is great, there is my hard end date as well" or: "This is when I know that the work is going to drop off to maybe nothing or a few hours a week or a few every week" but they were quite happy with that because they are off to Glastonbury or they went back and ... or they went on to another job with a few more hours here and there. So it has that flexibility. But there are reasons. I mean, like you said, the event happening with Condor Ferries, you are particularly ...

Ms. C. Reynard:

Yes, for us when Condor Ferries did not run unfortunately we were hit very hard. People come back to hotels and that is when we needed to call for extra people in. So it does affect us that way.

Deputy T.A. McDonald:

I understand. But it is obviously extremely beneficial that you have got people and you can call them.

Ms. C. Reynard:

Absolutely.

Deputy T.A. McDonald:

So I would imagine it would be very, very difficult to run a business like yours without obviously having so many people.

Deputy G.P. Southern:

Just thinking of ... I posed anecdotally that people being taken on as an agency worker on a zero hours contract the employer is not the company they are working for but the agency and remaining on zero hours for significant amounts of time although still in the same job, in the same place. Have you come across this?

Ms. N. Le Dain-Cyples:

Absolutely I believe that occurs. But you pay a premium and so that is when a company publish a way out, whether it keeps ... it wants to pay the premium for an agency to be the ultimate employer and have that so they do not have any type of relationship except the payment model with the agency and paying a premium for that individual to be in the workplace or they say: "This person is working out well, let us offer them a permanent contract." That is normally the use of agency workers, in my experience at least, and why you probably go out to test because there are such specialist skills sometimes that you require in a business, whether it is someone with the customer care skills to enter and be your ambassador at your reception of your hotel, or restaurant, to the people who are doing specialist maybe related jobs but you want to go out and make sure they are the right people sometime and agencies are sometimes a very convenient way to do your interviewing, especially if you do not have in-house resource or capability.

The Deputy of St. Ouen:

People who are engaged by an agency in that way, are they suffering a drop in their salary by being an agency worker?

Ms. N. Le Dain-Cyples:

That is probably a question more so for the agencies, to be honest with you. I know that as H.R. professionals we have preferred supplier lists of all of us and you negotiate the best rates you possibly can with the agencies. What they are ultimately paying their employees is obviously their relationship between themselves and their terms and conditions but ... we pay a premium.

The Deputy of St. Ouen:

Yes, you pay a premium because the agency needs to make something from it too.

Ms. N. Le Dain-Cyples:

Absolutely.

The Deputy of St. Ouen:

There are too many of these jobs being done through agency workers than people looking for jobs professionally in an office, they are not there for them to seek out because those posts are being filled by agencies.

Ms. N. Le Dain-Cyples:

It is the employer's appetite. Again, do they want to have that type of agency relationship where they cannot ... if you are an H.R. person you will not be the one disciplining that individual. You will not be the one calling them out and saying: "Listen, why were you late today?" because you do not have that employer/employee relationship. They are a contractor per se. So they have different rights associated outside of your workplace, so you do not have that relationship with them. Your appetite is normally to have a cohesive workplace where everyone is engaged and working towards the same objective. In my experience it has been bringing in agency workers where there is an absolute need.

Deputy T.A. McDonald:

Can I just ask a question, which I have not asked before, it has only come to me now. I presume you depend entirely on the agency for your vetting of these people, be it for confidentiality or be it for whatever, various skills and so on.

Ms. N. Le Dain-Cyples:

It depends on the relationship again and the type of contractual arrangement you have with the agency. You could go down to the very ... you interview them entirely, you do a background check, you do Criminal Records Bureau checks, and psychometrics and it depends how much you pay for them to do your vetting for you. But you would make that dotted line assumption that anyone they bring to the business is appropriate.

Deputy T.A. McDonald:

They would bring to you in, shall we say finance, would have been vetted for various skills.

Ms. N. Le Dain-Cyples:

Absolutely. You design a role specification or a job description, you give it to them, and they would marry that up with an individual matching that.

The Deputy of St. Ouen:

You have been going through lists of recommendations that the report made. Are there any others you would like to ...

Deputy G.P. Southern:

Can I just come back to one of those points? You said that any contract should be reviewed at least annually. Presumably that would be in order that the appropriateness of the contract should be reviewed and agreed between employee and employer, so someone, like we were talking about, who was from an agency and had been working there for a year there should be some review that says: "Hang on, where am I as an employer with you and where are you with me?" You could pick that this is when the people say: "No, I like the flexibility even though I have been here for a year because I took whatever off last month" whatever. But the employer too should be looking at that saying: "Actually is this the appropriate contract at this stage for this person?"

Ms. N. Le Dain-Cyples:

I mean some people do it more frequently. Most businesses, I guess they are triggered by the manpower returns where they have to do their reporting there saying: "Do we have the appropriate licences?" Say what we need in our workplace and that has been an issue since there was the change. There has been maybe a rise in agency workers where they are needed on an ad hoc basis because of that change in licencing and maybe more restrictions on what businesses are being allocated these days.

Deputy G.P. Southern:

Are you suggesting that by employing through an agency the employer is getting round the restrictions?

Ms. N. Le Dain-Cyples:

They may be. I am not one to say ... going on record and saying that people ... there is always a loophole somewhere but 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.

Deputy G.P. Southern:

And the most famous one I have come across is the employer who could not find a hairdresser for love nor money. A male hairdresser, very skilled had to resort to an agency. He is fuming because he is paying over the top and he will be until this person gets their quallies.

Ms. N. Le Dain-Cyples:

But I mean, fair play, there has been a tightening up on the amount of licences that have been allocated to businesses but when you do have that required skill that you need, I mean my issue is with ... was trying to find someone who had the F.A.T.C.A. experience and who did due diligence and could get everything I needed for the, because we are a regulated business, for the J.F.S.C.

(Jersey Financial Services Commission) to make sure that we were reporting the right way. But he was not allowed a licence so I had to sit in front of a panel, much like this, and defend our position as a company saying: "But we need the licence" and so we received it but it had a cap. So for that individual, while they had a licence, it was for 2 years so they had no certainty either after 2 years, did they?

Deputy G.P. Southern:

That is interesting because while we had a move to 3-year licences for 5-year licences in the past, with the proviso that you train up the successor with that moved to most licences will be permanent licences because of our redundancy law. So if the job still exists you cannot make that person redundant even if the law says so. You are saying some people cap.

Ms. N. Le Dain-Cyples:

Earlier this year. They received a licence with a 2-year cap saying ... quite right what you said there, that someone should be trained to fulfil that position after 2 years.

Deputy G.P. Southern:

So they have gone back to a 10 year-old policy that did not work then?

Ms. N. Le Dain-Cyples:

It is one of those things that there could be difficulty when you are trying to find someone, that an agency has the people there who are ready, who want the work, and so you go to where you find your skills pool and with zero hours when there is something like an emergency situation or catering, or something like that. You can go to that skilled pool and have people on the zero hours who choose to be on those types of contracts.

Deputy T.A. McDonald:

Which is understandable.

The Deputy of St. Ouen:

Now back to the list: are there any other recommendations you want to highlight?

Ms. N. Le Dain-Cyples:

There were and I found this quite interesting because it is quite in line with some of the questions that were on the survey. "Zero hours worker should be free to work for other employers when there is no work available from their primary employer." But they did say: "Except in very limited circumstances, for example, to prevent someone from working for a competitor if that means the competitor gains." I thought that one was quite interesting especially when there are things like

I.P. (intellectual property) surrounding that and customer lists because there has been a lot of stuff going on about customer lists lately.

Deputy G.P. Southern:

That exception is quite extreme, is it not?

Ms. N. Le Dain-Cyple:

I think everything has to be reasonable. Reasonable depends on the amount of facts, but it is a legal interpretation, but as long as there is some sort of reasonable circumstance where you can stand up, hand on heart in a court of law and say: "This is why I wanted them to do this but also they were working quite a bit" so I mean you would not restrict them from not working for somebody else if you were not giving them any hours. There has to be that sort of give and take.

Deputy G.P. Southern:

I have seen several definitions of "reasonable" and it stretched a long way from where you or I might perhaps think it was unreasonable but if it is ... could it be deemed reasonable to have an exclusive contract on a zero hours: "You are working for me, you cannot go and work for Fred down the road because of whatever confidentiality it raises", in which case should not the employee be saying: "Give me a permanent contract then and I will not be down the road"?

Ms. N. Le Dain-Cyple:

They probably should be. Exclusivity is something that ... personally I agree with you. I do not think there should be exclusivity.

Deputy G.P. Southern:

I was just interested in the caveat.

Ms. N. Le Dain-Cyple:

The caveat here.

The Deputy of St. Ouen:

Is there in the Jersey context? Are you aware of contracts where there has been exclusivity?

Ms. N. Le Dain-Cyple:

Yes. I have written them.

Deputy G.P. Southern:

You have written them?

Ms. N. Le Dain-Cyples:

I mean before ... this is going back a number of years now, so the reason that we found there was an uplift in zero hours was when the fixed term contracts issue started getting a little bit muddled, what the employee's rights were, what the employer had to do, so zero hours came up as a very convenient solution for a lot of industries. At that time there was little interpretation about what should be encompassed and what should not be. So until there is some sort of precedent the employers would take advantage of that.

Deputy G.P. Southern:

Can we just explore that a bit? It came about because confusion around fixed term contracts. Go on, which was ...?

Ms. N. Le Dain-Cyples:

Lots of things, the introduction of new legislation with regards to redundancy, what an employee's rights were, if they had a break in their fixed term contracts, was that break covered as part of a continuous employment. Gosh, what else was there? Unfair dismissal.

Deputy G.P. Southern:

Unfair dismissal, 6 months to 12 months, there has been a change more recently. So it was seen as a way to get around those ...

Ms. N. Le Dain-Cyples:

For certain industries probably, yes. It was, especially in hospitality. It was the easiest way to have a pool of workers there where you can say: "Right, here is a zero hours contract. Sometimes they work, sometimes they do not, but a fixed term I have to guarantee that I have X amount of hours for a fixed term period so this will give me some ..."

Deputy G.P. Southern:

Would some employers put everybody on a zero hours contract?

Ms. N. Le Dain-Cyples:

They possibly could have.

Deputy G.P. Southern:

But you do not know?

Ms. N. Le Dain-Cyples:

I would not be able to say yes or no, having never been an employer that would do that or I would advise ever doing that. But I can only have an assumption that there possibly could have been.

The Deputy of St. Ouen:

Do you have a sense as to whether that is still happening?

Ms. N. Le Dain-Cyples:

It develops and the employers and employees are both becoming a little more educated on the subject, and I do think that employees these days are much more educated when they come to a workplace, regardless of what contract they are on. That is becoming less and less. People know what their rights are when they walk into an employer: "I am not signing that, it does not have this in it."

Deputy G.P. Southern:

Is that at both the same level in terms of professions or you think everybody is getting more savvy?

Ms. N. Le Dain-Cyples:

I think everyone is getting more savvy. Until recently there was a great service over here for our Portuguese speakers who English was not their first language but they had the support there and they had interpreted contracts. There is the Polish Embassy who are helping people out with their contracts in interpretation. There is J.A.C.S. People know that they can go to J.A.C.S. It is sometimes the first thing people will say to an H.R. professional: "I am going to J.A.C.S." and I would be like: "Yes, go to J.A.C.S. because they are impartial." We support that. Understand what your rights are.

[14:00]

We can tell you, we can show you but if you want a second party to back it up do it. We fully support that.

Deputy T.A. McDonald:

But you think there has been enough publicity now letting people know where to go for advice and all that sort of thing?

Ms. N. Le Dain-Cyples:

I think there has been a lot of publicity. I think that probably J.A.C.S. do a fantastic job with the amount of resources they have. They really, really do and everybody goes to them on the Island. There or the C.A.B. (Citizens Advice Bureau) but the C.A.B. always point them over to J.A.C.S. obviously. I think people know where they need to go. They do provide templates on the website of contracts in different languages and everything else. So I think people are educated. I am not saying that they cannot do with more education and pointing them that way.

Deputy G.P. Southern:

That is interesting because one of the factors coming out of our own survey is that while employers seem to be aware of the guidelines issued by J.A.C.S. on zero hours contracts, employees are ticking the "no" box. There is a little bit of evidence that says that employees are not that genned up.

Ms. N. Le Dain-Cyples:

Could I ask: is that because we have had more employer than employee responses?

Deputy G.P. Southern:

No, I do not think so.

Ms. N. Le Dain-Cyples:

Is it equal?

Deputy G.P. Southern:

No, it is ...

Scrutiny Officer:

More employee.

Ms. N. Le Dain-Cyples:

More employee?

Deputy G.P. Southern:

Yes. The employers have responded. We will come on to another question when I have formulated it. But do carry on with your list.

The Deputy of St. Ouen:

Yes, please.

Ms. N. Le Dain-Cyple:

I will carry on. This one is quite interesting as well and quite in line with the survey. Again, results being U.K. longer terms with their zero hours, playing around with them. "Employer should provide zero hours workers with reasonable compensation if prearranged work is cancelled with no notice. The C.I.P.D. believes it is reasonable for employers to provide the minimum of any travel expenses incurred and at least an hour's pay in these circumstances." Now I would like to caveat that, that this is the U.K.; the U.K. response to the survey. Travel time in jersey, as we know, is much smaller. You get your 15 minutes traffic jam, I get it. But the travel to and from the employer is not much different from having someone go from York direct to Scotland or everything else, which is probably the expectations when you are looking at the U.K.-wide. But I mean that is a U.K. recommendation. I think that is something that hopefully will come out of this survey that is out there right now and the meetings that you are having is that maybe there are some suggestions and recommendations along these lines.

Deputy G.P. Southern:

Certainly travel time is a problem for those people who have not got a fixed place of work, so the care workers in people's homes who are spending a significant amount of time travelling between half a dozen places, a dozen places in a day. Certainly travel time, although it seems like a small island that is not going to be significant but for some workers it absolutely it is.

Ms. N. Le Dain-Cyple:

Of course, it is going to hurt some more than others.

Deputy G.P. Southern:

Getting paid for 8 and a half hours in a 12-hour working day. You are away from your home for 12 hours.

Ms. N. Le Dain-Cyple:

Again, if it is the nature of the industry it is something that perhaps the employer should be considering with the types of contracts and what they will and will not cover and what is reasonable. Again, go back to the reasonable. If it is part and parcel of the role and it is something that has always happened in the past it is something that definitely should be considered by the employer, but again they have that choice and the employee has a choice to say: "Oh no, you do not provide that for me. I am working a 12-hour day you are paying me for 6. I am travelling round for 6 of those so I do not want that contract, but they are offering me travel time."

Deputy G.P. Southern:

Which brings me on to the question I was trying to formulate before, which was the difficulty of challenging your employer. So if you think you are on the wrong contract, you think the contract is not fair or not reasonable, it is still up to you to challenge your boss and that there is that power structure automatically which makes that difficult. If you are in a unionised situation then fine, somebody else can do it for you, somebody else can do it on behalf of a number but one to one, when you are saying: "Hang on, this is not fair. Go on do something about it, boss" you ask once, how long do you wait to ask again?

Ms. N. Le Dain-Cyples:

It is the trust that you have with the employee/employer relationship regardless of the size. If they have the size and the resources then they should have or ideally should have someone who looks after the employee relations or the human resources people capital, whatever you wish to call it, aspect of the business. If it is a small "Mom and Pop" shop you should have that trust to be able to say, you know. Challenge it and say: "I have been here, I have been doing 40 hours a week for the past 15, 20 weeks. I think that this is going to be more permanent, what do you think?" If you get shut down is it the right place where you are working if you get shut down like that. I mean it is a choice again, probably a hard choice sometimes where people have to say: "Okay, they are not listening is that the right place for you to be working?" That is probably where they say we are tea in tissues sometimes in H.R. that ... it is about the people and it is how you feel. People need people, they do not need businesses is what we always say.

Ms. C. Reynard:

I think it also depends at the interview point. As long as it comes across that this is what is in your contract and it is explained to them correctly, and then once they get their offer letter and contract sent to them before they start they can then take it to J.A.C.S., to wherever and say: "Do you agree with it, do you not agree with it?"

Deputy G.P. Southern:

But by the time you get it checked or if you get it to a tribunal you probably have been dismissed if your action is about unfair dismissal because you wanted a proper contract and the relationship broke down.

Ms. N. Le Dain-Cyples:

Sure. I think what Claire was probably going towards was pre-employment.

Ms. C. Reynard:

It is pre-employment; you need to make sure that they are clear of what they want.

Deputy G.P. Southern:

That then becomes ... I am getting to complex levels now, because just thinking about it, that becomes difficult when, for example, you have been pointed at a zero hours job by the Social Security Department and the Social Security Department will insist you take that job. If the job offer is there you have got to take it. That is a very difficult thing to do, otherwise you are going to be sanctioned. Turning down a job if you are actively seeking work you are going to get sanctioned. So you get situations where people feel that they have no option. "I have got to take the zero hours job even though it does not suit me."

Ms. N. Le Dain-Cyples:

Absolutely. Which is appreciated but that is something that is imposed by Social Security Department, that is not imposed by the employer who is offering the work for the zero hours contract, and that is something to probably bear in mind. We are not imposing those sanctions. If I were employer A I am saying: "I have the work, here is a zero hours contract" and go into Social Security saying: "I would like a person who fits this description" the sanctions are imposed not by the people offering the work.

Deputy G.P. Southern:

But then there was a time at one stage when I was hearing people saying that all there is out there is zero hours contracts. That is what is there. If I can go to work at all I am also forced to, and certainly even today it looks like the growth in jobs, which we have just witnessed on the latest market survey is 55 per cent of them are zero hours contracts.

The Deputy of St. Ouen:

Eleven per cent of all jobs.

Ms. N. Le Dain-Cyples:

Eleven per cent of all jobs.

Deputy G.P. Southern:

Fifty-five per cent of the new jobs. They keep correcting my phrasing. Over half the jobs are zero hours contract in what seem to be that zero hours are still a growing thing.

Ms. N. Le Dain-Cyples:

That could be viewed completely positively as well saying there has been a nice amount of recovery. If you look at the trends that are occurring where those sectors are increasing we do see that it is mainly with the States of Jersey with education and health. We see that it is almost

static with hotels, restaurants and bars, so maybe they are coming to terms with how they use them and using them properly. The construction and agriculture which tend to be seasonal, they are also on the rise though. That could be seen as a positive that there is more work out there, there are better things going on with agriculture so we are having better crops. That to me is where the trends are being highlighted.

Deputy G.P. Southern:

Can I just explore with you the bottom one, education and health, is not States.

Ms. N. Le Dain-Cyples:

It is not States?

Deputy G.P. Southern:

It is not, it is the private sector. I think it is probably dominated by the care sector, which is growing because we are outsourcing from what was.

Ms. N. Le Dain-Cyples:

We have got the miscellaneous one, which is the top one, which I guess is everybody.

Deputy G.P. Southern:

This is not finance and it is not one of the others.

Ms. N. Le Dain-Cyples:

It was a head scratcher going: "What is 'miscellaneous'?"

The Deputy of St. Ouen:

Does it surprise you to learn that 11 per cent of all jobs are on zero hours contracts?

Ms. N. Le Dain-Cyples:

Not really, if it is fit for purpose.

The Deputy of St. Ouen:

How does that compare with other jurisdictions?

Ms. N. Le Dain-Cyples:

We can only comment basically on what we have here. I mean in the U.K. I can give you the stats right now about ...

Deputy G.P. Southern:

I think it is higher in the U.K., significantly.

Ms. N. Le Dain-Cyples:

Yes, significantly higher in the U.K. In 2012 the survey said that there were at least over 1 million people on zero hours contracts, so 0.8 per cent of the workforce were on it and from 2005 to 2013 it went from 89,000 to 250,000 people but they also highlighted that a quarter of the zero hours contracts are students and people who are using it into retirement.

Deputy G.P. Southern:

So therein lies the rub. I mean if it is not your prime source of income, if you are not dependent on it then ... if it is a second or if it is pin money - worst expression I can think of - bottle money type income. It is secondary, then fine. Absolutely no problem. It probably suits both sides equally. But it is the prime, that sort of income, it may not suit the employee as much as it suits the employer.

Ms. C. Reynard:

But I know for us and with zero hours contracts most of them have full-time work. So they work somewhere else and then they come to us for zero hours, which suits their needs.

Deputy G.P. Southern:

Two or 3 jobs.

Ms. C. Reynard:

Yes.

Ms. N. Le Dain-Cyples:

We do have people who are using that flexibility as well. There is an individual I know, and I was quite surprised that they were on a zero hours, they are a lawyer, and they were working 4 days a week in one place on a project and one day a week at another place on a completely different project. I went; "You are on zero hours, really?" "Yes, you would be surprised, there is quite a few of us." "Oh, interesting." But it is flexibility that they really liked about that.

Deputy G.P. Southern:

And they were not going into poverty?

Ms. N. Le Dain-Cyples:

What was that?

Deputy G.P. Southern:

The lawyer was not falling into poverty.

The Deputy of St. Ouen:

One of the few.

Deputy G.P. Southern:

Are you still on your list?

Ms. N. Le Dain-Cyples:

Yes, there was, I think, just the end of it. "The C.I.P.D. believes that it is good practice showing there are comparable rates of pay for people doing the same job regardless of differences of their employment status in order to support perceptions of fairness and trust in the workplace."

Deputy G.P. Southern:

That is fair, I think.

The Deputy of St. Ouen:

Except that the full-time worker will be getting a ... or for the pension contribution and the benefits of sickness, whereas a zero hours worker would not. Should they be offered compensation, an additional sum for not having those benefits?

Ms. N. Le Dain-Cyples:

Again, it is down to what the employee potentially can afford, what they have on offer and some people find it probably hard enough that they have to pay the holiday pay as well, the 4 per cent in the contract, but that is something that is widely accepted as the norm with zero hours contracts. It will be up to an employer if they want to pay someone sick pay but each of these has a significant cost. If you have someone on a zero hours and it is a true zero hours and you are only having them in maybe 5 hours every couple of weeks you are paying a premium with your insurer to have that sickness covered and your insurers and everything else, and they are looking at it like a full-time employee. So there are a lot of variables that employers look at cost-wise and it is not, I do not think it is - for a lack of a better term - they are cheaping out. It is about their appetite and what they can afford, and when they can afford a permanent person we are educating them as H.R. professionals to say: "Put them on the right type of contract for the right type of work."

Ms. C. Reynard:

I think also you need to look at seasonal contracts. If someone is on a seasonal contract for 6 or 7 months and they are not over the 5 years they do not get social security anyway so we might have people that have come back 40 years and doing the same job and are not eligible, but every year they still come and pay their money.

Deputy G.P. Southern:

Bring them back and forth. One of the potential motivations certainly in the U.K., the U.K. have got 2 types of employee: the employee and the worker. The worker has fewer rights, fewer protections than the employee. Certainly in the U.K. I think people saw the growth of zero hours contracts has a way of avoiding employer responsibilities for those officially employees, a way of avoiding the protections that are in place like redundancy conditions on their workforce.

[14:15]

The same does not apply in Jersey. Do you think employers in Jersey are aware now that there is not that equipment and that work protections in place, that Jersey has in place, applies to all employees, including those that they have on zero hours per se?

Ms. N. Le Dain-Cyples:

It is difficult. I mean the law has been in place since 2005, even though there is the employment protection in 2003, people are a little more educated than they ever were. I do not think most Jersey employers would even think about the difference unless they had a U.K. office or some other jurisdictional office to differentiate between a worker and employee. That is a very narrow look, I think, into what falls into where. I think as Jersey, in my personal opinion, seems to have always cherry picked. They watch how it is implemented in like jurisdictions, we take the best out of it, at least we hope the best out of it. We see where they have gone wrong, where they have gone right and we try and bring in the law to suit our smaller jurisdiction and our lovely type of working climate. So I think that when there was a worker and employee differentiation in the U.K., something like that probably would not have worked here.

Deputy G.P. Southern:

I was not expecting we report that at all. Far from it.

Ms. N. Le Dain-Cyples:

I think people just go: "I either have an employee or I do not."

Deputy G.P. Southern:

I just wondering whether employers here picked up this move in the U.K. and thought: "Ooh."

Ms. N. Le Dain-Cyples:

No, I would not think so unless they were the employment lawyers. I do not think there was probably a perception over here. The one thing we can say is that, you know, you see these in the *J.E.P. (Jersey Evening Post)* so the articles and headlines these days, so that is where people are going: "Oh, okay, interesting" and the more education and more it is out there, the more it is going: "here it is" that is where people are reading up on. They are picking up on the subject but I do not think they are going out there unless they are looking at what is coming out of the tribunal and everyone else going: "Oh okay, I am interested in that." Unless they have got a business interest or a professional interest or a work interest in it I do not know if they will go chasing those things.

Deputy T.A. McDonald:

Just looking at something totally different, in Ireland employees are compensated when expected work is cancelled. Now this may be relevant to hospitality, do you think such an agreement would be useful for Jersey, especially in this hospitality work?

Ms. N. Le Dain-Cyples:

Sort of along that recommendation that they are compensated if their work is cancelled at the last minute?

Deputy T.A. McDonald:

Yes.

Ms. N. Le Dain-Cyples:

That is hard. Again it is one of those things. You draw or you cancel ... you either engage or cancel at the last minute if you have no other option but to.

Ms. C. Reynard:

It depends what you call "last minute" as well.

Ms. N. Le Dain-Cyples:

Yes, what is that?

Ms. C. Reynard:

We know if there is a large function or something going ahead and how many amount, unless it is cancelled you have already got so much payment ahead and very rare does that happen, so you

were to give people notice. I think some of the zero hours need to be fair of how much notice you can give people. Can you give them 2 weeks, one week ...

Ms. N. Le Dain-Cyples:

Twenty-four hours, 48 hours.

Ms. C. Reynard:

Yes. Again it should be if they are cancelled ... and for us if we had anything cancelled the staff have still come in and we might have done something different like training with them or, you know, because we appreciate their time.

Ms. N. Le Dain-Cyples:

They would come in with an expectation obviously.

Ms. C. Reynard:

Yes.

Ms. N. Le Dain-Cyples:

I am not aware what the compensation would be in Ireland.

Deputy T.A. McDonald:

No, exactly. It was just, you know, food for thought. But I think it probably does apply more to hospitality than most areas.

Ms. C. Reynard:

I just think it does not happen that often. I do not know that it happens all the time.

Ms. N. Le Dain-Cyples:

Maybe agriculture and construction as well. I mean inclement weather could be ...

Deputy T.A. McDonald:

That is right.

The Deputy of St. Ouen:

Cancelled.

Ms. N. Le Dain-Cyples:

Four seasons in one day sometimes here.

Deputy T.A. McDonald:

You have noticed.

Ms. C. Riddett:

It is a bit of a 2-way street as well because does the individual have the right to give you last minute notice? It is not all about what the employer is doing. If this is a good zero hours relationship and there is nothing sort of underlying to why it is being used then essentially it is about a 2-way street and the fairness of: "We will give you 24 hours, you can give us 24 hours." But obviously that would have to be down to the business and what was happening. There are positives to the zero hours as well as the sort of concern over the employers abusing it. The individuals also get the benefit on occasion.

The Deputy of St. Ouen:

So as H.R. professionals, is there any area of zero hours contracts practice that you think can be improved upon? Should be improved upon?

Ms. N. Le Dain-Cyples:

Probably just the education. I mean there is that line between regulation or education. If you educate them you will not need to over-regulate. If it is working in practice ... I think the guys yesterday say if it is not broke. I do not think it is broken. I think it is an educational thing. People are learning more about how to use them responsibly.

The Deputy of St. Ouen:

How could we better educate the bosses and the employees? Any ideas on what more could be done to educate them?

Ms. N. Le Dain-Cyples:

C.I.P.D. would offer free seminars and sometimes very intense where we bring speakers in to educate on terms and conditions of employment. We do have people that are not in the H.R. profession attend, small business owners, different types of people who come to those types of events but perhaps more bodies, like ourselves - Chambers, J.A.C.S. - putting on those types of events, educate a bit more. Maybe releasing something along the lines of sometimes you have got the ... not necessarily these ones, but you have got the shock headlines, how about having some factual sort of: "This is it, how about you guys come and ... this is what it is all about. Write up summaries." Making available to everybody really. But that takes a lot of work from a lot of different people, but I think those people are willing to do it.

Deputy G.P. Southern:

Certainly J.A.C.S. run some fairly intensive seminars.

Ms. N. Le Dain-Cyples:

Absolutely. Some great stuff.

Deputy G.P. Southern:

Rather than ending up at a tribunal: "Come and talk to us and we can show you what the rules are and what ..."

Ms. N. Le Dain-Cyples:

Absolutely. No one wants to end up in court.

Deputy G.P. Southern:

Is one of the basics around zero hours contracts that it should accurately reflect what the job is?

Ms. C. Reynard:

Yes.

Deputy G.P. Southern:

So if you were working 9.00 a.m. to 5.00 p.m. ...

The Deputy of St. Ouen:

Just for the record you are nodding your head. **[Laughter]**

Ms. C. Reynard:

Absolutely. We were talking about this earlier in that ... as Natasha said, it needs to be reviewed on a regular basis if you are getting to a point where it is not zero hours. It is up to you and your responsibilities as an employer to change that contract and have that conversation with that individual to say, as you were saying, you have been here 9.00 a.m. to 5.00 p.m. for the last 20 weeks, this is a full-time job. Now it is up to that individual as to whether or not: "Well, actually I do not want to do a full-time job" or whatever the conversation is but you, as an employer, are the specialist in the contracts you are offering and you should be recognising the change and making those.

Deputy G.P. Southern:

It is back to those early words of be fair and reasonable.

Ms. N. Le Dain-Cyples:

Very reasonable.

Deputy G.P. Southern:

What if now - is the thing that has been bugging me for a while - the only powers that the officers at the Social Security Department have in terms of compliance and in terms of employment legislation is to check from time to time that a company is paying the minimum wage? He has no other powers and if they are not, to say: "You must pay them" or they will fine you. Has no other powers in terms of contracts because everything is a guideline so, for example, if they were to come into a company and see that while all 20 employees were working 9.00 a.m. to 5.00 p.m., 50 weeks a year, and yet half of them are on zero hours contracts, they have got no power to say: "That is wrong, do something about it." Now I think one of the things they could do - it is only floated at the moment - is give the compliance people on the employment law a few little improvements in what they are responsible for, for what they can say and do with employers.

Ms. N. Le Dain-Cyples:

We discussed that very point no more than an hour ago about that and it was Ceri who brought up saying, "You know, who would investigate?"

Deputy G.P. Southern:

Who would investigate? It comes back that point, you have got to challenge your employer over your contract and that is a bit scary because he might just say: "I have had enough of you moaning, on your bike."

Ms. N. Le Dain-Cyples:

Because you can investigate very different types of things, has there been this, that and the other going on. But who would investigate that. So it is down to, I guess, the States resources and whether they can empower them to do it. it would be something because you would expect that everyone had a terms and conditions of employment for every employee in the business, and they must maintain their records.

Deputy G.P. Southern:

They have to have a contract issued within a month, that is it.

Ms. N. Le Dain-Cyples:

And they must keep them there as well.

Deputy G.P. Southern:

And they must be available for inspection, yes.

Ms. N. Le Dain-Cyples:

Absolutely. Those are great things to have but so what. What are you doing about those?

The Deputy of St. Ouen:

Checking the appropriateness of the contract.

Ms. N. Le Dain-Cyples:

Are they fit for purpose?

The Deputy of St. Ouen:

Yes. People have got their own different views.

Deputy G.P. Southern:

Do they reflect the actual job? It is on the contract and this is what you are doing, it should be a match.

Ms. N. Le Dain-Cyples:

There will be no easy feat for an investigator but at least there will be something out there that would be regulating the use.

Deputy G.P. Southern:

If it was a question of zero hours or not zero hours they are fairly easy to spot.

Ms. N. Le Dain-Cyples:

I mean you would probably have to open that up to are these contracts fixed term, permanent, zero hours, annualised, fit for purpose? It is probably not just a narrow vision on zero hours, but I understand what you are saying.

The Deputy of St. Ouen:

Do you know what the position is in the U.K. or any other jurisdictions of the sort of thing Deputy Southern is talking about or do those powers exist in other places?

Ms. N. Le Dain-Cyples:

I could not possibly answer that, I do not know.

The Deputy of St. Ouen:

Okay, just in case you knew.

Deputy G.P. Southern:

We may examine that.

Deputy T.A. McDonald:

Is there anything, ladies, that you wanted to really tell us as a result of our meeting today or anything you feel that we should know because obviously you realise what we are doing and why we are doing it and everything else and being as fair and impartial as we can? This is an opportunity to do so.

Ms. N. Le Dain-Cyples:

I just wanted to mirror some of the things that have already been said by some of the people. Like Kristina Le Feuvre, she mentioned educate, make sure people are educated on matters. It is as important as legislation. I fully support that. I think that zero hours, if used in the right way, they have been very helpful to our Island in terms of recovery of certain areas and sectors.

Deputy G.P. Southern:

Overall on the ... obviously you given yourself the task of educating the employers out there. How are you doing?

Ms. N. Le Dain-Cyples:

I think we are doing quite well. We have a lot of people who are coming.

Deputy G.P. Southern:

Do you still come across occasional pits of ignorance?

Ms. N. Le Dain-Cyples:

That is always going to happen. But there is equally as bad employers as there are bad employees out there. It will happen more so you find that there is a lot of people with their heart in the right place that might have missed out on certain stuff but the education I think is out there. People are seeking advice, especially on terms and conditions of employment, so they are not putting a wrong foot down there. They have templates that are available to them for free and so they are using those resources that are there.

Deputy G.P. Southern:

We sometimes hear, small employers in particular, saying they are afraid to expand, afraid to take on staff, how accurate are those headlines, for example?

Ms. N. Le Dain-Cyples:

Again, that is subjective I think really. It is down to, I guess, their own needs. Can they expand because they have the resources and is it within their budgets, can they do that? Is it sustainable? Is it because they are afraid of people policies? I certainly would hope not. If it is best for their business to grow then hopefully they will grow. Is it something else that might be restricting them?

Deputy G.P. Southern:

It is an economic decision rather than ... it should be and that the help is there to any small businessman if they want to take on somebody else and are a bit trepidatious then the advice is there.

Ms. N. Le Dain-Cyples:

We are small and we are very wise and we have got the resources there for people to use, and there is no cost. Another thing I was just mentioning earlier about with the no cost, the tribunal, there is also no cost there as well and that has been a huge thing in the U.K. and other jurisdictions about the cost to get there whereas here we do find that a lot of people are going to conciliation and having anything settled before it goes to tribunal, which is a good thing. But again there is no cost so it is out there. We are there, we are helping people as much as we possibly can, big and small.

The Deputy of St. Ouen:

Unless there is anything more you would like to tell us I would like to thank you very much for coming in. I am sure we found this very helpful. Thank you once again.

[14:30]