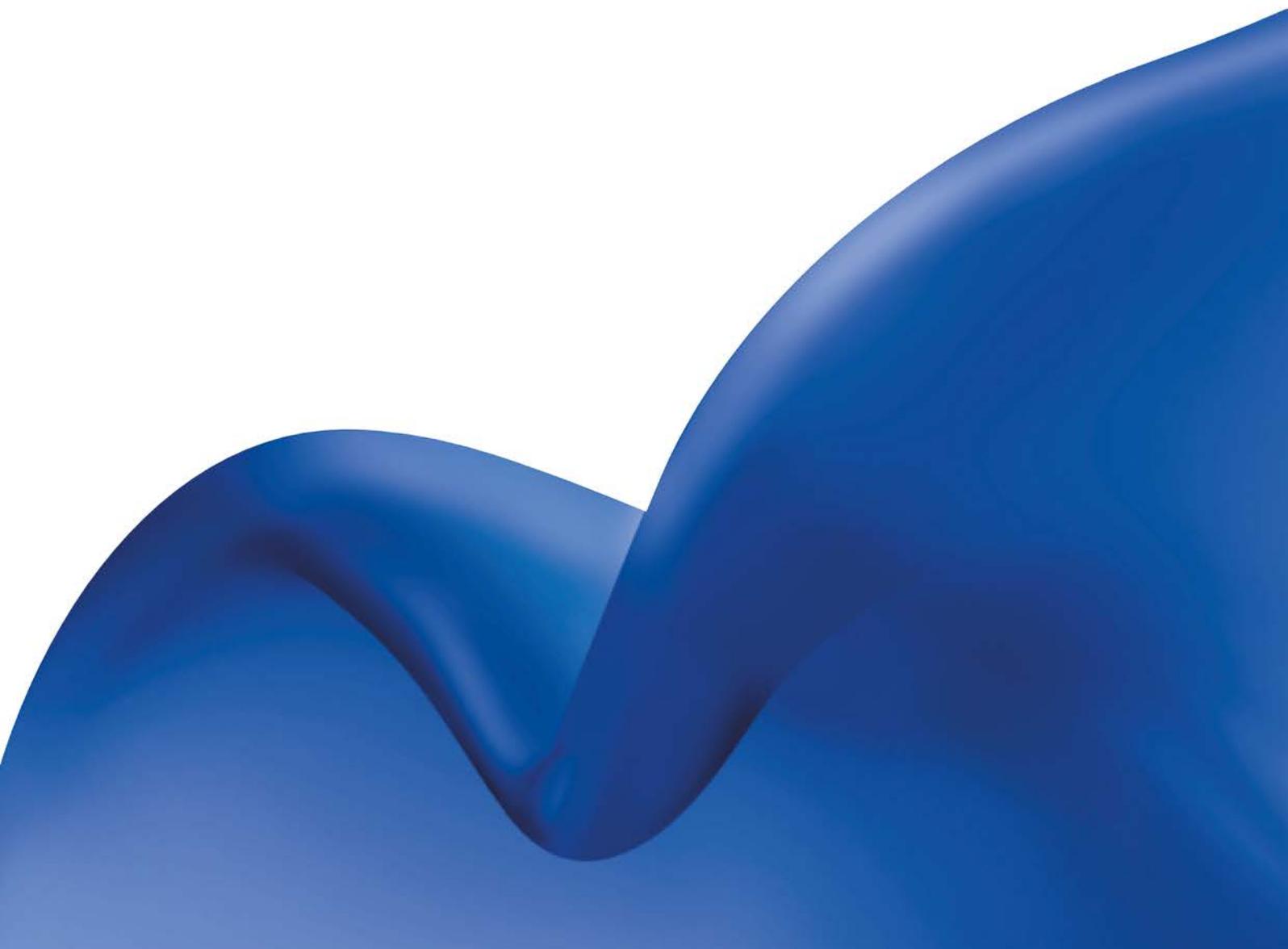


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Flexibility or insecurity? Exploring the rise in zero hours contracts

Ian Brinkley



The Work Foundation aims to be the leading independent international authority on work and its future, influencing policy and practice for the benefit of society. For further details, please visit www.theworkfoundation.com.

Executive Summary

Whatever the hard numbers tell us, zero hours contracts (ZHCs) have come to symbolise a wider concern that the labour market is moving towards more contingent, less secure, and more exploitative forms of employment at a time when in many areas jobs are scarce and people have little choice over taking whatever work is available.

Key data

- Just under 18% of those on ZHCs said they were looking for alternative employment, compared with 7% of all employees.
- A significant share of zero hours contracts (43%) are filled by people in the top three occupational groups – managers, professionals and associate and technical staff. A fifth (17%) were manual skilled or semi-skilled jobs and just under another fifth (also 17%) were care, leisure, or sales jobs. Just over one in ten were unskilled and just over one in ten were administrative.
- 60% of care-workers were on zero hours contracts in 2011-2012 compared with about 50% in 2008-2009
- Between 1997 and 2012, the share of employees giving at least one of the flexible work options listed in the LFS in both survey years increased very slightly from 19.3% to 19.7%.
- ‘Nurse banks’ work well with most respondents were satisfied with their working pattern, with 86% reporting that bank/agency working suits them well.
- The CIPD survey said about 19% of employers were using them in July 2013. This is much higher than the estimate from the 2011 Workplace Employment Relations Survey which suggested they were in just 8% of workplaces
- Incidence is highest in hospitality, where zero hours are reported in nearly 20% of workplaces; however, they are less common in the retail industry, in business services, and public administration at between 4 and 6% of all workplaces.
- 44% had lasted for two years or more with the same employer, and 25% had lasted five years or more; 75% had been in a job for more than two years.
- While just over 25% of people on ZHCs said they would like to work more hours, three quarters of ZHC workers did not want more hours
- 75% of those on ZHCs say they hours vary each week, compared to 40% of employees not on ZHCs – so while ZHCs clearly experience a much greater degree of hours variability, many on conventional contracts also face variable weekly hours.

The main findings

Even if zero hours contracts are much higher than current statistics suggest, they are still a small part of the overall labour market. We are sceptical that their rise is an unintended consequence of the recent EU Directive on Agency Workers, as claimed by some.

The greater use of zero hours contracts is taking place against a background of falling real wages, high levels of workplace fear of the consequences of redundancy and unfair treatment for a significant minority, and an employment recovery where permanent

employee jobs have been in a minority.

The calls to ban zero hour contracts however are in our view misplaced. The UK labour market currently supports a wide variety of flexible working arrangements. Moreover, zero hours contracts can suit some people and there may be some circumstances where work is so erratic that it would be hard for an employer to offer the work on any other basis. We do not know how many people on ZHCs have taken them out of choice and how many have taken them out of necessity. We do not know exactly why employers are making more use of them.

Recommendations

We welcome the BIS informal consultation announced by the Secretary of State on the use of zero hours contracts, however, **we would favour a more systematic approach which would get the best possible picture of the incidence and drivers of zero hours contracts from all currently available information sources.**

With a more robust consultation that identifies all the issues, it will be possible to map out how to achieve good practice around the use of zero hour contracts. **Any investigation should also identify organisational good practice that improves how zero hours contracts are used.** The Work Foundation also thinks it is worth exploring whether operating zero hours contracts through “banks” such as those used in the NHS might be applicable in other parts of the public sector.

Any commission should set out what good practice looks like and develop appropriate codes of conduct. On the basis of the evidence, make recommendations on any legal or regulatory changes or changes in public procurement practice that may be required to discourage abuse and encourage best practice.

The Work Foundation would be happy to host a wider consultation similar to Will Hutton’s Fair Pay Review for the Treasury which was supported by us and published in March 2011.

Introduction

There has been growing public interest in the growth of zero hours contracts (ZHCs), where people are placed on a contract under which the employer is not obliged to offer regular work. These are seen by some as part of the flexible labour market and an important reason why unemployment has been lower and employment higher than we would have expected over the past five years. For others, they have entirely negative connotations associated with labour market exploitation and the growth of insecure forms of labour contract.

The interest in zero hours contracts is, in some ways, surprising given they represent less than 1% of the workforce according to the Labour Force Survey. By comparison, other more traditional forms of insecure work such as casual and seasonal employment have attracted little attention, even though they are more common. One reason is that there may be far more zero hour contracts around than the statistical measure can capture. The most recent independent estimate, from the CIPD, puts the total at around 1 million compared with the latest ONS estimate of 250,000. Moreover, what happens at the margin matters – zero hours could be a small part of the workforce but account for a much bigger share of the new jobs, if their use has been rising sharply in the recovery.

Whatever the hard numbers tell us, zero hours contracts have come to symbolise a wider concern that the labour market is moving towards more contingent, less secure and more exploitative forms of employment at a time when in many areas jobs are scarce and people have little choice over taking whatever work is available. As a recent survey indicates, workplace fear of the consequences of losing a job or of being victimised at work are at record levels¹, albeit for a minority of the workforce.

Zero hours have undoubtedly attracted a bad press. Typical news stories highlight potential abuse and give an overwhelmingly negative impression. Some MPs have called for them to be banned with a Private Members Bill being tabled to that effect. Trade unions and other organisations have highlighted concerns about bad practice and exploitative employment relations through individual case studies.

However, do zero hours really deserve this totemic status as representing all that is bad in modern employment practice? Bad practice is hardly confined to zero hours but is common across all forms of employment contracts. So too is good practice. Properly used, zero hours can offer flexibility to some individuals and allow employers to offer work that would otherwise not be available. Rather than a knee-jerk ban, a more constructive approach would be to see how the legal basis of zero hours contracts and good practice in the workplace surrounding their use can be improved.

Despite recent interest, we still know very little about zero hours contracts. We do not even

¹ <http://www.cardiff.ac.uk/socsi/ses2012/%5Bhidden%5Dresources/4.%20Fear%20at%20Work%20Minireport.pdf>

know how many exist. It is clear that the main statistical source severely underestimates their incidence – and nor do we know by exactly how much they might have grown over the past 15 years. If we are also ignorant of exactly how many ZHCs are currently held, we also know little about their use in practice. For example, we do not know how many people have taken zero hours contracts because they had no choice, or whether they provide a stepping stone to more secure work, or trap people in disadvantage. We do not know how much of the recent increase has been driven by a desire to evade some employment rights, economic pressures and changing markets or the side-effects of changes in public procurement. We do not know in any quantifiable way what impact the introduction of ZHCs has had on workplace morale, engagement and productivity.

In July 2013, the Business Secretary announced that the Department for Business, Innovation and Skills (BIS) would undertake an informal review. While this is very welcome, we argue in this report that a more systematic exercise is needed, modelled on either the Fair Pay Review or through a select committee inquiry. This report covers:

- the nature of zero hours contracts and some issues of employment law;
- health warnings about the use of official statistics;
- the wider labour market context, looking at levels of regulation, the role of labour market intermediaries, the growth of non-standard employment, and the extent and nature of flexible working;
- a cross-sectional analysis of some characteristics of zero hours contracts, using the latest available data and other evidence for 2012;
- how zero hours contracts have changed over time, comparing 1997 with 2012;
- and recommendations for policy and organisational responses.

Zero hours contracts – workers or employees?

Zero hour contracts are where an individual is not guaranteed work and is paid only for the actual hours of work offered by the employer and carried out. Workers have to be available as and when an employer needs them. Under the National Minimum Wage and Working Time legislation, the practice of employers asking employees to 'clock off' in quiet periods but remain on the premises is illegal. There are three primary reasons why zero hours contracts might be used:

- demands of the job: where work is erratic and highly unpredictable, varying from day-to-day and week-to-week, they can be the most effective and cost-efficient way of matching labour demand and supply;
- evading employment rights: firms may designate individuals as workers rather than employees: workers are not entitled to protection against unfair dismissal, maternity rights, redundancy rights and rights under TUPE;
- meeting individual flexibility: for some employees, a zero hours contract may be attractive in that they chose when and where they work, or it is a supplement to a main job, or the potential insecurity of income is not a major concern – for example, a retired person who wants to do some occasional work.

The House of Commons Library briefing note² on zero hours contracts points out that case law has tended to look at the actual employment relationship rather than the wording of the contract to determine whether someone is an employee or a worker. This has two implications. Firstly, firms who thought they had evaded employment rights may find they are still liable if the status is challenged in an employment tribunal. Secondly, firms are almost obliged to treat workers on zero hours contracts badly – for example, avoiding making offers of work on a regular basis – if they want to make sure that the employment status of the individual remains that of a worker.

A word of warning on zero hours statistics

Almost all of the statistical information on zero hours contracts comes from the household Labour Force Survey (LFS) or the Workplace Employment Relations Survey (WERS) which is based on representative workplace surveys of both managers and employees. However, while the data comes with some important caveats, it is important to recognise that the Labour Force Survey is a high quality and reliable source of information on many aspects of the labour market.

Firstly, the LFS is a sample survey, and because the number of people who say they are on

² Pyper and Harari (2013) *Zero Hours* House of Commons Note SN/BT/6553, updated June 2013.

zero hours contracts account for just under 1% of total employment, the sample size is small. The 2011 WERS survey is also a sample survey and identified zero hours contracts as present in just 8% of all workplaces. All statistics on zero hours contracts should therefore be regarded as approximate, with only substantial changes counted as significant. More detailed analysis of the characteristics of people on zero hours contracts is problematic as the sample size rapidly drops to a level which is not statistically significant. Even those where the sample size is large enough to draw some conclusions are subject to wide margins of error.

Secondly, there is serious under-reporting. Estimates for the NHS and the domestic care sector put the number on zero hours contracts at 75,000 and 300,000 based on returns by NHS trusts and estimates from a different dataset covering social work in England and Wales³. Yet the LFS estimate for the whole economy had until very recently been cited as just over 200,000 in Q4 2012. At the time of writing some MPs are attempting to get estimates of zero hours contracts in higher education based on employer returns through Freedom of Information requests. This should help to identify if the education sector is also under-reporting. There is no easy way at the moment to estimate whether returns from other sectors such as retailing, hospitality or business services are also under-recording.

Some of the reasons why the LFS under-records ZHCs are to do with the scope and design of the questionnaire used to capture data. The LFS question only applied to those with ZHCs when it was their “main arrangement” so would exclude, for example, some NHS staff on ZHCs in addition to their main job. The latest ONS revisions have taken this into account, and this and other technical adjustments have increased the estimate for 2012Q4 from 200,000 to 250,000, an increase of 25%.⁴ The ONS is due to introduce a further refinement, so that people who said they were on shift-work could then be asked whether they were on a zero hours contracts (previously, if someone answered shift-work to the questionnaire, they were deemed not to have a ZHC). The revised estimates will be available in early 2014, and the ONS says that “*There is potential for a step change in the data when this is introduced.*”

However, it remains to be seen how much of the potential gap in under-recording of ZHCs the new methods is able to close. If zero hours are highly concentrated in small areas of the labour market, a representative sample survey such as the LFS may still struggle to fully pick them up. We also still suspect that under-reporting remains a problem, with some people on a contract that is to all intents and purposes a ZHC but has been called something else by the employer. The analysis presented below uses the estimates of zero hours contracts before the latest revision. We will re-run the analysis once the new estimates become available early in 2014 to see whether it changes our picture of the characteristics of people who hold ZHCs. The current analysis should therefore be regarded as provisional.

Thirdly, the figures may be strongly affected by seasonal factors and this appears to have worsened significantly since 2008. The question is only asked in two quarters of the Labour

³ The National Minimum Data Set – Social Care (NMDS-SD)

⁴ <http://www.ons.gov.uk/ons/guide-method/method-quality/specific/labour-market/articles-and-reports/zero-hours-contracts.pdf>

Force Survey, for Q2 and Q4. We have also found that choice of quarter can affect the responses to some questions, notably on occupation. The ONS now recommends that only the fourth quarter should be used for constructing time series analysis of changes in ZHCs. The ONS also advise that going back any further than 2000 is problematic. We have updated our time series analysis using the latest revised figures, and further revision will be needed when the new figures become available in 2014. We have, at the time of writing, no indicators of whether this under-reporting has been about the same in the past, significantly greater or less. It is quite possible that while the LFS gives an inaccurate picture of the extent of ZHCs at any one time, the changes being shown are accurate over time. The latest revisions, for example, show a very mixed pattern of change over time compared to the original estimates.

The labour market context

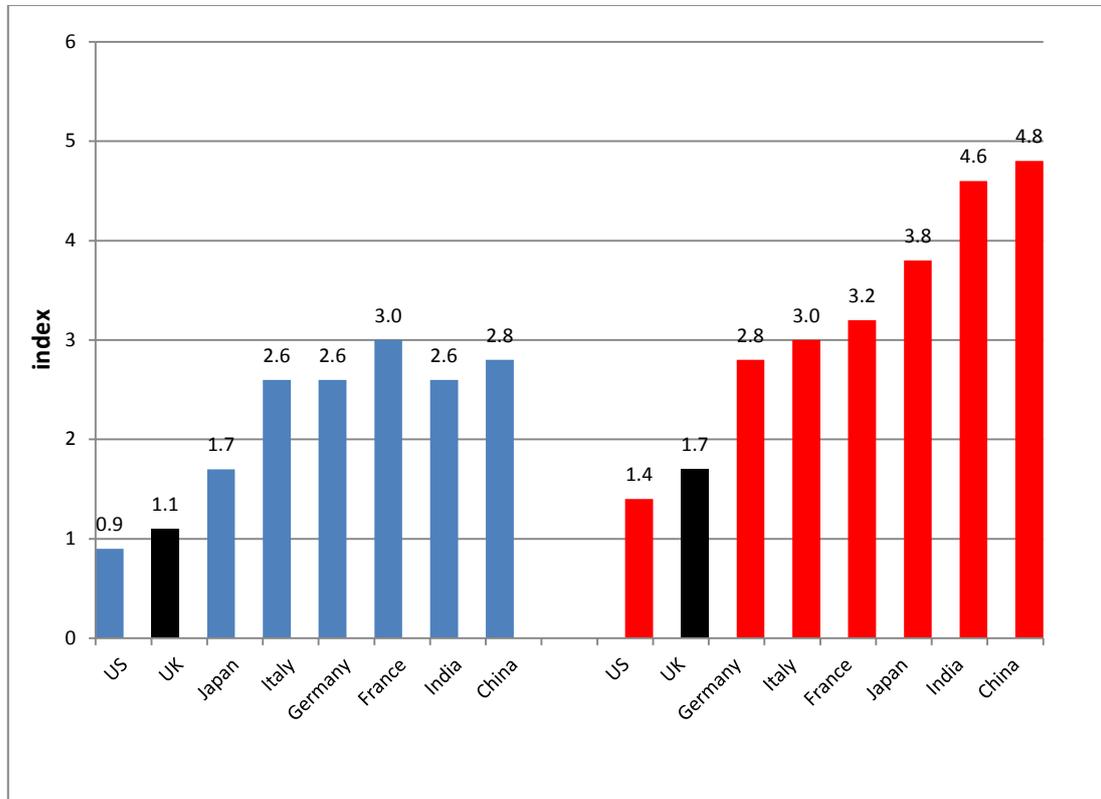
Zero hours contracts have been seen as part of the UK's highly flexible and lightly regulated labour market. Relatively light employment regulation, less generous welfare benefits and increasingly stringent job search requirements on those able to claim unemployment benefit have all been seen to contribute to higher levels of employment and lower unemployment rates compared with some more heavily regulated European labour markets.

However, in other ways UK labour markets are just as tightly regulated as in much of the OECD and other forms of regulation have over time become more stringent. These include increased requirements on employers not to discriminate on the grounds of gender, race, age and disability or whether the employee is part-time or full-time; to ensure healthy and safe workplaces; to agree reasonable requests for flexible working and time off for caring responsibilities; to recognise trade unions in response to employee demand; to avoid excessive working time; to pay the National Minimum Wage; to provide workplace pensions; and to help police official constraints on the employment of foreign nationals. Some forms of work – such as agency workers in the agricultural, horticultural and shellfish industries – now have specific legislation and are regulated by the Gangmaster Licensing Authority.

The focus of policy has, however, been on employment protections as they are thought to be especially important in influencing the ability and willingness of employers to hire. These include rights to claim for unfair dismissal and entitlement to redundancy pay. Overall, the UK has in this domain remained one of the least regulated labour markets in the OECD – indeed, recent estimates suggest it is much more difficult to lay off workers in India and China than here.

Historically, the UK has tended not to place legal constraints on the use of certain forms of labour – for example, UK employers have been free to use temporary contracts in contrast to some OECD economies where, until recently, temporary work was severely restricted. Instead, the emphasis over time has been to ensure that relatively modest employment protection rights have become more standardised across all forms of employment. In principle, this approach should discourage employers who want to use more flexible employment forms simply to reduce their obligations to an employee, while allowing employers who have a work-related need to offer a flexible form of contract the scope to continue to do so.

Employment protection regulation – overall regulation (left-hand chart) and ease of dismissal (right-hand chart)



All figures 2008 or nearest year. The higher the score, the greater the degree of regulation.
Source: OECD database

Flexible working in the UK

Successive governments together with employer organisations, trade unions and others have all promoted more flexible working arrangements for decades to increase the employment rate, secure competitive advantage and achieve work-life balance, especially for those with caring responsibilities. Flexible working takes many forms, including extensive use of informal ad hoc arrangements.

We can distinguish between flexible working *practices* and flexible working *arrangements*⁵. Flexible workplace practices can be seen as a way of managing the organisation of work in the interests of both employers and employees and includes part-time work, flexitime, job-sharing, and term-time working. Flexible working arrangements are more about the employer’s ability to manage workforce size and hours and include zero hours alongside shift-working, annualised hours, temporary staff, freelancers and contracting in and out. The chart below summarises most forms of flexible working for which we have some statistical evidence from either WERS or the LFS and which are given as examples on the BIS website under “right to request” flexible working.

⁵ This follows the distinction in WERS.

Flexible Working examples (2013)

WERS	LFS*	BIS
Flexible working practices	Flexible working arrangements	Right to request
Reduced hours		
Flexitime	Flexitime	Flexitime
Home-working	Home-working*	Home-working
Compressed hours	9 day fortnight/4.5 week	Compressed hours
Job sharing	Job sharing	Job sharing
Term-time working	Term-time working	Term-time working
Part-time*	Part-time*	Part-time
		Staggered hours
		Phased retirement
Workplace flexibility		
Annualised hours	Annualised hours	Annualised hours
Shift-working	Shift work*	
Temporary contracts	Temporary work*	
Zero hours	Zero hours	
Agency workers	Agency workers*	
Contracting out		
Contracting in		
	On-call working	
	Week-end, evening, night working*	

*Questions on these examples are asked elsewhere in the survey

Sources: WERS questionnaires; Wanrooy et al (2013) *The 2011 Workplace Employment Relations Survey: First Findings*. ONS. BIS.

The summary report of the first results from the WERS for 2011 highlight the more commonly used forms of flexibility by employees apart from part-time work. About 30% said they used flexitime, another 17% were able to work at home, 9% said they used compressed hours, 9% school-term time working and 4% used a job-share. About 12% said they could take paid leave with a domestic emergency.

WERS responses from managers showed that the most common form of flexible working arrangement was shift-working – up from 24% of workplaces in 2004 to 32% in 2011 and some form of temporary contracts, used in 25% of workplaces. Contracting in and out as defined by the survey was surprisingly low – at 11% to 12% of all workplaces⁶. Agency workers were employed at 10% of workplaces at the time of the survey. By comparison, the overall incidence of zero hours contracts was relatively small at 8% of workplaces. However, the incidence was higher for workplaces with more than 100 employees, suggesting larger employers are making more use of zero hours contracts proportionately than smaller employers.

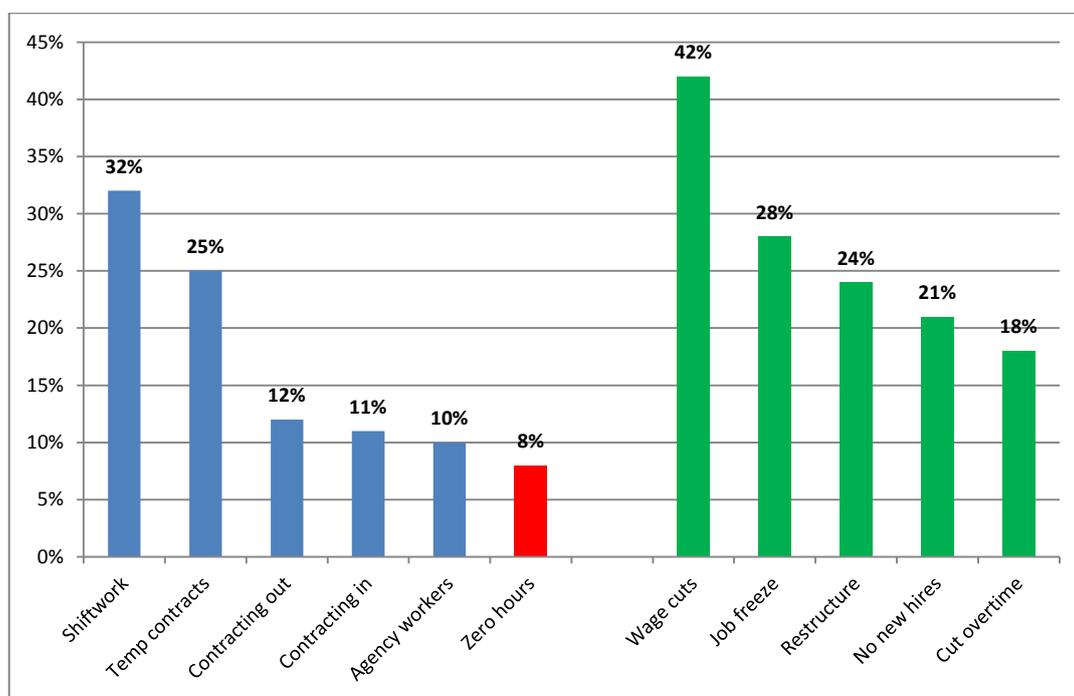
Managerial responses to the recession show that the most common action was to cut or freeze wages, at 42% for all workplaces affecting about 33% of all employees. Wage

⁶ Defined as work done for that workplace by an independent contractor including cleaning, security, catering, building maintenance, printing, payroll, document transportation, computing, training, recruitment and temporary vacancies.

flexibility to this degree appears to be different to previous recessions and has been part of a wider pattern where wage growth has been very low despite persistently higher inflation. Many of the other responses involved adjusting hours and work but seemed to be following very traditional means of doing so. For example, 28% of workplaces had frozen posts, 21% had postponed expansion plans and 18% had cut back on overtime.

We therefore remain sceptical that the growth of zero hours contracts can explain much of the “productivity paradox” whereby private sector employers have hired in large numbers since 2010 despite very low output growth. We have argued that a better explanation lies in wage flexibility, combined with a dysfunctional financial system and continued market uncertainty⁷. By comparison, a small increase in zero hours contracts as a share of the workforce is unlikely to have had any measureable impact.

Flexible workforce arrangements in 2012 (left-hand chart) and 2011 managerial responses to the recession (right-hand chart)



Note: all figures show the share of workplaces

Source: Wanrooy et al (2013) *The 2011 Workplace Employment Relations Survey: First Findings*, ESRC.

The LFS shows how many people were in formalised flexible working practices and arrangements in 2012, with people invited to select from a pre-set list of some of the more common forms of flexible working. Just over 20% of employees reported having some flexible working arrangement. The most common were flexitime (2.4 million or 45 per cent of employees saying they had one of the flexible working types listed in the LFS; followed by

⁷ The Work Foundation Autumn Statement 2012

term-time working (1.1 million or 20% of employees with a flexible contract) and annualised hours (just under 0.9 million or 17% of all employees with a flexible form of contract. Other forms of flexible working included on-call working (400,000 or 8%), some form of compressed hours at just over 190,000 or 4% and job sharing at just over 90,000 or 2%. Zero hours at 200,000 represented 4% of employees with formal flexible contract arrangements.

Examples of flexible work (2012)

Flexible	000s	% flexible contracts	% of all employees
Flexitime	2391	45	9.7
Term-time working	1105	20	4.5
Annualised hours	875	17	3.6
On-call working	417	8	1.7
Zero-hours	200	4	0.8
Compressed hours*	194	4	0.7
Job-sharing	93	2	0.4
Total of above	5275	100	21.4

Notes: types of flexibility as pre-set in LFS. *Nine day fortnight, 4.5 day weeks.

Source: Labour Force Survey 2012Q4

The growth of non-standard employment?

A common assumption is that labour markets in many economies, including the UK, are moving towards more flexible or more insecure forms of employment. Zero hours contracts are seen as part of this shift and therefore seen as a potentially important contributor to preserving and enhancing the overall flexibility of the UK labour market.

Conventional definitions of flexible working tend to refer to “non-standard” employment which includes part-time work, self-employment, and temporary workers. However, to describe part-time jobs today as “non-standard” looks increasingly unjustified. Part-time work has been a significant and growing part of the UK labour market since the 1960s, with nearly one in four employees working part-time. Most part-time workers are on permanent contracts, and most say they want to work part-time. It is surely time to stop thinking of part-time work as an unusual feature of contemporary labour markets.

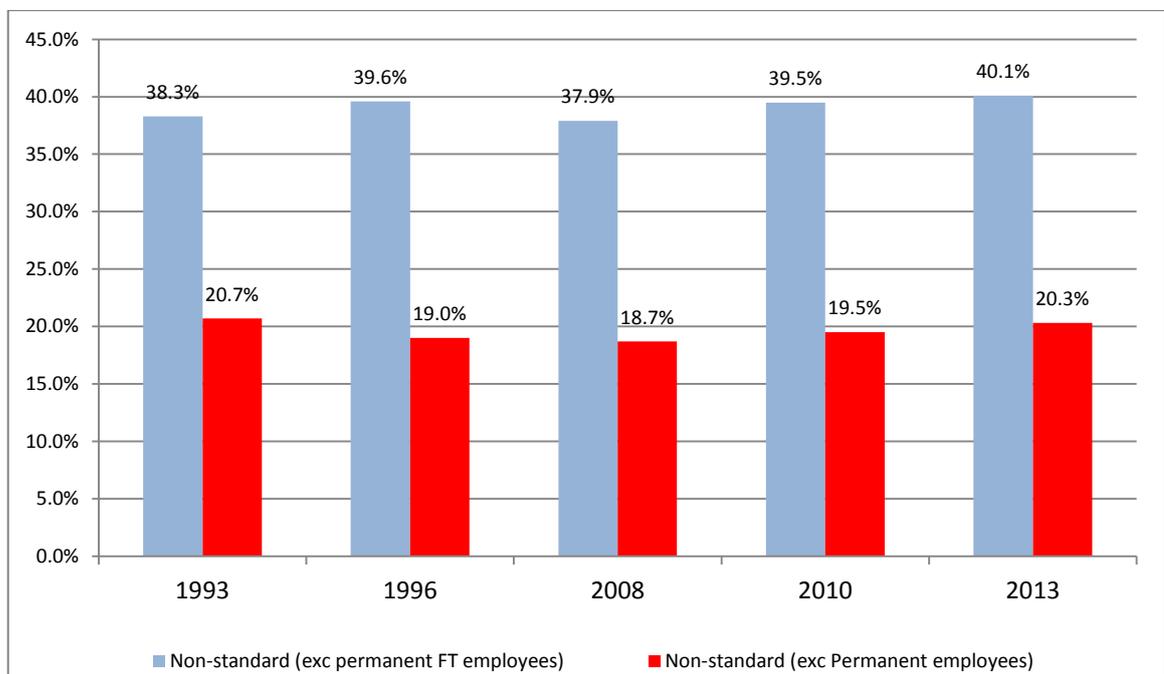
We have therefore constructed two measures of non-standard employment. The first follows convention, and counts all those except full-time employees in permanent jobs as non standard. As well as the categories listed above, this measure also includes unpaid family members and those in temporary government schemes – in other words, everyone in work as defined by the LFS except for full-time permanent employees. The second is an alternative measure of non-standard employment which consists of everyone in work except all permanent employees.

In the first quarter of 2013, just over 40% of the workforce was in non-standard employment as conventionally defined (part-time, temporary full-time, self-employed) and just over 21%

on our preferred measure (temporary, self-employed). Both measures include unpaid family workers and those on government schemes. Over the past twenty years on either measure, the move towards non-standard employment has been glacial. In the first quarter of 1993, non-standard employment on our two measures was respectively 38% and 19%.

Non-standard employment increased in the recession – however, we have to be careful about not mixing up cyclical with structural changes. Recessions typically destroy more full-time and permanent jobs than part-time and temporary jobs and the recession of 2008-2010 was no exception. In the labour market recovery of 2010-2013 we have seen a modest rise in the share of non-standard employment. It is, however, much too soon to say that we are seeing the start of a more significant shift towards a less secure employment structure.

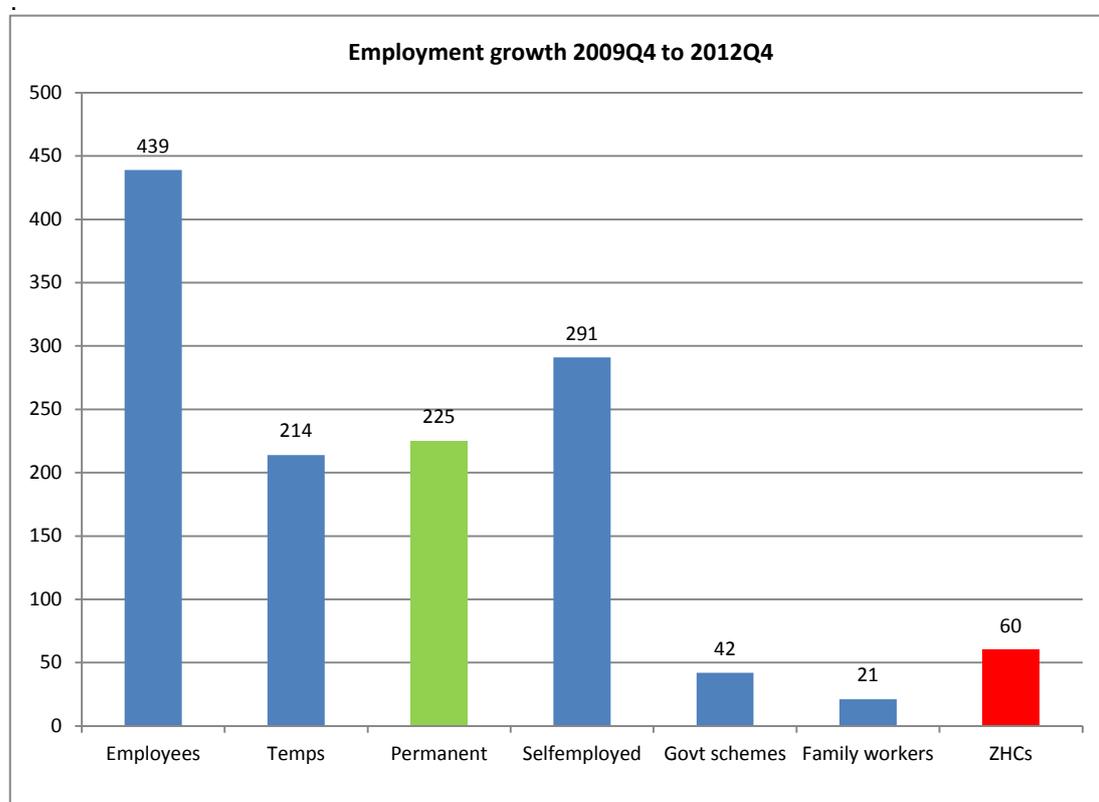
Non-standardised employment as share of total employment (1993-2013)



Notes: non-standard excluding FT permanent employees estimated for 1993 and 1996. All figures Q1. Source: Labour Force Survey, The Work Foundation estimates.

What is happening at the margin in terms of new employment opportunities is also important. Between 2009Q4 and 2012Q4 total employment went up by over 850,000. However, much of this increase was dominated by temporary employee and self-employed jobs. There has also been a significant increase in “involuntary” part-time working, where people say they took a part-time job because no full-time jobs were available. Over the same period, zero hours contracts went up by 40,000 – 23%. This is a significant increase in percentage terms, but a small part of the overall increase in employment. However, in a period where no more than one new job in four was for a permanent employee position, it is not surprising that

ZHCs have been seen as symbolising a much bigger growth in more insecure and fragmented employment since the recession ended.



Note: permanent denotes all employees minus all those in temporary jobs

Source: Labour Force Survey, 2009Q4 to 2012Q4

The structure of the labour market is not changing as much have some might think. More surprisingly, the share of employees reporting formalised flexible working arrangements has also shown little advance over the past 15 years.⁸ Between 1997 and 2012, the share of employees giving at least one of the flexible work options listed in the LFS in both survey years increased very slightly from 19.3% to 19.7%. The WERS suggests that between 2004 and 2011 there was relatively little overall change in the incidence of flexible working across workplaces. Other indicators over a similar period (1997Q4 to 2012Q4) show that the share of part-time employees increased slightly from just under 22% to just under 23% of all those in work, but the share of temporary employees declined.

Within the total there was more movement. The Labour Force Survey shows there was a significant increase in term-time working and annualised hours, up 23% and 19% respectively. In contrast, the once fashionable idea such as nine day fortnights and 4.5 weeks (forms of compressed hours working) seem to on the way out. Between 1997 and

⁸ The 2012 survey has the option of "on-call working" which the 1997 survey did not, so we have for comparison purposes excluded on call working from the total for 2012. In 2012Q4 there were over 400,000 people who said they were "on call" and their inclusion would increase the share of employees in flexible working arrangements to 21.4%. It is possible that other responses will have been distorted by the inclusion of an extra option, perhaps most likely in the case of zero hours contracts. So these comparisons should be used with some caution.

2012, the number of employees on these sorts of contracts fell by over 60%. Job sharing also looks to be even less common than it was, with the numbers reporting they were part of a job-share dropping by 33%. The most common form of flexible working, flexi-time, showed no significant change. WERS confirms these trends for the period 2004 to 2011. Some forms such as annualised hours, shift-work and zero hours working increased, while others such as job-sharing decreased. This is disappointing given the efforts put in by successive governments, the social partners and other campaign groups to encourage more flexible working arrangements.

We think many of these shifts are associated with changes in particular sectors, with public based industries having a key role. For example, in 2012, public administration, education, and health accounted for over 90% of term time working, 47% of all job-shares, and 38% of all annualised contracts. Manufacturing accounted for 44% of all compressed hours contracts. Our preliminary analysis suggests the increase in term-time working since 1997 has been driven by increased use in the public based services, and the collapse of compressed hour working is largely caused by both changing practices and a significant decline in employment in manufacturing.

The role of labour market intermediaries

Labour markets are not just shaped by regulation but also by institutions. We have seen an explosive growth in other forms of labour market institutions – the labour market intermediary. The intermediary landscape runs all the way from head-hunters, to general and specialist recruitment agencies and online websites, the welfare to work industry, public employment services, through to voluntary sector organisations. The full scale of labour market intermediation cannot be easily captured through official statistics, but labour supply agencies were first identified separately in the UK official statistics in the early 1990s, and in 2012 employed nearly one million people. In the US, temporary help agencies – sometimes called contingent labour agencies – employed nearly 2.7 million people in 2013, having doubled in size since 1993⁹.

These institutions have become a major and growing feature of the labour market and are likely to be even more important features of the labour market in the future. Although some of these institutions are traditionally associated with temporary work, many are major suppliers and brokers for permanent jobs. Moreover, in some cases temporary workers are permanently employed by the agencies, which then provide their services on a temporary basis to other employers.

The interaction between zero hour contracts and labour market intermediaries is not well understood. For example, the supply of temporary labour to the NHS operates through institutions called nursing banks, operated through an umbrella organisation called NHS Professionals, or via NHS Trusts, or other commercial agencies. Nurses in a bank typically have no fixed contracted hours, but also can chose which shifts they work. It is not clear whether these contracts are fundamentally different to zero hours arrangements, even if

⁹ US Bureau of Labor Statistics, May of both years.

called something else; or how many people using them would ever describe themselves as zero hour employees. One example of an NHS Trust policy statement says that all bank workers will be appointed as zero hours workers, with an explicit intention that they should have “worker” rather than “employee” status. The guidance says that managers should not give bank workers regular pre-booked hours in one service area for more than a continuous 12 week period. It is not known how far this is common practice within the NHS. However, we think it is worth exploring whether “bank” arrangements could be applied elsewhere, especially in the domestic care and public sectors, in order to offer a better balance between the needs of employees and employers.

A survey undertaken for the Royal College of Nurses (RCN) in 2006¹⁰ suggested both advantages and disadvantages for individuals employed in nurse banks and those employed on temporary contracts through agencies. Overall, the report was fairly positive: *“most respondents are satisfied with their working pattern, with 86 per cent reporting that bank/agency working suits them well. This centres to a large extent on this form of working allowing nurses to work the hours they want, to get the volumes of work they want, and ensure flexibility in working life with 80 to 90 per cent agreeing with each of the statements covering these issues.”* However, around a third of respondents said they would have preferred a permanent post, increasing to two thirds of nurses who qualified after 2000. So while these arrangements appear to satisfy most people on hours and flexibility, they are not necessarily the type of working arrangement that some people would prefer.

Zero hours work in 2012

The most basic question is how many people in today’s labour market are on zero hours contracts and how have they grown over time. We do not know the answer to either question. The latest estimate from the ONS is that, there were 250,000 people on zero hours contracts in 2012 Q4, or just under 1% of the employed workforce. We had always suspected the LFS under-reported the total numbers, but recent evidence drawn from another dataset suggests that in the domestic care sector the number is around 300,000 in England alone¹¹. Returns compiled by the Labour Party from NHS Trusts from Freedom of Information Requests claim that another 67,000 are employed by the NHS¹². The most recent independent estimate from the CIPD based on a survey of just over 1000 senior HR professionals puts the figure at around 1 million. The CIPD survey also suggests that the incidence of zero hours contracts might be wider than we thought. The survey said about 19% of employers were using them in July 2013. This is much higher than the estimate from the 2011 Workplace Employment Relations Survey which suggested they were in just 8% of workplaces – this is described in more detail below. However, the share of employers and the share of workplaces are different measures and cannot be compared directly. The picture most people have of zero hours employment is probably relatively low pay work of short duration in hospitality or retail or care. The reality is much more diverse and there are few consistent patterns. For example, in the low wage sectors, zero hours are common in

¹⁰ Ball and Pike (2006) *Temporary Working*, Employment Research Ltd.

¹¹ Written response to a Parliamentary Question, June 20 2013.

¹² <http://www.itv.com/news/story/2013-07-12/nhs-zero-hour-contract-warning>

hospitality, but rare in retailing. In the public based services, they are above average in health, education, and community services but used much more sparingly in public administration.

The incidence is highest in hospitality, where zero hours are reported in nearly 20% of workplaces, but also in public based services such as health, education, and other community services where zero hours are used in between 10% and 13% of workplaces. However, they are less common in the retail industry, in business services, and public administration at between 4% and 6% of all workplaces. They are hardly used elsewhere, where the workplace incidence is typically between 1% and 2%.

Use of zero hours contracts in workplaces by industrial sector

Category by current use	Sector	2011 % workplaces
High use private services	Hospitality	19%
Higher use public based services	Health	13%
	Education	10%
	Community Services	10%
Lower use private services	Retailing	6%
	Business services	6%
Lower use public services	Public Administration	4%
Low use (< 2%)	Manufacturing	2%
	Communications	2%
	Energy and water	1%
	Construction	1%
	Financial Services	<1%
Average	All sectors	8%

Source: Wanrooy et al (2013) *The 2011 Workplace Employment Relations Survey: First Findings*, ESRC

The Labour Force Survey provides some details by industry which confirms the WERs distribution. In the fourth quarter of 2012 about 30% of all those on ZHCs were in education, health, and public administration and 27% were in hospitality and retailing. Another 16% were in banking and business services, 11% in “other services”, 9% in transport and communication, and 15% across all other industries.

What sort of jobs do people on zero hours contracts perform?

A common assumption is that ZHCs are a form of temporary labour. However, two thirds of people on ZHCs said they were in a permanent job. The share of people on ZHCs on temporary employment – at 32% – is still much higher than in the rest of the workforce (just over 5%) and much higher than those in other forms of flexible employment. For example, over 90% of people working flexitime, annualised hours, job-sharing or undertaking on-call working said they were in a permanent job – the share was slightly lower for those in term time working at 86%. Even so, those on ZHCs are more likely to be part of the permanent workforce than in temporary employment relationships.

Another common assumption is that ZHCs are relatively short-lived. However, overall, 44%

had lasted for two years or more with the same employer, and 25% had lasted five years or more. These are indeed lower percentages than for the workforce as a whole, where 75% had been in a job for more than two years. ZHCs were also over-represented among short duration contracts, with 21% less than six months duration compared with 8% across the workforce as a whole. Nonetheless, the durability of some ZHCs in what appears to be a stable relationship with one employer is striking.

One criticism of ZHCs is that they not may supply enough work for individuals. The data offers some confirmation, in that just over 25% of people on ZHCs said they would like to work more hours. This compares with about 11% of all in work. However, we can infer that three quarters of ZHC workers did not want more hours (some may have wanted less and others were content with the current levels). So while ZHCs clearly do not meet some people's needs, in many other cases the hours supplied appear to be about right.

Another question in the LFS asks people if their weekly hours vary. Not surprisingly, the answer is that most people on ZHCs say they do. However, while 75% of those on ZHCs say they vary each week, 25% say they did not. As one of the purposes of ZHCs is to allow for short-term variations in hours, we might have expected the share saying they varied to be even higher. Moreover, about 40% of employees not on ZHCs also said their hours varied – so while ZHCs clearly experience a much greater degree of hours variability, many on conventional contracts also face variable weekly hours. However, it may be that ZHC hours are significantly more unstable than for those with variable hours in conventional contracts.

It may be that actual variability is over a more extended period – say from month to month. It may also be for some ZHCs that although actual weekly variability in practice is small, some employers still want the assurance that should there be an unexpected fall in demand they can immediately cut back on paid hours. It is also possible some employers want zero hours to evade employment rights rather than because the hours they can offer vary – though as we noted earlier this is a risky approach given the legal precedents.

It is not possible from the Labour Force Survey to directly test a key question – whether ZHCs are being taken because people prefer their flexibility or because there is nothing else available. We can however ask whether people on ZHCs are actively looking for another job. Just under 18% of those on ZHCs said they were looking for alternative employment, compared with 7% of all employees. This is an imperfect indicator of discontent, and could also be about the particular job as well as the form of contract. We might have expected the share looking for other employment to be higher given the negative perceptions of ZHCs. However, it is also possible that some people on ZHCs feel trapped or that in high use sectors such as domestic care there is no realistic alternative if they wish to remain in the industry.

Characteristics of workers on ZHCs

Characteristic	ZHC contracts	Non-ZHC contracts
Permanent	71%	93%
Two years or more	44%	75%
Less than six months	21%	8%
Weekly hours vary	75%	40%
Looking for another job	18%	7%
Would like more hours	26%	11%
Full-time students	26%	11%

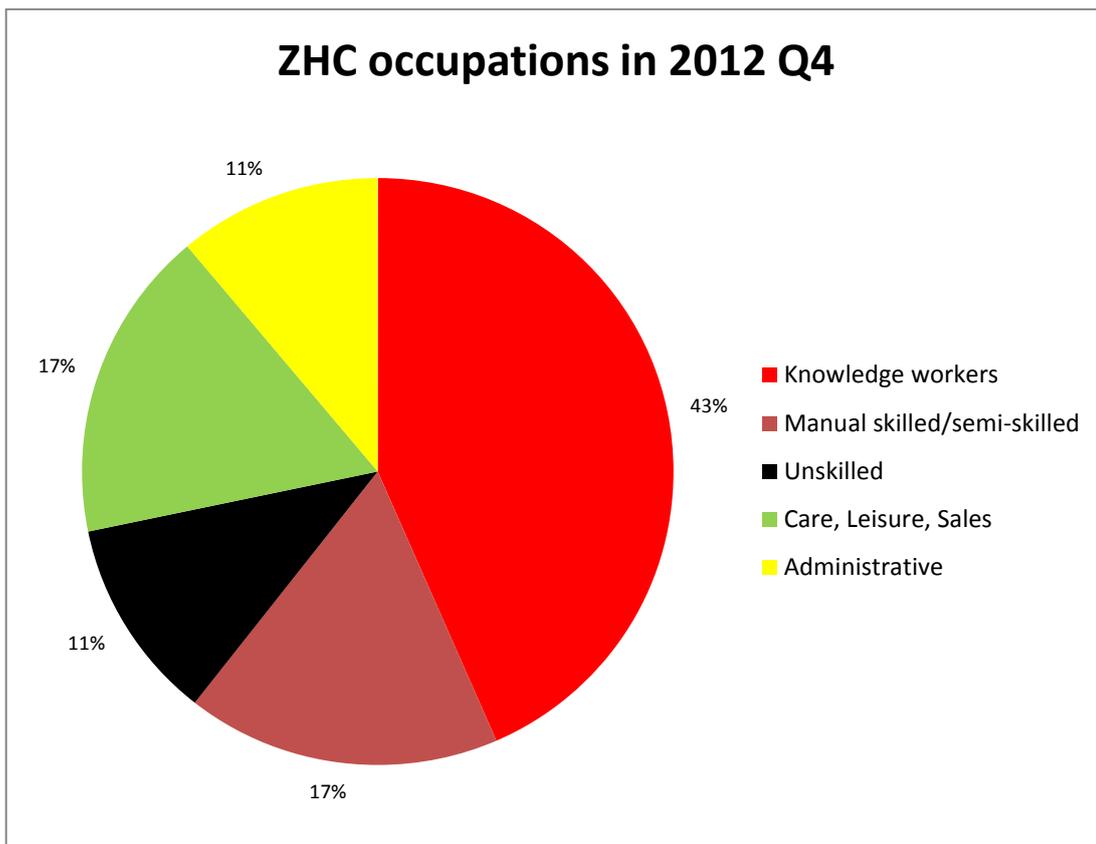
Notes: two years or more and less than six months are with current employer
Source: Labour Force Survey, 2012 Q4 analysis from The Work Foundation.

Zero hours occupational diversity – knowledge workers and others

The popular view of zero hours contracts is that they are predominantly filled with lower skill and lower wage workers. In fact, a significant share of zero hours contracts are filled by people in the top three occupational groups – managers, professionals and associate and technical staff. The latest figures show that 43% of all ZHCs in the last quarter of 2012 were in these occupations, with 20% recorded as professionals, 14% in associated professional and technical jobs, and 10% as managers. Just under a fifth (17%) were manual skilled or semi-skilled jobs and just under another fifth (also 17%) were care, leisure, or sales jobs. Just over one in ten were unskilled and just over one in ten were administrative.

However, as we signalled in the introduction to this report, there may also be seasonal factors at work here which overstate this share and correspondingly understate the share of workers in caring, leisure and sales jobs and less skilled jobs. At the time of writing, we had found no easy way to decide which of the two quarters (Q2 or Q4) was likely to give a better underlying picture of the occupational balance, and so have gone with the latest quarter. This is shown in the chart below, with results for Q2 shown in a footnote to illustrate how seasonal variation may distort some results¹³.

¹³ Q2 results for occupational break-down are 25 per cent for managers, professionals, and associates; 27%t for caring, leisure, and retail; 18% for manual skilled and operatives; 18% for unskilled; and 11% for secretarial and administrative jobs.



Note: all figures 2012 Q4, seasonally unadjusted. Knowledge workers defined as managers, professionals and associate professionals

Source: Labour Force Survey

One of our working hypotheses is that ZHCs differ in characteristics between those filled primarily by what we call “knowledge workers” and other types of worker. Our work on the growth of the knowledge economy distinguished between knowledge workers and other workers, based on the knowledge content of the work they did. The best proxy measure from the official statistics is the top three occupational groups – managers, professionals, and associate professionals and technical workers.

Just over 20% of all those on ZHCs were in more knowledge intensive jobs, about half the share of all employee jobs in these occupational groups. Most of the rest (58%) were concentrated in three low paid service based occupations – caring and leisure, sales and customer services, and unskilled. Manual and secretarial and administrative jobs are under-represented in ZHCs.

ZHC knowledge workers were more likely than other workers on ZHCs to be on permanent contracts and much more likely to be with their current employer for more than two years. Knowledge worker ZHCs are also more likely to be in the public sector. This is not surprising given the incidence of zero hours contracts in health and higher education, but may also help explain why permanent and longer term ZHCs are more common among knowledge

workers. But knowledge workers on ZHCs are also more likely to say their weekly hours varied and that they would like more of them. So while on some measures, knowledge worker ZHCs look to be in more durable employment relationships, they may also be signalling greater discontent about hours.

ZHCS and knowledge workers characteristics compared in 2012

Characteristic	KWs on ZHCs	Others on ZHCs	All on ZHCs
Permanent	79%	69%	71%
Two years or more	61%	40%	44%
Less than six months	14%	23%	21%
Hours vary	82%	73%	75%
Looking for another job	16%	19%	18%
Public sector	24%	12%	14%

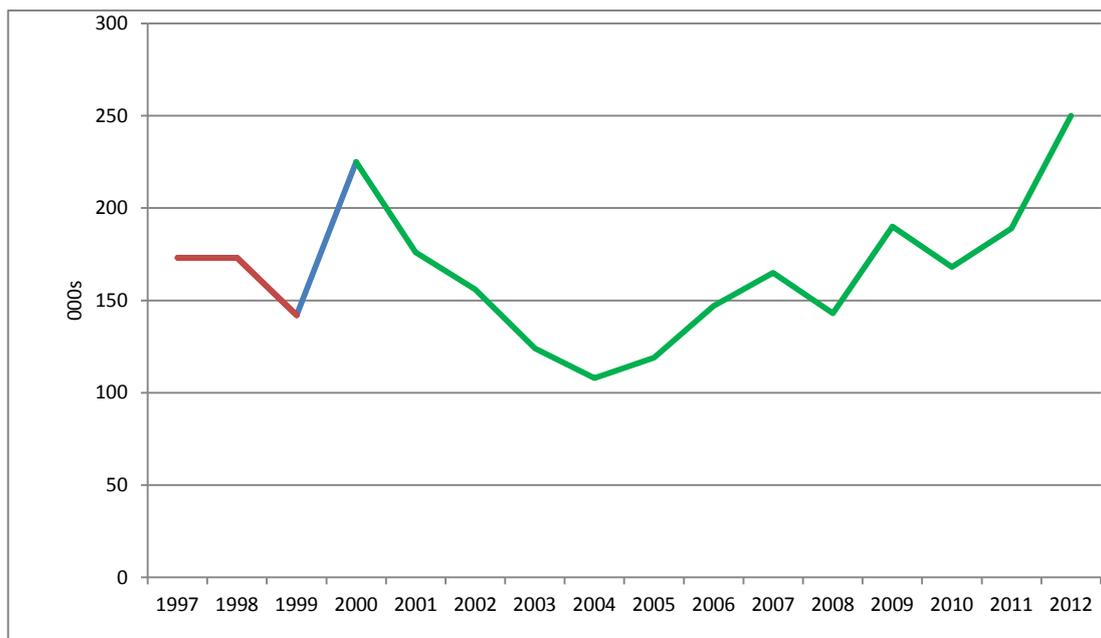
Notes: knowledge workers defined as all in top three occupational classifications – managers, professionals, and associate professionals and technicians.

Source: Labour Force Survey, analysis from The Work Foundation

Zero hours contracts 1997-2012

Many accounts of zero hours contracts to date take as their starting point the mid-2000s. In reality, zero hours contracts have fluctuated significantly over the past 15 years and current levels are similar to what they were in 2000. They fell between 2000 and 2004, have grown erratically since 2004, with a surge in 2012 which has caught the public eye. As a share of total employment, zero hours contracts were 0.8% in 2000, fell to 0.4% by 2004, and are around 0.8% today.

Zero hours contracts 1997-2012



Note: pre 2000 not directly comparable

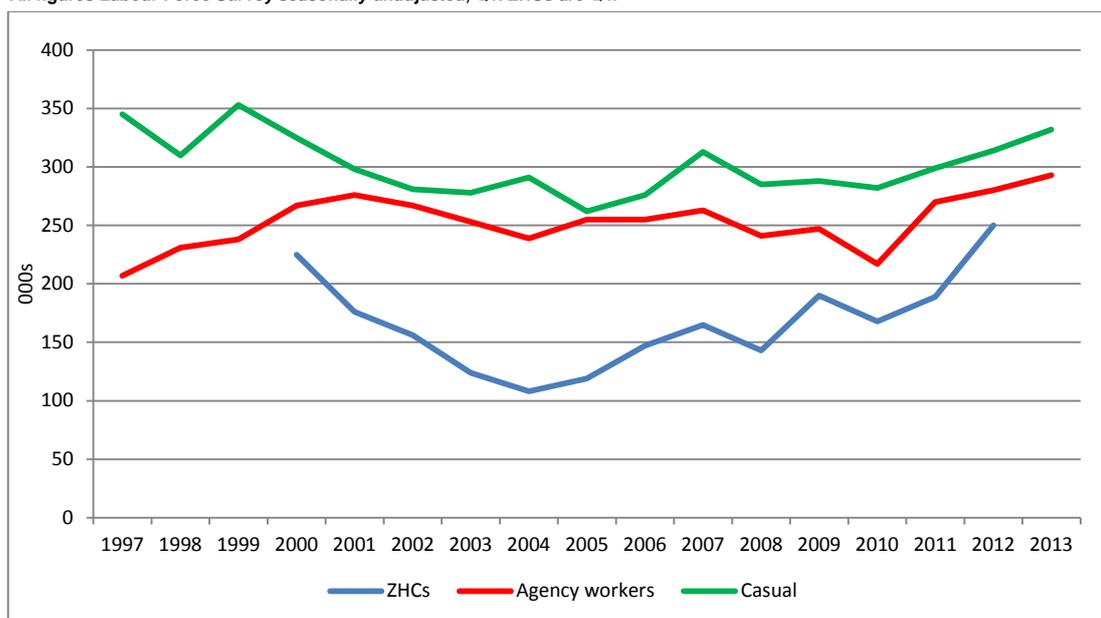
We do not have a wholly convincing story of why zero hours first fell and then revived, and no single cause is likely. The fall since 2000 may be linked to lower unemployment and the introduction of the National Minimum Wage, and the rise since 2004 by higher unemployment and pressure on organisations to respond to much higher levels of uncertainty. But changes in institutional practice may also have had a role, especially in higher education, the NHS and the care home sector.

It has also been suggested that the growth in zero hours contracts has been prompted by the introduction of the Agency Workers Directive in 2011 which gave agency workers greater employment rights and protections and consequently meant that some employers replaced agency workers with zero hours contracts. This is unlikely for three reasons. Firstly, as we saw above, most people on zero hours contracts say the arrangement is permanent rather than temporary. Secondly, the revival in zero hours contracts predates the Directive by several years. Thirdly, since 2011 the number of temporary agency workers has risen, not fallen, and in the first quarter of 2013 were at their highest level since 1997. It is possible that zero hours contracts were substituting for other forms of temporary working. However, the pattern of casual working has tended to follow that of zero hours contracts, with a decline until the mid 2000s and an erratic increase since then.

The chart below shows these trends from 2000, the first year that data on a comparable basis is available. As ever, trying to untangle the exact relationship between zero hours, agency workers, and casual workers is not straight-forward – some people on zero hours contracts could describe themselves as casual workers and some may be temporary agency staff. Nonetheless, however measured, we can see all three lines starting to move upward from 2008 onwards.

Zero hours, agency and casual work 1997-2013

All figures Labour Force Survey seasonally unadjusted, Q1. ZHCs are Q4.



A recent study published by the Low Pay Commission offers some insights into the incidence and drivers within the domestic care sector¹⁴. Overall, about 60% of care-workers were on zero hours contracts in 2011-2012 compared with about 50% in 2008-2009. However, the figures for care workers can be highly erratic from year to year and trends in the rest of the workforce have not been consistent. There was a big rise for care managers, up from 2% in 2008 to 27% in 2012, but the share among senior care-workers fell from 42% to 21%. Overall, the researchers estimated that 80% of the domestic care workforce in the private sector were on zero hours contracts compared with just 5% of the workforce in statutory providers.

According to the report, some providers of care to people in their homes claim that they have been forced towards zero hours. This is because of the shift in contracts by local authorities from block bookings of a set number of hours to more flexible “Framework Agreements” with private providers where packages of personal care are agreed, so that services are required on a repetitive basis but without being able to easily predict the quantity. This study illustrates how changes in public procurement in the delivery of care *may* have driven a shift towards zero hours contracts in the private sector. As we argued above, institutional and policy related changes and practice may be as important a reason for the rise of zero hours in some sectors as broader changes in the nature of work and the employment contract.

We looked at how the industrial distribution of some forms of flexible working had changed since 1997 above. This analysis comes with a health warning. Firstly, the industrial classifications have changed between the two surveys, so while the analysis covers similar sectors, it is not precisely a like-for-like comparison. Secondly, the statistics are affected by the number of people on zero hours contracts who also reported what industry they worked in – and the share of people reporting their industry appear to be significantly lower in 2012 than in 1997. We are reluctant to draw many conclusions from this analysis given all the possible sources of statistical bias and changes in definition, but it looks as if the increased use of zero hours contracts in public based services has been more important than in private based services. This is consistent with the evidence from the WERS which shows that ZHCs were becoming even more concentrated in hospitality and public based services as measured by workplace incidence, with above average rises in hospitality, health, and education.

¹⁴ [http://www.lowpay.gov.uk/lowpay/research/pdf/LPC - Final Leeds University Report - 26 February 2013SM2.pdf](http://www.lowpay.gov.uk/lowpay/research/pdf/LPC_-_Final_Leeds_University_Report_-_26_February_2013SM2.pdf)

The policy and organisational response

The longer term growth in zero hours does not, as yet, appear to be part of a longer run change in the structure of employment or an expansion in flexible working within the UK labour market. Recent trends such as the growth of self-employment, if continued, may start to change that assessment but it is far too early to jump to conclusions that we are seeing a fundamental structural shift. Even if zero hours contracts are much higher than current statistics suggest, they are still a small part of the overall labour market. We are therefore sceptical that they play any significant role in explaining the encouraging growth of private sector employment in this recovery or can plausibly be seen as part of a dramatic re-ordering of employment relationships in the UK labour market.

We are also sceptical that the rise of zero hours is an unintended consequence of the recent EU Directive on Agency Workers, as claimed by some. There is nothing in the aggregate statistics that suggests there is an association between the two forms of employment and agency work is at one of the highest levels since the Labour Force Survey started recording this form of temporary work. There seems to be little merit in revisiting the regulation of agency work.

The greater use of zero hours contracts is taking place against a background of falling real wages, high levels of workplace fear of the consequences of redundancy and unfair treatment for a significant minority, and an employment recovery where permanent employee jobs have been in a minority. Public sector organisations are under great pressure to make efficiency savings. Against this background, it is not surprising zero hours contracts have come to symbolise, for some, a uniquely exploitative form of employment contract leading to some calls for the banning of the use of zero hours. The TUC has suggested a national minimum threshold for the number of hours being offered to match the national minimum wage¹⁵.

The calls to ban zero hours contracts, however, are in our view misplaced. The UK labour market supports a wide variety of flexible working arrangements and employment contracts. The approach by successive governments both in the UK and in some other OECD economies has been to regulate and legislate where necessary and encourage good practice rather than restrict or ban. Bad employment practice can be found across all forms of employment.

Moreover, zero hours contracts can suit some people and there may be some circumstances where work is so erratic that it would be hard for an employer to offer the work on any other basis – and we should think hard before restricting arrangements that might give people the flexibility they need or create new job opportunities. We would also want to avoid disrupting the use of similar flexible arrangements allowing the employment of post-graduate students in universities and NHS nursing banks.

¹⁵ <http://www.personneltoday.com/articles/07/09/2012/58795/we-have-the-national-minimum-wage-now-we-need-national-minimum-hours.htm>

A big problem facing policy makers and others is that answers to many of the key questions are not known. We do not know how many people on ZHCs have taken them out of choice and how many have taken them out of necessity. We do not know exactly why employers are making more use of them. We have almost exhausted the interpretation that can be put on the aggregate statistics and even these have to be made with great care and awareness of the constraints of sample size and seasonality. Without a sound evidence base, it is hard to take good decisions that address the key issues without the unintended consequences.

It would also be constructive to start to map out what good practice around the use of zero hours contracts might be. In 2010, we published the report of the Good Work Commission¹⁶ and the framework set out in that document could prove a useful way of thinking about how the practice of zero hours contracts can be closely aligned with the promotion of good work and by the good work organisation.

Although in the eyes of some, zero hours contracts will never be seen as “good work”, we would argue that we should nonetheless identify organisational practice that improves zero hours contracts and addresses some of the imbalances between employees and employer than can arise. We should be able to differentiate between good and bad practice. Some ought to be relatively straight-forward such as being very clear about what is being offered before workers take a job. We also think it is worth looking at whether operating zero hours contracts through “banks” such as those used in the NHS might be applicable in other parts of the public sector.

A major challenge for organisations that want to use ZHCs more widely is to sustain loyalty and commitment and engagement. There is a great deal of evidence that suggests organisations with high levels of employee engagement do better than those where the workforce feels little commitment or loyalty. Organisations with a significant share of their workforce on contracts which are not seen as fair or transparent will struggle to sustain performance. This suggests to us they should be used sparingly – and only when there is a genuine business need that can only be addressed through this form of employment contract or when it suits the individuals concerned.

The BIS informal consultation announced by the Secretary of State on the use of zero hours contracts was very welcome. But it is increasingly clear that there is much more work that needs to be done to get an accurate picture on the numbers, use, and drivers of zero hours contracts on which to base sensible policies and it is not clear that the review in its current form will do the job.

We would favour a more systematic approach – perhaps along the lines of the Coalition’s Fair Pay Review¹⁷ – which brings together the information and insights from a wide range of institutions and organisations. This could have three clear goals. Firstly, to get the best possible picture of the incidence and drivers of zero hours contracts from all currently

¹⁶ Parker and Bevan (2011) *Good Work and Our Times*: report of the Good Work Commission, The Work Foundation.

¹⁷ <https://www.gov.uk/government/news/will-hutton-publishes-interim-report-of-the-fair-pay-review>

available information sources. Secondly, to set out what good practice looks like and develop appropriate codes of conduct. Thirdly, on the basis of the evidence, make recommendations on any legal or regulatory changes or changes in public procurement practice that may be required to discourage abuse and encourage best practice. The Work Foundation would of course be happy to offer support to either of these approaches.

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Contact details

The Work Foundation
21 Palmer Street
London SW1H 0AD

info@theworkfoundation.com
www.theworkfoundation.com

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