Acas Council submission to the Taylor Review of Employment Practices in the Modern Economy

1. Acas welcomes the opportunity to respond to the Independent Review of Employment Practices in the Modern Economy.

2. Acas is a statutory, non-departmental public body with a duty to improve employment relations in Great Britain. We have considerable practical experience of the dynamics of the workplace and the wide range of contractual arrangements used in the modern labour market. In 2015/16 we handled almost 950,000 calls from individuals and employers to our national helpline and dealt with over 500,000 queries online. We provided conciliation in 970 collective disputes, received 92,000 notifications for our early conciliation service, and our network of locally based advisers trained 34,500 individuals on a wide range of workplace-related topics.

3. This submission draws on insights from this experience and reports evidence from Acas' research on non-standard contractual arrangements. This includes research in recent years on zero hours contracts and agency working, and a new analysis of calls to the Acas helpline regarding these and self-employed contractual arrangements.

4. Acas helpline users in general represent only a subset of those engaged in the labour market – broadly speaking, individuals and employers who have some kind of concern at work and who are seeking advice. The evidence from the helpline presented in this submission is therefore not necessarily representative of non-standard contractual arrangements more widely.

5. The value of Acas' data is its ability to provide useful qualitative insights into a broad range of views and experiences concerning the types of problems that can be encountered by some of those engaged in these forms of work. This includes insights on how these can present different workplace challenges, in some respects, to those encountered in 'traditional' working relationships, and areas where good practice can be encouraged and improved.

6. The evidence in this submission therefore should be considered in the context of its strengths and limitations. The Annex provides further details on the research informing this submission.

7. The issues highlighted by Acas' experience and research are of particular relevance to the Review's focus on:

A. Whether current definitions of employment status need to be updated to reflect new forms of working created by emerging business models;

B. Whether emerging business practices put pressure on the trade-off between flexible labour and benefits such as higher pay or greater work availability, so that workers lose out on all dimensions;

C. Whether the growth in non-standard forms of employment undermines the reach of policies like the National Living Wage, maternity and paternity rights, sick pay, and holiday pay;

D. How government can support a diverse ecology of business models enhancing the choices available to investors, consumers and workers.

8. A summary of Acas' insights in these areas, together with relevant policy considerations from Acas' perspective, is provided under the corresponding headings below. A number of other themes within the scope of the Review are outside the remit of Acas. Acas does not seek to offer an opinion on those issues beyond its practical experience.

A. Whether current definitions of employment status need to be updated to reflect new forms of working created by emerging business models

Confusion and uncertainty around employment status

9. In Acas' experience, there is a great deal of confusion and uncertainty around employment status among both individuals and employers engaged in non-standard working arrangements.

10. Acas' research on zero hours contracts, for instance, has found calls to the Acas helpline about these contracts often feature uncertainty about whether an individual is a 'worker' or an 'employee' and therefore which rights and obligations may apply. Such uncertainty is especially evident where individuals have been working for the same employer over prolonged periods of time with reasonably regular patterns of work.

11. A recent analysis by Acas found similar uncertainties among individuals calling the helpline whose arrangement with their employer was labelled self-employment. These included individuals in a range of sectors who were unsure of their status and may have been working regular hours for a single employer, sometimes over protracted periods of time. Others reported how they did not 'feel' self-employed due to the significant degree of control exercised over when, where and how they performed their work.

12. A further uncertainty, evident among some agency workers engaged in multiple jobs via several agencies at any one time, was a sense of confusion about their 'overall status' when treated as employed in some jobs but self-employed in others doing the same type of work.

13. Some helpline callers had heard about recent high profile tribunal decisions that have found ostensibly self-employed individuals to be workers, and were seeking advice on challenging their own status believing that their situation was comparable. Public awareness of these decisions also appeared to have generated some 'myths' about status: for example, that if someone is engaged to perform work for only one organisation then they must now automatically be regarded as an employee/worker and entitled to rights such as paid holidays.

Ambiguous status and lack of clarity around options

14. Evidence of such uncertainty and confusion reflects, in one respect, the fact that a significant proportion of *all* calls to the Acas helpline involve queries

from individuals and employers who are unsure about the details of their contract and applicable rights and obligations. This can be for a range of reasons, commonly because people have not been issued with a written contract, or have not read it or fully understood it, or simply because it has not seemed particularly relevant to the day-to-day experience of getting on with their work.

15. However, a significant difference between calls relating to 'standard' and 'non-standard' forms of work is that, once they do enquire, those in 'standard' contractual arrangements can usually determine their status and applicable rights and responsibilities with relative certainty. In contrast, for many of those in non-standard arrangements, assessing their status can remain a very uncertain endeavour even after they enquire.

16. In this regard, it was clear that many helpline callers were experiencing a frustrating and somewhat circuitous journey in trying to establish their status with sufficient certainty to inform their options:

- many had apparently been moving to and fro between Acas, HMRC and other resources in an attempt to find the answers they needed;
- some were perplexed that their enquiries suggested that a person may have different statuses for the purposes of tax and employment law, neither of which they clearly understood;
- others were frustrated to be informed that neither Acas nor HMRC could provide an authoritative determination of their status, that only a tribunal could do so, and that professional legal advice might therefore be needed given the complexity of case law on employment status.

17. In Acas' experience, where employment status remains unclear even after clarity has been sought, this can cause a great deal of anxiety for those concerned – especially where rights, entitlements and security of income are at stake. Those with unclear status also face a more complex and uncertain array of potential routes for addressing their concerns. As tribunal and/or civil court options may potentially be appropriate depending on status, such callers often faced the prospect of having to continue their enquiries on multiple speculative fronts.

18. Such uncertainty clearly impacts on the ability of individuals and employers to objectively assess their positions and to resolve concerns and disagreements in the workplace. In some instances, uncertainty about status hampered callers' confidence to raise their concerns with their employer, for fear of being seen to be asserting rights they may not have and looked on less favourably thereafter. Others felt that making a tribunal claim to establish their status seemed too arduous a prospect without a better advance indication of their likely status, although this was a course of action some callers were considering.

Issues for consideration

19. In Acas' view, understanding employment status and the relevant associated rights and duties is a crucial area of difficulty for both individuals and organisations. Making it easier for people to access clear guidance on the various

types of employment status, and the relevant tests for their application, would help alleviate some of the uncertainty and confusion currently experienced with regard to non-standard working arrangements.

20. One option for doing so may be an accessible online tool (similar to HMRC's existing online tool for tax purposes) providing an indication of the types of factors taken into account by courts and tribunals in determining employment status in an individual's particular circumstances. A further option would be clear, scenario-based guidance illustrating how the legal framework applies to determine status in common types of working arrangement. Acas is currently exploring these options and would welcome working with the Government and relevant stakeholders to develop these and/or other options for guidance in light of the Review's findings.

21. Guidance in itself, however, does not provide a complete answer to those engaged in unclear working relationships. For example, evidence from the Acas helpline suggests that indications of status from HMRC's online tool can be simply disregarded by employers when individuals seek to use this as evidence in challenging their status and entitlements.

B. Whether emerging business practices put pressure on the trade-off between flexible labour and benefits such as higher pay or greater work availability, so that workers lose out on all dimensions

22. In Acas' experience, while non-standard contractual arrangements can clearly offer flexibility for both organisations and individuals, the trade-off between the benefits and risks of flexibility is not always understood, desired or shared equally between those engaged in these arrangements.

'Reluctant' non-standard workers

23. It is clear that many helpline callers are engaged in a zero hours, agency or self-employed arrangement more out of necessity than by choice. Some described their situation, for instance, as being "kept on freelance" or "not really self-employed", and told how they felt taken advantage of in respect of their status and unfairly excluded from employment rights.

'One-sided' flexibility

24. Others appeared more willing to be engaged in a non-standard form of work but had found that the way their contract operated in practice meant that the flexibility was "all on one side". These callers included:

- zero hours workers who felt they had no genuine option to turn down offers of work. For example, some had been told they were obliged to pick up extra shifts when their employer was short staffed, or had been given verbal warnings for refusing shifts, or had been told that turning down shifts would result in them getting no further work;
- agency and zero hours workers regularly given very short notice – as little as one hour – to turn up for shifts;

- agency and zero hours workers subjected to frequently changing shift patterns without prior discussion and at very short notice, aggrieved that they were effectively "on call full-time" despite working part-time hours;
- zero hours workers frustrated by their employers' processes for having to request leave, sometimes up to a month in advance, feeling that this ran against the principle that they should be free to turn down shifts;
- self-employed, agency and zero hours workers with lengthy notice periods – as much as 3 months – to reduce their 'normal hours' or to leave their job. Such callers were often looking to manage a transition to another job and were worried about their employer's obligations to provide work and pay during the specified notice period. Some had seen colleagues provide the required notice and then not receive any further work or pay.

A false sense of security

25. A further group comprised those for whom the risks inherent in their flexible arrangement had not been clearly understood until an unexpected development brought home the precarious nature of their employment, often after many months or even years in the job. The triggers for these calls included such developments as:

- a sudden change in employer behaviour: e.g. an unexpected change to a previously regular shift pattern, or a sudden reduction in an individual's 'established' working hours;
- a change in the worker's circumstances: e.g. falling sick and being told there was no entitlement to pay if unavailable to work, or being allocated different or fewer hours on returning to work;
- an attempt to raise a concern with their employer having an unexpected adverse impact on income: e.g. a complaint about bullying by a supervisor resulting in work no longer being offered.

26. The surprise and distress experienced by callers in these types of situations made it clear that many had had a very limited advance appreciation of the insecure nature of their contract. For others, it seemed that a sense of insecurity may have lurked in the background, but that while they were getting regular work they had assumed that their situation was essentially no different to that of a permanent employee.

27. In Acas' view, this potential for such a 'false sense of security' is an important context for interpreting wider survey evidence on whether people in such contracts are 'satisfied' with their overall working arrangement.

A sense of 'commitment imbalance'

28. While the issues outlined above are not confined to any particular sector, in Acas' experience they do appear to create particular stresses in jobs which are generally associated with high degrees of professional and emotional commitment. For instance, helpline callers in non-standard contracts in the caring and teaching professions often reported that they felt frustrated and angered that their considerable commitment to the people they cared for or taught was not reflected in their contractual status.

29. This also highlights indirectly the potential impact on those who depend on the services that those in non-standard contracts may provide. In the care sector, for example, the conclusion of the independent Kingsmill Review in 2014, that zero hours contracts can "cause instability for workers, for care recipients and for the care that is delivered", resonates with the picture that emerges from some calls to the Acas helpline.

Poorly informed choices regarding flexibility

30. A broader issue highlighted by Acas' research is the extent to which people have ready access to the information needed to make an informed choice about the trade-offs in non-standard arrangements before they enter them.

31. Earlier Acas' research on agency working[1] has highlighted some particular issues for agency workers in this regard, for instance around workers' decisions with regard to 'Pay Between Assignments' (PBA) contracts. This research found:

- agency workers often had very little understanding of the nuances of the Agency Workers Regulations, and therefore what different contractual options meant for them in terms of benefits and risks;
- in some cases, agency workers were found to be unaware of the type of contract they were on at all;
- others had been presented by their agency with a list of the benefits of a PBA contract (including employee status) but not the risks – for example, that they may be utilised on a long-term, continuous basis within a single client firm but lose equal treatment rights with comparable workers in that firm; or specifications around the work they may need to accept to secure entitlement to pay between assignments, which in some cases involved travelling to distant locations.

Issues for consideration

32. In Acas' experience, where non-standard contracts are entered into other than by way of genuine and informed choice, this can impact negatively on the 'psychological contract' between the organisation and the worker, that is, on the unwritten aspects of the relationship which enable trust and commitment.

33. While there are wider labour market issues affecting the choices people and organisations have and the options they take when entering working relationships, Acas believes that clear and easily accessible guidance has a role to play in helping to improve awareness of the potential risks and benefits involved in different types of contractual arrangements. Guidance on these contracts should also promote good practice in relation to achieving and sustaining good one-to-one relations between managers and individuals. This would be of benefit to both:

- *individuals*: enabling more people to enter into non-standard working arrangements in full knowledge of their position, including an awareness of the inherent uncertainty that comes with the flexibility in their contract;

[1] Professor Chris Ford and Dr Gary Slater, *The effects of Agency Workers Regulations on agency and employer practice* (Acas research paper 01/2014) http://www.acas.org.uk/media/pdf/5/7/The-effects-of-Agency-Workers-Regulations-on-agency-and-employer-practice.pdf

- *employers*: providing a better basis for drafting contracts; encouraging early conversations with individuals about their terms and conditions before starting work; and improving employer awareness of the importance of worker commitment, its relationship with engagement, productivity and well-being, and the important role that job security can play in this.

34. Acas, BEIS, trade unions and other stakeholders have all played an important role in recent years in improving the availability and quality of guidance on these types of contracts for individuals and employers, however this remains an area where more work could be done. In Acas' view, a Government-led, joint stakeholder approach may add value and impact in this area.

C. Whether the growth in non-standard forms of employment undermines the reach of policies like the National Living Wage, maternity and paternity rights, sick pay, and holiday pay

35. Acas' evidence suggests a significant lack of awareness among individuals and employers about applicable rights and responsibilities in non-standard contracts. In part this reflects the nature of calls to the Acas helpline in general. However, the many challenges noted above around clarity of employment status can cause further problems when it comes to understanding which rights and responsibilities apply in these arrangements.

36. Evidence from the Acas helpline also suggests that the fact that there is currently no statutory requirement to provide a written statement of terms and conditions to workers, as there is for employees, can further limit awareness of the legal framework around these contracts.

37. Helpline calls evidence an array of issues relevant to the reach of specific employment rights to non-standard arrangements. These include:

<u>Holiday entitlement, maternity rights and sick pay</u>

- individuals and employers with low awareness of whether those in non-standard contracts are entitled to these statutory rights, and if so how to calculate the relevant details on pay or time off;
- agency workers questioning the use of rolled up holiday pay by their agencies, often resulting in underpayment of accrued entitlements; others not informed by their agencies of their right to paid holidays then later refused back-dated claims as their annual 'leave year' had expired.

<u>Working time</u>

- uncertainty over aspects such as 'travelling time' and entitlement to pay while 'on call'; callers in the care sector in particular unclear about entitlement to pay during breaks and travel between assignments.

<u>Notice and dismissal</u>

- uncertainty among individuals and employers about rights to notice of termination, redundancy pay and protection against unfair dismissal for longstanding zero hours, agency and self-employed workers;

- non-standard workers' contracts being simply terminated rather than affording them the opportunity of a disciplinary procedure or performance management process;
- workers falling out of favour with their manager then left uncertain if they had been dismissed or simply left off the rota temporarily, with JCP unable to help with income given the ambiguity of their employment situation.

Discrimination

- offers of work drying up after an employer is made aware by a worker of a change in personal circumstances – for instance, that a worker is pregnant, or has been diagnosed with a serious illness.

Variation of terms and conditions

- uncertainty about whether there is a right to be consulted or to be given a minimum notice period of changes to working hours or other terms and conditions, especially for longstanding zero hours workers and agency workers.

Deductions from pay, unpaid wages and minimum wage

- agency workers confused about deductions from pay when paid via an umbrella company; others not paid for the final part of their assignment and confused about who was ultimately responsible for paying this, or having difficulty getting hold of someone to deal with their concern;
- self-employed workers enquiring about protection against changes to their remuneration package, such as sudden reductions in their rate of pay or the deduction of new fees or charges from their pay; others, notably delivery drivers and couriers, concerned that they earned less than the National Living/Minimum Wage after accounting for necessary costs such as providing their own vehicle, insurance, fuel costs, etc.

'Effective exclusivity'

38. Even where there is clarity and understanding about applicable rights and responsibilities, Acas' evidence points to a further issue that can undermine the reach of employment protections to these forms of work – that is, the extent to which individuals in non-standard arrangements have the confidence to question and assert their rights in practice.

39. Acas' research has repeatedly found that zero hours, agency and self-employed workers often feel they have no genuine flexibility to turn down shifts, or to look for work elsewhere, *in case* their employer responds by restricting future work opportunities. This threat of being 'zeroed down', explicit or implied, can also cause anxiety and apprehension when it comes to asking questions about contractual or statutory entitlements, or raising other types of concerns or grievances about treatment and conditions at work.

40. While new legislation was introduced in 2015 rendering 'exclusivity clauses' in zero hours contracts unenforceable, Acas' evidence suggests that the practice or threat of 'zeroing down' persists in some workplaces. Acas' has previously labelled this predicament a form of 'effective exclusivity'.

41. With little or no recourse open if their hours are 'zeroed down', many workers understandably experience deep feelings of insecurity about the potential consequences of any actions they may take and refrain from asserting their rights. In Acas' experience, this can contribute to feelings of unfairness on the part of workers about the way they are being treated – in some circumstances exacerbated by the fact that individuals have been working for their employer for many years.

Non-standard contracts as means for avoiding employment obligations

42. Calls to the helpline provide some evidence of organisations citing self-employed status as a reason not to discuss or specify clear terms and conditions of the working arrangement. For example, some callers told how, on enquiring to their manager about their rights, they had been told simply "you don't have a contract, you're self-employed".

43. In other cases, Acas' evidence suggests that some employers may be choosing to use non-standard contracts directly as a means to reduce or avoid the costs of employment obligations. For instance, some helpline callers – in the construction, hairdressing, cleaning and logistics sectors – related how their employer had told them that they would need to become self-employed, without any substantive change in the working relationship itself, to enable the employer to avoid the costs of sick pay, holiday pay, maternity pay or other obligations.

44. Acas' experience from conciliation in collective disputes further suggests that, in addition to the impact on individuals, the increasing use of non-standard contracts in some sectors in recent years can impact on relations and trust in discussions and negotiations between trade unions and employers. This is often manifest in the form of background concerns in a dispute about potential long-term strategies to replace elements of a 'standard' workforce with non-standard workers, and a related sense of a wider downward pressure on workers' terms and conditions.

Issues for consideration

45. As already noted with regard to employment status and improving understanding of the trade-offs in non-standard contracts, it is clear that there is a role for guidance to help tackle problems relating to lack of awareness and understanding of rights and responsibilities in non-standard forms of work. Acas will continue to review and develop its guidance in this area in response to emerging user needs and relevant policy developments.

46. In Acas' view, an appropriate extension of the statutory obligation to provide a written statement of terms and conditions, including hours of work, to workers as well as employees might further promote clarity and mutual understanding in non-standard arrangements.

47. The problem of 'effective exclusivity', however, presents a policy challenge that goes beyond that of improving transparency and awareness. Here it is precisely where people *do* clearly understand the nature of the contract, and therefore the insecurity of their position, that their confidence to assert their rights or challenge unfair treatment can be lacking.

48. In Acas' view, this issue of 'effective exclusivity' reflects an imbalance of power in many non-standard contractual relationships which creates deep-rooted challenges. Where workers are discouraged from raising concerns this is likely to have a negative impact on the effectiveness of basic statutory employment protections in those arrangements. Management practices that inappropriately restrict work opportunities with the effect of undermining the reach of employment rights is therefore an issue of fundamental importance.

49. As regards how such practices might be addressed, in Acas' view the availability of redress to an Employment Tribunal, allowing individuals to make a complaint regarding detrimental treatment, might provide a level of reassurance to individuals in these circumstances. 'Detriment' here would need to be carefully defined – for instance, not every circumstance in which offers of work are reduced in response to an individual taking work elsewhere would necessarily be unreasonable. An example might be an employer offering fewer hours to a worker because that worker has repeatedly turned down offered shifts in order to work for another employer.

50. Where individuals' confidence to assert rights is undermined, there will be further challenges in ensuring that they feel able to use the routes for redress that are available to them. For example, workers who believe that they have suffered a detriment by having their work opportunities restricted might nevertheless be reticent to make a claim of detriment to an Employment Tribunal, or to seek Acas Early Conciliation, for fear of further reductions in their hours. An associated protection against victimisation might go some way to addressing this.

51. In addition to any such regulatory responses, discouraging the practice of 'zeroing down' is in many ways a matter of influencing micro-level management behaviours within the workplace. Acas' experience and research shows that individuals are more likely to feel confident to raise concerns where there is a positive culture of trust in the workplace. This points to a need for accessible practical advice and support aimed at helping employers who use non-standard contracts to understand good management practices, including how to build and maintain good employment relations at both an individual and collective level.

D. How government can support a diverse ecology of business models enhancing the choices available to investors, consumers and workers

52. Acas very much welcomes this focus of the Review and the related theme of how to encourage and incentivise business, workers and other stakeholders to work together to improve the quality of work and tackle bad practice in the workplace.

53. In Acas' view, encouraging good employment relations in all organisations should be a central focus within any healthy ecology of business models. Promoting and supporting good relationships between employers, individuals and their representatives has a vital role to play in improving business efficiency, productivity and innovation through effective worker voice, engagement and wellbeing.

54. Acas has a well-established model for characteristics which define good workplace practice and a 'model workplace' tool on our website to enable organisations to assess the effectiveness of their people management[2], which may be of interest to the Review in its efforts to develop a vision for 'good work'. The Acas model puts an emphasis on practical considerations such as:

- Developing organisational ambitions and goals that staff know about and understand;
- Managers who listen to and consider the views of staff;
- A pay and reward system that is clear, fair and consistent;
- Organising work so that it encourages initiative, innovation and collaborative working;
- Developing a culture which encourages the learning of new skills.

55. Acas further believes that effective workplace relationships have a key role to play in addressing the UK's productivity challenge. The long term success of high level solutions, such as better physical infrastructure, capital investment and investment in skills, depends on workplaces being efficient, responsive and innovative. The way workplaces are organised, the part played by managers and leaders, and the role and involvement of workers and their representatives provide the means for things to change and improve. This message applies across sectors and industries and is a view shared by employer bodies and trade unions.[3]

56. Acas' research has also contributed to the growing recognition of the importance to organisations of individual wellbeing both inside and outside the workplace, and shows how the effective promotion of wellbeing at work touches on a vast array of employment relations issues – from leadership to job design, organisational policy to workplace culture.[4]

57. A particular focus is needed on supporting mental health at work. Acas' recent paper on *The Management of Mental Health at Work*[5] explores how the complexity, diversity and range of root causes of mental health conditions can make management of mental health at work difficult and challenging, especially for line managers. The paper places emphasis on the need to mobilise change in the broader structure of social arrangements, addressing the barriers that people with mental health conditions encounter in the workplace, labour markets and wider society.

Issues for consideration

58. In Acas' view, now is a good time for a renewed focus on these issues in view of the Government's current initiative to develop a new industrial strategy.

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[2] http://www.acas.org.uk/media/pdf/g/e/Model_Workplace.pdf and http://www.acas.org.uk/modelworkplace.

[3] See further Acas' policy report on *Building Productivity in the UK* (June 2015) http://www.acas.org.uk/media/pdf/7/9/Building-productivity-in-the-uk.pdf.

[4] http://www.acas.org.uk/media/pdf/7/k/The_future_of_health_and_wellbeing_in_the_workplace.pdf

[5] http://www.acas.org.uk/media/pdf/2/p/Mental_health_report_11_Nov_2016.pdf

A recent joint response from Acas, the CBI, the CIPD and the TUC to the BIS Select Committee inquiry into the government's industrial strategy[6] noted that a key focus that has been missing in this area in the past has been that of improving workplace practices, particularly around how people are led and managed, how jobs are constructed and investment in training and development.

59. A growing body of evidence suggests that the quality of UK leadership and people management in the workplace is lagging behind our key international competitors. Consequently, an effective industrial strategy needs to set out how Government can work with employers, employees, trade unions and business organisations, professional bodies and government agencies on a national, sectoral and local level, to raise the quality of leadership and people management practices in order to create more inclusive and high performing workplaces.

60. Acas would welcome working with the Government along with other stakeholders to support the development of this component of the industrial strategy and encourages the Review to consider how its findings might best inform this direction of travel.

61. 'Good work' and 'good workplaces' have a close connection not only with productivity but also with corporate governance. Employee voice is an area of particular importance here. In Acas' experience, involving employees in business decisions brings benefits for everyone, whether this is done through trade unions or other arrangements such as stakeholder advisory panels or consultative committees.

62. In Acas' view, the current thinking by the Government[7] and the Financial Reporting Council on governance therefore presents a strategic opportunity to make the case for embedding worker and wider considerations formally within Board responsibilities as part of a broader 'good work' agenda. Acas has recently set out its views and issues for consideration in this area in its response to the Government's green paper on corporate governance reform.[8]

63. More broadly, voice and representation are at the core of good employment relations and at the heart of what Acas is trying to achieve. We have considerable in-depth expertise in this area, based on academic research[9] and on practical experience in supporting the establishment of consultative arrangements. Acas would be happy to play a wider part in contributing to the Review's thinking in this area.

64. It is also of paramount importance to ensure that organisations are able to make clearly informed choices regarding business models they may wish to adopt. This includes reliance on zero hours, agency and self-employed working, as well as the use of volunteers and other non-employee participants in the workplace, and more widely the increased reliance on outsourcing.

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[6] http://www.acas.org.uk/media/pdf/i/a/industrial_strategy_response.pdf
[7] https://www.gov.uk/government/consultations/corporate-governance-reform
[8] http://www.acas.org.uk/media/pdf/q/m/Corporate-governance-green-paper-response.pdf
[9] See for example http://www.acas.org.uk/media/pdf/0/l/pdp-employee-representatives-accessible-version-July-2011.pdf

65. As the evidence presented throughout this submission makes clear, there is a need for clear and accessible guidance on the rights and responsibilities that apply in these different types of contracts, on the risks as well as the benefits of flexible arrangements, and for practical advice and support aimed at helping organisations create productive workplaces through a focus on good workplace relations.

66. Further, to ensure that choices regarding business models are best-informed on these matters, more still needs to done to understand what constitutes 'good work', what drives it, and how it can be encouraged in business models that rely on non-standard forms of work. This encompasses contractual issues such as pay and conditions; understanding how individual and collective relationships are formed and sustained in these workplaces; how value and meaning within these relationships can be fostered and protected; and where the balance lies between flexibility and the scope for building an experienced, skilled and committed workforce that delivers high quality services to consumers.

67. In Acas' view, this is a further area where a Government-led, joint stakeholder approach would bring significant benefits.

Acas
May 2017

Annex

The research and evidence informing this submission

The use and value of Acas' data as evidence

This submission draws on insights from Acas' practical operational experience and reports evidence from a range of Acas research on non-standard contractual arrangements. This includes research in recent years on zero hours contracts and agency working which drew in part on data from the Acas helpline. A more recent exercise analysed calls to the Acas helpline regarding these as well as self-employed contractual arrangements.

The 2014 Acas Helpline Survey[10] indicated that, as a proportion of all calls to the helpline, 5% were from those identifying as self-employed and 2% from those identifying as agency/temporary workers. This suggests that in 2014 the Acas Helpline took in the region of 63,000 calls from callers in these types of contractual arrangement. (The 2014 Survey did not provide a measure of the proportion of calls from zero hours workers, nor does this estimated call volume include calls from employers in connection with these types of contract.)

In general, Acas' users, including helpline callers, represent only a subset of those engaged in the labour market – broadly speaking, those who have some kind of concern at work and who have taken the step of seeking external, impartial information and advice. The samples of helpline callers used for Acas' various research exercises on non-standard contracts are, moreover, not necessarily representative of all those in such contracts in terms of industries, income distribution and so on. It is therefore not possible to extrapolate the evidence from helpline calls to the wider population of users of non-standard contracts.

The value of Acas' helpline data is its ability to provide qualitative insight into a broad range and diversity of views and experiences concerning the types of problems that can be encountered in non-standard forms of work. This includes insights on how these present different challenges, in some respects, to those encountered in 'traditional' working relationships. The evidence in this submission should be considered within the context of its strengths and limitations.

The research

1) New Acas research on zero hours, agency and self-employed working

From November 2016 to April 2017, Acas carried out a research exercise to gather qualitative data on the types of issues on which helpline callers were seeking advice in connection with all these 'non-standard' working arrangements.

In preparation for the exercise, a circular was sent to helpline advisers highlighting recent government and wider policy interest in the 'gig' economy and the broader growth in 'non-standard' forms of work in recent years. Advisers

[10] http://www.acas.org.uk/media/pdf/3/7/0215-Acas-Helpline-evaluation.pdf

were made aware of both the BEIS Committee's 'Future world of work and rights of workers inquiry' and the Taylor 'Review of employment practices in the modern economy'. A group of advisers then identified calls that, in their view, appeared relevant to the scope of the exercise. A qualitative analysis of 150 of those calls was used to inform this submission.

As noted above, several factors compromise the generalisability of helpline data. For these calls in particular, the ambiguous nature of many of the contractual arrangements meant that callers may have misidentified or not specified their contractual status. There was also an element of subjective judgment on the part of advisers in categorising contractual status on the basis of the information provided by callers.

As a broad indication within these limitations, however, the 150 calls analysed comprised an estimated: 45 zero hours workers; 29 agency workers; 24 self-employed (incl. 6 employees/workers in process of being converted to self-employed); 20 in hybrid or multiple arrangements (e.g. employed and self-employed in simultaneous jobs); 22 unclear/other (including some temporary, term-time and seasonal workers). 10 calls were from employers. 5 calls were identified as involving 'gig' work in the narrowly defined sense of discrete pieces of work secured via online platforms; a further 19 were from 'gig' workers more broadly defined, such as delivery drivers / couriers in situations similar to those in recent tribunal cases regarding employment status.

The calls indicate a broad coverage of sectors, including: delivery drivers/couriers; call centre workers; retail workers; construction workers; taxi drivers; cleaners; hairdressers; care workers; nurses and other NHS bank workers; outsourced patient transport for the ambulance/police service; domestic nanny work; promotions/modelling; schools education and counselling; chefs and other hotel/bar/restaurant workers; warehouse and factory workers; security workers; social research; translation/interpretation services; children's entertainment; seasonal racing pigeon work; leisure centre workers; dental practitioners; and creative industries workers.

2) Acas' previous research on zero hours contracts

Acas carried out an analysis of calls to the helpline relating to zero hours contracts between June-August 2013. This involved logging the number of calls on zero hours contracts, recording some of their chief characteristics – for example, the gender of the caller and whether they were an employer or worker – and doing a qualitative analysis of 70 individual calls. Two focus groups with Acas helpline advisers provided further data on experiences and insights from the wide range of calls taken on this subject. Findings were reported in the policy discussion paper *Give and take? Unravelling the true nature of zero-hours contracts* (Acas, May 2014).[11]

3) Acas' previous research on agency working

Acas research in 2014 looked at the effects of the Agency Working Regulations on employer and agency practice. The report *The effects of Agency Workers*

[11] http://www.acas.org.uk/media/pdf/6/n/Acas-Policy-Discussion-Paper-Zero-Hours-May-2014.pd

Regulations on agency and employer practice (Acas research paper 01/14)[12] presented recent statistical data on agency working from the Labour Force Survey, alongside findings from 28 interviews, conducted across 11 agencies, four user firms, union and industry representatives, along with a small number of agency temps. The research included their perspectives on the new contracting forms between agencies, firms and agency temps that have emerged as a result, including the use of the Swedish Derogation model.

A follow up analysis of calls to the Acas helpline relating to agency work was reported in the short discussion paper, *Three sides to every story: the impact of the Agency Worker Regulations* (Acas, March 2015).[13]

[12] http://www.acas.org.uk/media/pdf/5/7/The-effects-of-Agency-Workers-Regulations-on-agency-and-employer-practice.pdf
[13] http://www.acas.org.uk/media/pdf/p/s/Acas-Employment-Relations-Comment-Agency-Worker-Regulations-March2015.pdf