

Low Pay Commission Report

A Response to Government on
'One-sided Flexibility'

OGL

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Executive summary

1. In addition to our standard brief of recommending rates of the National Minimum Wage (NMW), the 2018 remit for the Low Pay Commission (LPC) included an additional set of tasks following the Taylor Review of Modern Working Practices (hereafter 'the Taylor Review'). These were to review the scale and nature of the issue of 'one-sided flexibility', to assess the impact of introducing a higher minimum wage for non-guaranteed hours and to consider alternative policy ideas.

The nature and extent of one-sided flexibility

2. Flexible working can benefit both workers and employers. However, the Taylor Review identified the problem of one-sided flexibility at work, particularly for low-paid workers, stating that 'Government must take steps to ensure that flexibility does not benefit the employer at the unreasonable expense of the worker, and that flexibility is genuinely a mutually beneficial arrangement'. Examples of one-sided flexibility can include unreasonable requirements around workers' availability; unpredictability making it difficult for workers to manage finances; and an overarching fear of losing future work if they raise a concern or turn hours down.

3. We have looked at the evidence, both qualitative and quantitative, and spoken with employers, workers and their representatives, as well as policy makers in other countries. We concur with the Taylor Review's conclusion that one-sided flexibility is a problem; we also found evidence of the issues identified in the Taylor Review: the misuse by some employers of flexible working arrangements creates unpredictability, insecurity of income and a reluctance among some workers to assert basic employment rights. Various stakeholders described the effects these practices could have on workforces, from financial difficulties to impacts on mental health.

4. Although much of the debate on these issues has focused on contracts where workers do not have any guaranteed hours of work, so called 'zero-hours contracts', we found the issues described above in a range of working arrangements, including zero-hours contracts, but also temporary working and short-hours contracts (where workers have a guaranteed minimum number of hours, but frequently work beyond this). Workers on zero-hours contracts have, in theory, the right to turn down shifts, and since January 2016 have had protections against demands for exclusivity from employers. Workers on guaranteed hours do not have these rights. We heard on visits from workers with short-hours contracts that some employers still enforce unreasonable expectations around availability, overtime and exclusivity.

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- 5.** But it is not the case that all workers in these types of contracts suffer these issues – we came across genuine examples of two-sided flexibility, and industries and businesses where flexible working arrangements suited the needs of both workers and employers. We also came across examples of employers struggling to persuade their flexible workers onto more standard and stable contracts because workers wanted to maintain their flexibility. Because of this, and the fact that the problems associated with one-sided flexibility go wider than the phenomenon of zero-hours contracts, none of our recommendations are specific to certain types of contract. Instead they are focused on employer practice more generally.
- 6.** Assessing the full scale and nature of the problem is challenging. Even if assessing scale was as simple as counting the number of low-paid workers on zero-hours contracts this would be insufficient. Issues around awareness mean counting the number of people on zero-hours contracts and other flexible arrangements is difficult. Employers tend to have differing views as to whether their non-guaranteed hours contracts are in fact ‘zero-hours’ contracts and in some cases prefer to use other terms. Further, workers can be unaware of the type of working arrangement they have. These awareness issues mean that it is challenging to establish an accurate measure of the number of people in these contracts and that there is a need for better information. We also need to understand more about workers’ views of these arrangements.
- 7.** Nevertheless, the recently published Skills and Employment Survey (Felstead et al, 2018) provides a useful benchmark estimate of the scale of one-sided flexibility. It found that seven per cent of employees (equivalent to 1.7 million individuals) were very anxious that their working hours could change unexpectedly. Insecure hours were associated with a range of other negative phenomena: anxiety about unfair treatment, lower pay and greater anxiety about job quality and security. This survey is undertaken every five years and to fully understand and address these issues we need more regular measures. We recommend that Government considers ways to specifically measure the scale of one-sided flexibility. It would be useful to collect evidence on these measures on a regular basis so we can assess the impact of any changes. In that context we note that Government is considering the recommendations from the Carnegie UK Trust and RSA’s report ‘Measuring Good Work’ (Irvine, White and Diffley, 2018).

Addressing one-sided flexibility

- 8.** To address the problems with one-sided flexibility the Taylor Review proposed a higher minimum wage for any hours that are not guaranteed, which we refer to as the premium. In a subsequent blog post and submission to our consultation, Taylor expanded on this; he called for a notice period of one week, beyond which additional hours would need to be paid at least at the premium rate.
- 9.** We undertook a broad consultation on the potential impact of this idea, speaking to employers, workers, representatives of both, and international policy makers. Employers told us that the higher rate would inevitably raise the cost of flexibility, potentially negatively affecting working hours amongst a group who, the evidence tells us, are more likely to already be underemployed. Some employers allow their workers discretion over the hours they work and to swap shifts with one another. Employers told us that this discretion would need to be reduced or removed entirely

to prevent gaming of the premium – a move that would be against the direction of travel for greater flexibility for many workplaces and, in their view, against workers' wishes.

10. Employers were sceptical as to the enforcement potential of the premium. Their view was that collecting the necessary information to prove an hour of work is guaranteed and has sufficient notice places a significant burden on business. Many employers told us they would put systems in place to respond to the premium, but that more unscrupulous employers would game these requirements by obfuscating around the necessary compliance information for HM Revenue and Customs (HMRC), or by simply shifting to a self-employment model and avoiding it altogether. While only a minority of employers suggested they would make more use of self-employment it was our view that these are likely to be the employers we need to influence the most.

11. While worker representatives were keen on a deterrent against one-sided flexibility, there were still some strong concerns. Some unions were worried that the premium could legitimise poor working practices, with employers reasoning that the premium essentially 'buys' maximum flexibility so they need not worry about notice of shifts or variability of hours. Others warned that a high premium that made up a significant part of a worker's earnings could potentially 'trap' them in precarious work. In this situation workers wanting to move into more stable work would need to forego the premium and therefore their earnings would fall.

12. In our work, we found evidence of positive examples of flexibility, and so it is important that any measures preserve genuine two-way flexibility. We found widespread support for the idea that workers should have better notice of their working schedules, more security of income, and the confidence to assert their rights. The goal of the premium proposal was to address these concerns, but in our view, it does not do so effectively. We did not hear unqualified backing for the premium from any of the stakeholders we spoke to. We therefore recommend an alternative package of measures.

- **A right to switch to a contract which reflects your normal hours** – The Taylor Review recommended a right to request a more stable and predictable contract. Government has since consulted on such a measure based on the right to request flexible working. However, we are of the view that a stronger framework is appropriate, as the issue is not about a worker requesting a change to the amount of work they do, but rather the proper recognition of their normal hours. Workers, already worried about raising issues in the workplace, because of fears of employer retaliation, are less likely to raise a 'request' – so the right needs to be stronger than this. An employer would need to objectively justify any refusal according to conditions clearly defined in legislation. These would include the reference period for determining normal working hours, a qualifying period, and the specific circumstances in which an employer would not be required to offer a contract guaranteeing normal hours worked. We have given examples of these specific circumstances in our report, but recommend that the Government consult widely on these qualifying conditions. This right should be enforced through employment tribunals, and the Government should also consult on appropriate penalties for non-compliance.
- **A right to reasonable notice of work schedule** – Employers of flexible workers need to be encouraged to undertake more and better planning. We came across a range of examples of poor business practices whereby planning was simply not considered. By contrast, other employers work hard to plan ahead and give notice of forthcoming

One-sided flexibility

requirements, and find that this benefits both the worker and the business. We consider that every individual should have a right to reasonable 'recordable' notice of their working shifts. We recognise the difficulty of setting a single fixed period across industries and forms of work, and recommend that the Government provides guidance in this area. There would also need to be effective enforcement and appropriate remedies.

- **Compensation for shift cancellation or curtailment without reasonable notice –**

The practice of cancelling shifts at the last minute, sometimes on arrival at work or partway through a shift, was thought unfair by both employers and workers in our consultations, but we found it was not uncommon. For this reason, we recommend that where shifts are cancelled without reasonable notice workers should be compensated. Compensation could be tied to the actual value of the cancelled shift; the minimum-wage value of the cancelled shift; or a simple multiple of the minimum wage rate. Our view was that there are advantages and disadvantages to each of these options and we suggest the Government consult on how best to make this work.

- **Information for workers –** Government has accepted and consulted on Taylor's recommendations around individuals' right to a written statement of terms from employers, which we found strong support for and strongly agree with. We recommend that this statement includes the rights we are proposing here.

Introduction

1. In October 2016, Matthew Taylor, the Chief Executive of the Royal Society of Arts, was commissioned by the Government to investigate how employment practices need to change to keep pace with modern business models. In July 2017 the Taylor Review of Modern Working Practices was published.

2. The report discussed the issue of 'one-sided flexibility', stating 'Government must take steps to ensure that flexibility does not benefit the employer, at the unreasonable expense of the worker, and that flexibility is genuinely a mutually beneficial arrangement'. The report goes on to recommend that 'the Government should ask the LPC to consider the design and impacts of the introduction of a higher National Minimum Wage (NMW) rate for hours that are not guaranteed as part of the contract'.

3. The Taylor Review suggests that the higher NMW rate needs to be 'set at a level which incentivises employers to schedule guaranteed hours as far as reasonable within their business. Business would still have the ability to offer zero or short-hours contracts, or to request that an individual works longer hours than those guaranteed in their contract but would have to compensate the most vulnerable workers (those on low wages) for the additional flexibility demanded of them'.

4. The report goes on to say, 'We want to incentivise employers to provide certainty of hours and income as far as possible, and to think carefully about how much flexibility they can reasonably expect from their workers. Workers need to be able to make informed decisions about the work that they do, to plan around it, and to be compensated if arrangements change at short notice.'

5. The Government's response to the Taylor Review was published on 7 February 2018 and included a request for us to undertake additional work. It said: 'We accept the review's recommendation to ask the LPC to explore the impacts of introducing a higher NMW rate for hours that are not guaranteed as part of the contract. We will also investigate alternative means of tackling the issue and ask the LPC to do the same and provide advice on the impacts of alternative options. The LPC will provide their assessment of the impact of these options to Ministers in their October 2018 report.'

6. This report details the work that we have undertaken in exploring these policies. It starts with an exploration of the nature and extent of the issue of one-sided flexibility and insecure working, potential impacts of a higher minimum wage for non-guaranteed hours (which we refer to as 'the premium') and recommendations for Government. Further details about the alternative ideas considered are given in Appendix 1.

Evidence gathering

7. Evidence and stakeholder views have been central to our review. We are very grateful to those individuals and organisations who have given us their time to assist us in our work.

8. Each year we conduct a written consultation on the rates of the minimum wages and their impact. This year we included questions regarding the premium. We received 44 responses to these specific questions from a range of employers, employer representatives, trade unions and other interested groups. A total of 31 stakeholder groups gave oral evidence, and we met or had telephone calls with 42 individuals and organisations from academia, business, trade unions and charities. In addition, during our six visits across the UK we spoke with employers and workers about the premium as well as alternative ideas. International colleagues in Ireland, New Zealand, Australia, France and Germany kindly provided us with information on how they deal with insecure work.

9. We commissioned research from the Resolution Foundation into how other countries address insecurity of income for low-paid workers. We also commissioned research from Incomes Data Research (IDR) looking at variable hours for low-paid workers, and we conducted in-house analysis of the Labour Force Survey (LFS) and the Annual Survey of Hours and Earnings (ASHE).

10. Several employer representatives agreed to include relevant questions within their own surveys, including the Chartered Institute of Personnel and Development (CIPD) and the Association of Convenience Stores (ACS). We have also drawn on previous LPC commissioned research. Trade unions and other organisations have also shared their research with us and we drew on all of these to form our conclusions.

Chapter 1

The nature and extent of one-sided flexibility

What is one-sided flexibility?

1.1 The Taylor Review described one-sided flexibility as ‘a requirement to be available for work at very short notice, without any guarantee that work will actually be available’. It continued: ‘This makes it very difficult for a person to manage their financial obligations or, for example, secure a mortgage. This can feel unfair, especially when the reality of the working arrangement is that the individual regularly works 40 hours a week. While in theory individuals in these working arrangements have the right to turn down work, we were told that workers, needing work but lacking unfair dismissal rights, often felt that to express legitimate views about conditions or make even reasonable requests risked having future work denied to them.’

1.2 This description of one-sided flexibility identifies several problems for some workers:

- **Income insecurity:** The variability and insecurity of work makes it difficult for people to manage their financial obligations or access credit.
- **Unpredictability:** In some settings the use of flexible working practices can enable poor workforce planning, which makes it difficult for workers to manage their lives around frequently changing and/or unpredictable work schedules.
- **Inability to assert rights:** Workers feel unable to express concerns or assert their statutory rights for fear of having work denied to them later (sometimes referred to as being ‘zeroed down’).

1.3 We reviewed existing qualitative research, and spoke with employers, workers, their representatives and other stakeholders to further explore one-sided flexibility. This is found in a range of work settings, but tends to be associated with non-guaranteed hours which can be available under numerous contract types. At one end are contracts that do not guarantee any minimum number of hours, typically known as zero-hours contracts. Then there are contracts that guarantee some hours, but with individuals often working many more. For example, an individual might be contracted to work seven hours per week but they regularly work 20 hours a week, meaning that the 13 hours that they work on top of the seven hours are not guaranteed and could be reduced or removed at any time. Their contract does not therefore reflect the reality of their working week and does not provide them with security for their hours or earnings. We refer to these contracts as ‘short-hours contracts’ or ‘minimum-hours contracts’. Another form of non-guaranteed hours are short-notice additional hours, often referred to as overtime.

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1.4 But it is not the case that all workers in these types of contracts or working non-guaranteed hours suffer these issues – we came across genuine examples of two-sided flexibility, and industries and businesses where flexible working arrangements suited the needs of both workers and employers (see Box A).

1.5 Usdaw helpfully distinguished between two types of flexibility in their consultation response: hours which are worked on a regular basis but are not guaranteed by the contract; and hours which represent a temporary increase in demand. It is the first type of flexibility that we have focused on for the purposes of this work. We recognise that the second form of flexibility is important. The need for employers to respond to changes in demand while compensating workers adequately has been highlighted to us by many stakeholders. For example, the National Farmers' Union (NFU) described how flexible contracts are most commonly used in the horticulture sector to enable them to respond to fluctuating customer demand and weather.

Box A: Benefits of flexible working

There are a wide variety of different types of flexible working arrangements. These include reduced hours, nine-day fortnights and term-time working, as well as the contracts that we have focused on in this report which offer variable numbers of hours.

In the course of our consultation, we heard and saw evidence on the benefits of genuine two-way flexibility, and the reasons some individuals choose flexible working arrangements. Workers appreciate the ability to adapt their working time and arrangements around their personal lives; to work additional hours when it suits them; and to make use of arrangements such as job-sharing. Two-way flexibility can be offered in a range of employment types, provided the right frameworks are in place to meet the needs of individuals and employers.

One way for business to manage variable demand and for workers to be offered some form of flexibility is temporary work. In 2014, the Recruitment and Employment Confederation (REC) surveyed temporary workers on the main reasons for choosing their working arrangements. The benefits reported by individuals included the ability to find work and earn money quickly; the ability to build work around caring or family commitments; opportunities to gain experience in a new area of work; and the flexibility to pursue study or other interests.

'I love the flexibility. I can say yes or no when I need to. When I really need the money and when I can step back and say I can survive on this much.' **Camilla, office professional**

'I have found it harder to get a permanent part-time role that fits around the hours that I can do. I look after my children and the agency are quite relaxed about what I take on here.' **Laura, office professional**

The University of Greenwich (2017) interviewed workers about their experiences of zero-hours contracts:

'When I applied for the job, I said I'm a college student so I can't work full-time, but I can work after college and at the weekend. And they pretty much fit it around you, really easily. So whatever you can do, as long as they've got the labour to spend on you, they'll give you the shifts that fit your availability.' **Orla, retail worker**

Why do workers not change jobs?

1.6 A recurring question is why workers do not leave for other jobs if they face the problem of one-sided flexibility at work. The labour market is currently considered to be tight, vacancies are at record highs and employers bemoan skills gaps in various industries. All of this would seem to suggest that workers have ample opportunity to move jobs if they are not happy. In this year's consultation and in the course of our visits and discussions with low-paid workers across the country, we heard about a range of factors which prevent workers, unhappy with their working arrangements, from moving to more secure jobs.

1.7 Firstly, there may be a lack of accessible or relevant jobs in the local area. Finding flexible work that fits with a worker's requirements is challenging. On visits to rural areas we heard from workers about the difficulties of travelling to work when there is limited public transport and many people are reliant on cars. This restricts access to jobs and means that many people in rural areas have limited choice of employment. This is particularly an issue for younger workers, who are less likely to have access to private transport.

1.8 Individuals may also lack the required skills for other jobs in the area. For example, we heard from factory workers who told us that they don't have the relevant skills to move into the hospitality or tourism sectors.

1.9 As with our work on non-compliance with the minimum wage, we found that people's expectations may prevent them moving jobs. Qualitative research with workers who are underpaid and are aware of this suggest a scepticism about the ability to secure better conditions elsewhere. There is a similar 'better the devil you know' type attitude amongst some workers with regard to one-sided flexibility.

1.10 Finally, there are a set of issues around tenure which can create risk aversion when it comes to moving jobs. Some statutory rights accrue over time, as do some non-statutory employment benefits; for example, some employers offer better terms around things like maternity pay, over and above statutory requirements, after a certain amount of time in the job. Also, opportunities to move from temporary to permanent employment are associated with tenure. All of this combines to create the notion of 'starting from scratch' with each job move.

What does the low-paid flexible labour market look like?

1.11 Before we discuss the evidence around one-sided flexibility, we begin by examining the extent of the use of flexible working practices, particularly at the lower-paying end of the labour market. We then go on to look at the three problem areas described above; we present stakeholder evidence on the nature of these problems and assess the available quantitative evidence on their extent. Where relevant, we have also included data provided in consultation responses from employers, employer representatives and trade unions to give an indication of the scale of the issue.

Prevalence of flexible working arrangements

1.12 The Labour Force Survey (LFS) allows us to explore a range of different flexible working practices including zero-hours contracts and temporary working. However, there is a key evidence gap when it comes to short-hours contracts, which are a major feature of some sectors and which we believe make up a significant proportion of all non-guaranteed hours in the labour market.

1.13 Table 1 shows the numbers of people involved in a range of working arrangements in the workforce at the end of 2017. Zero-hours contracts account for around 2 per cent of all workers, but are significantly more prevalent among lower-paid workers, accounting for 6 per cent of those earning less than 50p per hour above the relevant NMW or the National Living Wage (NLW). Women are considerably more likely to be on a zero-hours contract than men (418,000 women, 362,000 men). Most zero-hours workers have permanent contracts (67 per cent) with 33 per cent on temporary contracts, and around one in eight zero-hours workers employed through an agency.

Table 1: Numbers of flexible workers, LFS 2018 Q2

	All workers		Those earning within 50p of the NMW/NLW	
	Number (thousands)	Per cent	Number (thousands)	Per cent
Flexitime	3,390	11%	230	4%
Annualised hours contract	1,630	5%	270	5%
Term time working	1,330	4%	230	4%
Job-sharing	140	0%	20	0%
Nine-day fortnight	100	0%	0	0%
Four-and-a-half-day week	200	1%	20	0%
Zero-hours contract	780	2%	330	6%
On-call working	720	2%	60	1%
No flexible working	24,380	76%	4,110	79%
Temporary Agency	300	1%	90	2%
Permanent Agency	450	1%	110	2%

Source: LPC estimates using LFS Microdata, Q2 2018, UK.

Note:

- All worker estimates use population weights.
- Estimates for those earning within 50p of the NLW/NMW use income weights and imputation methodology.

1.14 The Chartered Institute of Personnel and Development (CIPD) found that nearly a third (29 per cent) of businesses make use of flexible employment arrangements for low-paid workers (defined as those at or close to the minimum wage), such as zero-hours contracts, short-hours contracts or agency work. This increased to 38 per cent of the public sector, compared to just over a quarter (26 per cent) of the private or voluntary/third sector.¹

1.15 The evidence on the use of short-hours contracts is weak, though it suggests they are less commonly used than zero-hours contracts. In their 2015 report, CIPD estimated that about 10 per cent of employers used such contracts, compared to 23 per cent using zero-hours contracts. Incomes and Data Research (IDR, 2018) found that while more employers use zero-hours contracts

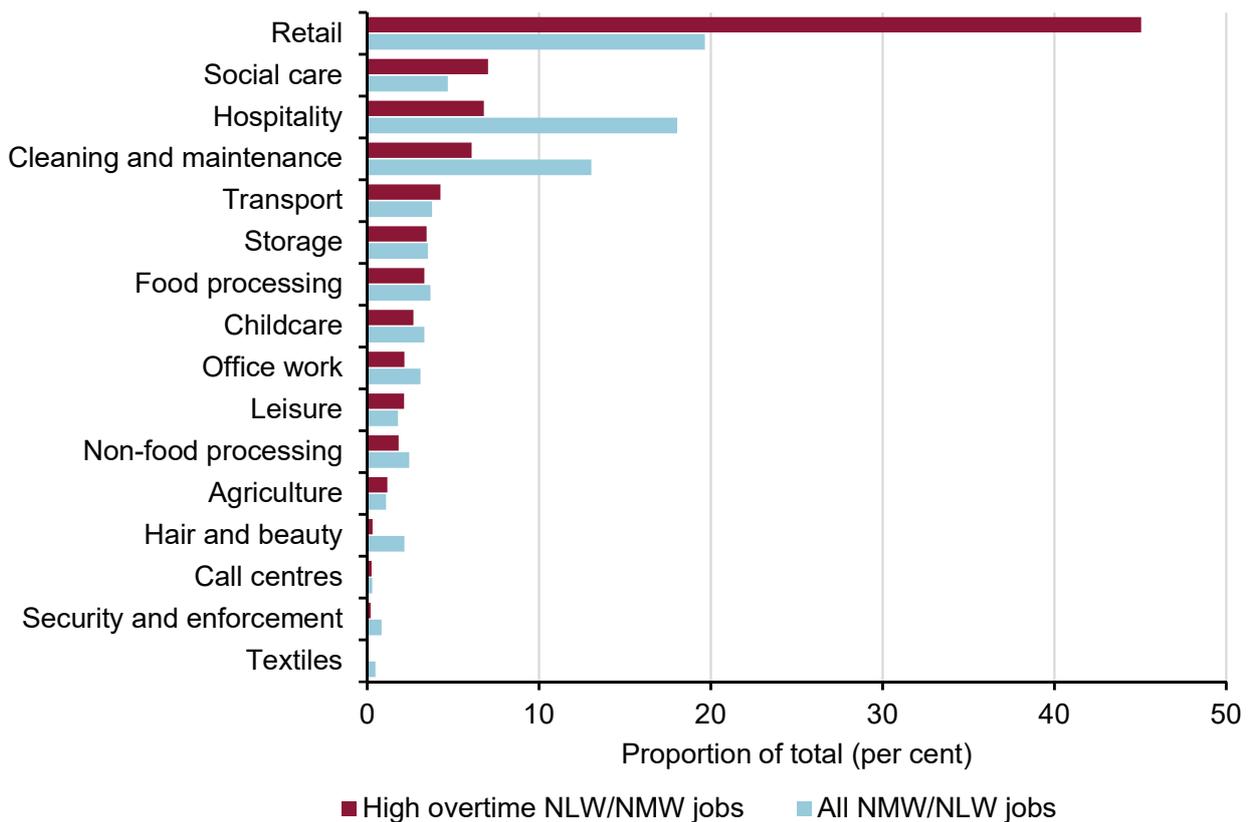
¹ From the CIPD's Spring 2018 Labour Market Outlook (LMO) involving 1,008 employers.

than minimum-hours contracts (80 per cent versus 33 per cent), minimum-hours contracts cover a greater number of workers (29 per cent of the whole workforce or 37 per cent of the low-paid workforce, compared with 15 per cent of the whole workforce on zero-hours contracts or 24 per cent of the low-paid workforce). However, it should be noted that the IDR research is based on a small sample of large employers.

1.16 We analysed overtime hours in the Annual Survey of Hours and Earnings (ASHE) as a proxy for non-guaranteed hours. Analysis of ASHE data shows there are 4.7 million workers who work some paid overtime, or 17 per cent of all workers. Some 1.9 million of these are in low-paying occupations. Retail has the highest number of overtime workers, which concurs with IDR’s research, which found this sector makes substantial use of short-hours or minimum-hours contracts.

1.17 To examine which workers are likely to be on short-hours or minimum-hours contracts, we established a proxy measure of low-paid ‘high overtime workers’ – those who are paid up to 50 pence above the minimum wage (MW) and work at least 30 per cent of their total hours from overtime (OT). We do not know how accurate this proxy measure is for short-hours/minimum-hours contracts. Figure 1 shows the proportion of workers in different low-paying sectors who work a large amount of overtime, comparing the figures for all workers and low-paid workers.

Figure 1: Proportion of NMW/NLW overtime workers by sector, UK, 2017



Source: LPC estimates using ASHE 2010 methodology, low pay weights, including those not on adult rates, UK, April 2017.

1.18 High overtime workers are much more likely to work in large firms. Three quarters of all high overtime workers are in large firms, compared with only 43 per cent of all those earning the minimum wage. Some 15 per cent of those low-paid high-overtime individuals work at least 30 per cent or more of their total hours as overtime. Female part-time workers make up more than half

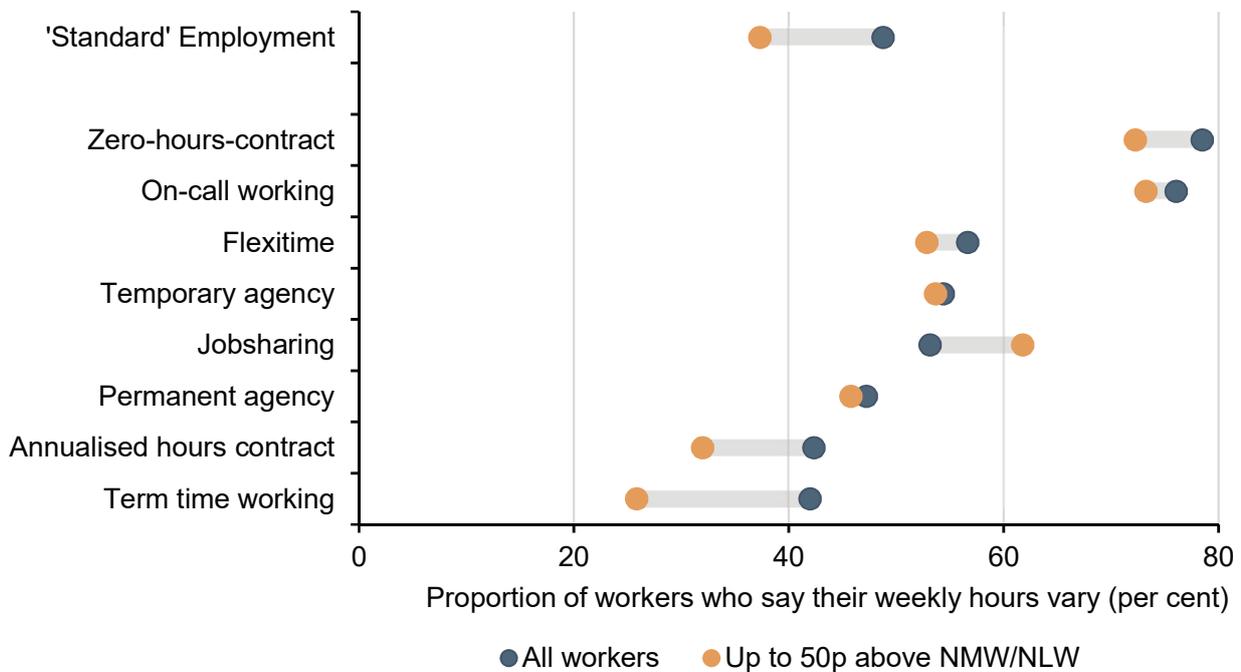
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(52 per cent) of all high overtime workers, compared with only 21 per cent of workers. These workers received little or no pay premium for their overtime hours.

Variations in hours and pay

1.19 Weekly variations in hours of work are a relatively common feature of the UK labour market; around 40 per cent of all UK workers say that their hours ‘tend to vary from week to week’. However, variability in hours is far higher in certain work settings. Of all individuals with flexible working arrangements, those on zero-hours contracts and those working ‘on-call’ say their hours vary week to week. However, even amongst those who say they don’t have a flexible working arrangement (labelled ‘standard’ employment on Figure 2), just under 50 per cent say their hours tend to vary – though this may include workers on short-hours contracts who are not identified in the LFS. In most cases lower paid workers are slightly less likely to experience variation in hours week to week.

Figure 2: Share of workers whose hours vary by type of flexible working arrangement, UK, 2016-2018



Source: LPC estimates using LFS Microdata, Q2 2016-Q2 2018, UK.

Notes:

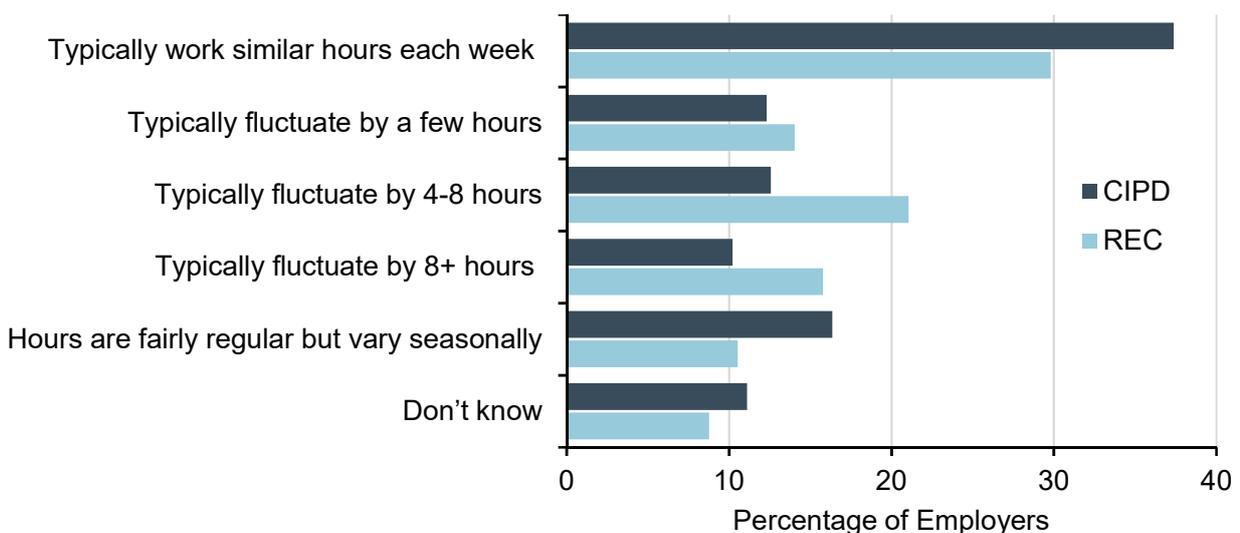
- Contract type does not include nine-day-fortnight and four-and-a-half-day week due to small sample sizes.
- Estimates for all workers use population weights.
- Estimates for workers paid up to 50p above the NLW/NMW use income weights and imputation methodology.

1.20 The LFS data cannot tell us how much workers’ hours vary week to week but other data sources provide some evidence here. However, what this data does not tell us is the extent to which this variability is driven by the worker and their circumstances or by their employer. Figure 3, based on the CIPD’s Labour Market Outlook (LMO), suggests that there is a significant share of low-paid flexible workers whose hours are fairly constant (37 per cent), which could imply grounds for a contract which reflects their normal hours. The REC, as part of their response to our 2018 consultation, asked the same questions to its members and a slightly lower proportion (29 per cent)

said their low-paid agency workers work similar hours each week, with demand fairly steady.² Eleven per cent said those workers' hours varied seasonally, while one in five said those workers' hours fluctuated by four to eight hours each week, and 16 per cent said they fluctuated by more than eight hours each week. The hospitality sector experienced the most variability.

1.21 IDR (2018) found that nearly a quarter (24 per cent) of respondents employing staff on zero-hours contracts, and 17 per cent of those using minimum-hour contracts, said their workers' hours were fairly stable. Some 28 per cent of respondents said hours for workers on zero-hours contracts were highly variable and difficult to predict, compared with no respondents in relation to minimum-hours contracts.

Figure 3: Employer views on typical variability of weekly hours of low-paid flexible workers



Source: CIPD Labour Market Outlook (2018) and REC data

1.22 Some workers also experience variations in pay. On average around 10 per cent of all workers say they have 'no usual amount' of pay, suggesting their pay tends to vary. This is higher in some working arrangements, particularly zero-hours contracts, on-call working and agency working.

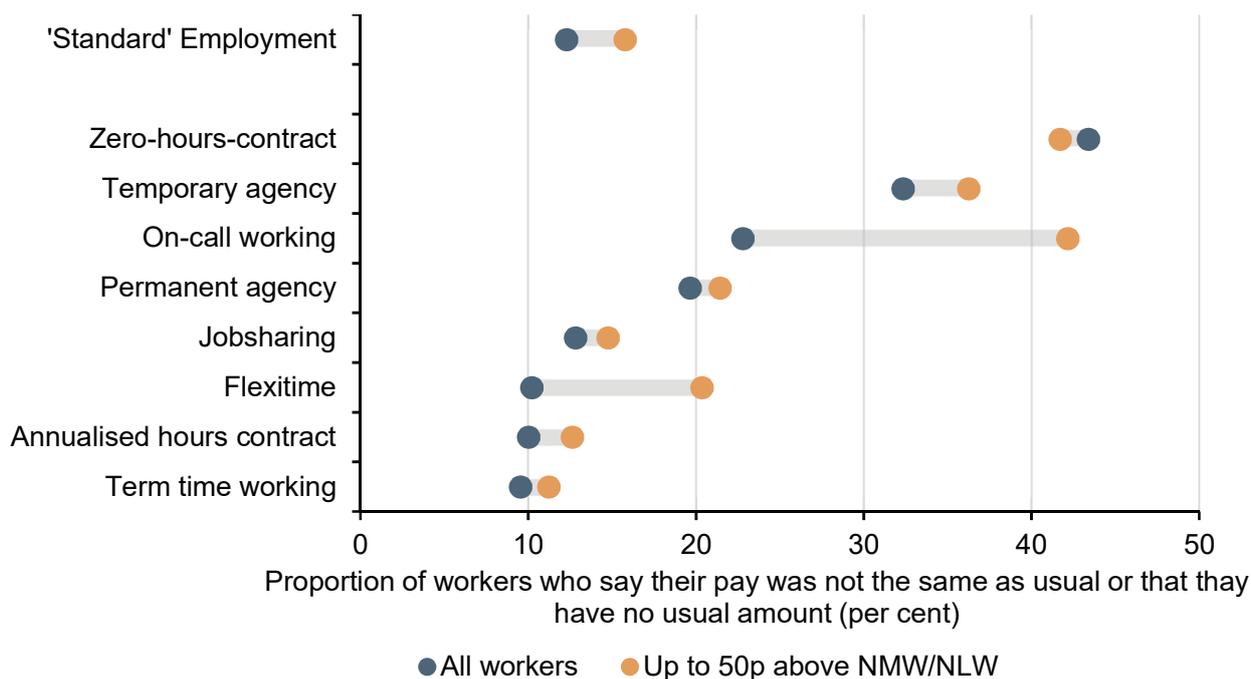
1.23 It should be noted that variation in pay appears lower than variation in hours in LFS data. One explanation is the time period considered in each of the questions asked in the LFS. The question on hours asks about variations week to week, while the question on pay variation asks about the most recent pay period, which could be weekly, fortnightly, four-weekly or monthly. It is possible that for some workers their hours vary week to week though their pay is steadier for the longer period over which they are paid.

1.24 Figure 4 shows the differences in pay variation between workers overall and low-paid workers. In almost all cases – including those in non-flexible 'standard' working practices – lower-paid workers experience slightly more variation than workers overall. The exceptions to this are zero-hours workers, where lower-paid and all zero-hour workers tend to experience similar levels of pay variation. This means that around 14 per cent of UK workers experience pay variation, compared to around 24 per cent of low-paid workers.

² The sample size for this survey was 58

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Figure 4: Share of workers whose pay varies by type of flexible working arrangement, UK, 2016-2018



Source: LPC estimates using LFS Microdata, Q2 2016-Q2 2018, UK.

Notes:

- Contract type does not include nine-day-fortnight and four-and-a-half-day week due to small sample sizes.
- Estimates for all workers use population weights.
- Estimates for workers paid up to 50p above the NLW/NMW use income weights and imputation methodology.

Conclusion

1.25 Overall, the available data shows that workers in a range of flexible work settings experience above-average levels of variability in their hours and pay. However, this data does not tell us the extent to which such variability is driven and requested by workers or by employers, and therefore does not capture the extent of one-sided flexibility. It is also clear that there is a lack of evidence with regards to other types of contracts where workers have non-guaranteed hours, such as short or minimum-hours contracts. We therefore need measures which help policy makers to understand the extent of one-sided flexibility more effectively to enable them to address this problem. We return to this question below in our consideration of the nature of the problems associated with one-sided flexibility.

What are the problems associated with one-sided flexibility?

1.26 Over the course of 2018, in our regional visits, oral evidence sessions and meetings with stakeholders, we spoke extensively with employers and workers in low-paying sectors about their experience of flexible working and non-guaranteed hours. We heard a great deal about the benefits and disadvantages of such arrangements and identified several consistent themes which support the conclusions the Taylor Review drew. Although genuine two-way flexibility in the labour market

is important and can benefit both workers and employers, we heard about various practices which negatively affect some low-paid workers.

1.27 In this section, we use the evidence we have collected to explore the nature of the problems associated with one-sided flexibility. Where possible, we assess the available evidence on the extent of these issues. The evidence is richer in some areas than others. In particular, because of the focus on them in recent years, there is more specific evidence available on zero-hours contracts than other contract types where non-guaranteed hours are common. But we know from other qualitative evidence that workers on short-hours contracts may face many of the same issues as those on zero-hours contracts. Throughout this section we use case studies drawn from our own and others' work to illustrate the broad themes we have identified.

1.28 We identified three main issues which one-sided flexibility creates for low-paid workers. Firstly, it causes income insecurity, which makes it difficult for individuals to manage their finances; for example, recorded underemployment shows the extent of financial precarity felt among workers. Secondly, even when workers can deal with fluctuating income, unpredictability in their working hours – frequently changing shift patterns, short-notice cancellations and a feeling of being 'on-call' – make it difficult to take leave, or organise life around work, and creates stress. Thirdly, insecurity over working hours can mean workers are reluctant to assert their employment rights, out of fear that their hours will be reduced.

1.29 However, judging the overall scale of these issues is extremely challenging. As the previous section showed, some working practices are more likely to be associated with varying hours and income than others. But at the same time, even standard working practices see some variation in hours and pay. Further, this data alone does not indicate whether it is the employer or the worker driving the variation, and whether this is one-sided or two-sided flexibility.

1.30 Nevertheless, the recently published Skills and Employment Survey (Felstead et al 2018) provides a useful benchmark estimate of the scale of one-sided flexibility. It found that seven per cent of employees (1.7 million individuals) were very anxious that their working hours could change unexpectedly. Insecure hours were associated with a range of other negative phenomena: anxiety about unfair treatment, lower pay and greater anxiety about job quality and security.

Income insecurity

1.31 One-sided flexibility and the associated variation in hours and pay, as well as a fear of losing shifts completely, can lead to income insecurity. Citizens Advice (2018) explored the financial insecurity of people with unpredictable incomes in a survey of 2,116 adults, finding that 18 per cent had experienced a reduction in pay or a decrease in hours in the last 12 months.³ They also found that 'nearly half (49 per cent) of people who are self-employed or in insecure work said their income changed either a fair amount or a great deal from one month to the next, compared to 13 per cent of all adults'. Some 11 per cent cited changes in hours, with 4 per cent citing this as a result of seasonal or temporary work.

1.32 This research also found that those on unpredictable incomes struggle to save and are more likely to borrow money from friends and family (17 per cent compared with 8 per cent of those with

³ Walking on Thin Ice (2018), based on analysis of the Understanding Society Survey, a YouGov representative survey, analysis of the Living Costs and Food Survey and in-depth interviews with 10 people.

One-sided flexibility

stable incomes), ignored or delayed a payment (11 per cent), used their overdraft (25 per cent), use credit cards (25 per cent) and/or take out high cost loans (5 times more likely), and are 'more likely to fall into a spiral of debt'.

1.33 Research by the University of Greenwich (2017) found that some people with non-guaranteed hours struggled to manage their finances due to variability in their weekly hours. One hotel worker described the impact of last-minute changes to her shifts: 'I think the majority of the staff that we work with are on zero [-hours] contracts as well but a lot of them are younger and they're happier to go home whereas we've got a house and a car and bills to pay they haven't'. Another hotel worker reported having to find and take on additional work to make up for unexpected changes in income: 'I'll have to actually find the money lost this week to pay my bills'.

1.34 In 2018 Usdaw surveyed over 10,500 low-paid workers in the retail and associated sectors, such as food production and distribution. Over 6,000 of these earned below £8.50 per hour and many were employed in part-time and insecure work. These individuals were part of a union and therefore are likely to be better protected than others who are not unionised. Usdaw found that for nearly four in ten workers, at least 20 per cent of their wages were made up of non-guaranteed hours (2018a). The report found that increasing income variance had a corresponding impact on individuals' mental health. Overall, 73 per cent of respondents were struggling to pay their gas and electricity bills, with one in three of those having difficulty every month, and a third having missed or been late with mortgage or rent payments. Half of those surveyed said they had missed meals to pay essential bills. Nine per cent of those earning less than £8.50 per hour have accessed food banks in the last five years.

1.35 The problem of income insecurity can be compounded by the use of non-guaranteed hours over long periods, when individuals' working patterns are, in fact, stable. Acas, the Advisory, Conciliation and Arbitration Service (2014), found that several callers to their helpline had been working on zero-hours contracts for many years and saw themselves like 'permanent members of staff'. Acas (2017) quoted a worker as saying: 'I've been there three and half years working full time doing the same thing, but I'm on a zero-hours contract – it's mad'. Citizens Advice Scotland thought there were situations where zero-hours contracts are issued by employers inappropriately – such as where a standard full-time or part-time contract may be more suitable. This may be because employers are under the mistaken impression that they represent a suitable option for the worker, or that it enables them to take on staff whilst avoiding certain statutory employment rights. Analysis of LFS data suggests that around 20 per cent of zero-hours contract workers have been with their current employer for over five years.

1.36 Some workers are underemployed, which means they want to work additional hours, either in the same job, another job or in an additional job. This is most often because they need to earn more than they can earn on the hours they are given. LFS evidence on underemployment shows that it falls as earnings rise. Usdaw's survey of members (2018b) found that 27 per cent were contracted to work less than 17 hours per week, but only 11 per cent did so in an average week.⁴ One in three respondents to their survey said they would like to work longer hours. Furthermore, 64 per cent were regularly working overtime and of these, 68 per cent wanted these hours guaranteed. We found a range of evidence demonstrating the stress this creates for individuals.

⁴ Usdaw conducted an online survey of their members in October 2017 and received just under 6,000 responses.

Box B: Underemployment – University of Greenwich (2017)

Workers in hospitality, cleaning and social care reported underemployment. These workers all perceived that they had limited control over their hours:

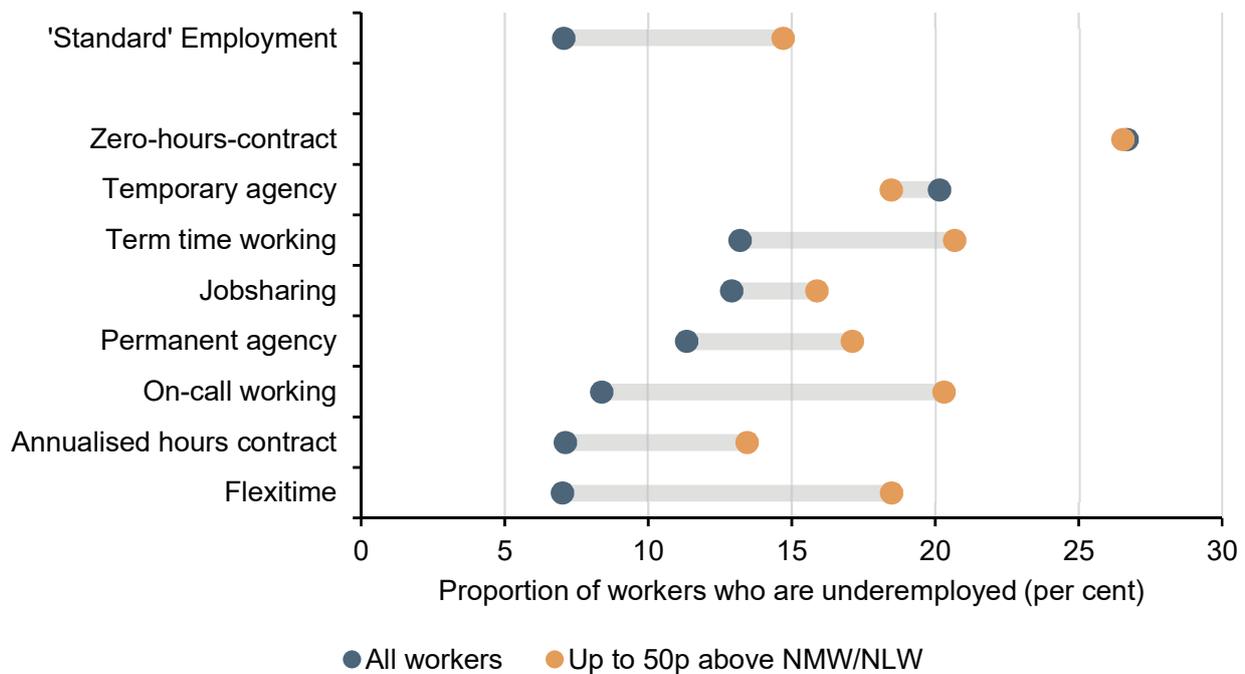
Andreas, a bar worker said ‘I don’t mind doing more than five days, but I mind doing less than five days. That’s the thing, you lack stability. It’s very worrying and stressing because if my manager feels like it he won’t give me any days next week. They are under no obligation to give me my hours. However, at the end of the month when I’ll be getting paid, this will have an impact on me.’

Lydia, a housekeeper, worked 30 hours one week and 25 the next, dependent upon how busy the hotel was. She wanted to work more hours, ‘because it is more money’.

Two retail workers on short-hours contracts reported wanting more hours, with one preferring to work full-time, but generally being given only 20 hours a week.

1.37 Across the different flexible working patterns identified in the LFS, underemployment is on average more likely to be an issue for low-paid workers. However, zero-hours workers are more likely to be underemployed, with minimal differences between low-paid zero-hours workers and all zero-hours workers. Looking more closely at zero-hours workers it appears underemployment is strongly tied to variation in hours. Only 11 per cent of those not on variable hours face underemployment compared with 27 per cent of those on variable hours. For variable zero-hours workers it would be difficult to take on another job to make up the hours as they will not necessarily know when their shifts will be. A recently published survey reports higher levels of underemployment, with 44 per cent of 18,000 zero-hours workers reporting wanting more hours (Datta, N. et al 2018).

Figure 5: Underemployment by type of flexible working arrangement, UK, 2016-2018



Source: LPC estimates using LFS Microdata, Q2 2016-Q2 2018, UK.

Notes:

- a. Contract type does not include nine-day-fortnight and four-and-a-half-day week due to small sample sizes.
- b. Estimates for all workers use population weights.
- c. Estimates for workers paid up to 50p above the NLW/NMW use income weights and imputation methodology.

Unpredictability

1.38 In our consultation and visits, we met with representatives of industries where business can be seasonal and unpredictable, making it more difficult to guarantee hours for all staff. In hospitality, for instance, bookings can be made with only a few days' notice and demand for restaurants can be hard to foresee. The social care sector is exposed to service users dying or moving from home to residential care, with demand and therefore availability of work varying. The work of agricultural producers needs to respond to changing weather conditions.

1.39 In most industries a degree of unpredictability is inevitable, but we nevertheless encountered a range of examples where poor workforce planning and scheduling were having an impact on individuals' ability to plan their lives. Availability requirements over and above the hours guaranteed in their contracts led to many workers feeling constantly on-call despite working relatively few hours overall. Here we examine the forms this unpredictability can take and present evidence on some of the most common practices.

Box C: Unpredictability – University of Greenwich (2017)

Researchers found door security staff reporting they 'don't know which door' they are going to be working on and a night shift might involve two locations.

A fast food worker, Lisa, also described similar short-notice shift planning: 'Come Thursday night when I'll check my schedule, I have no idea what I'm going to have next week...

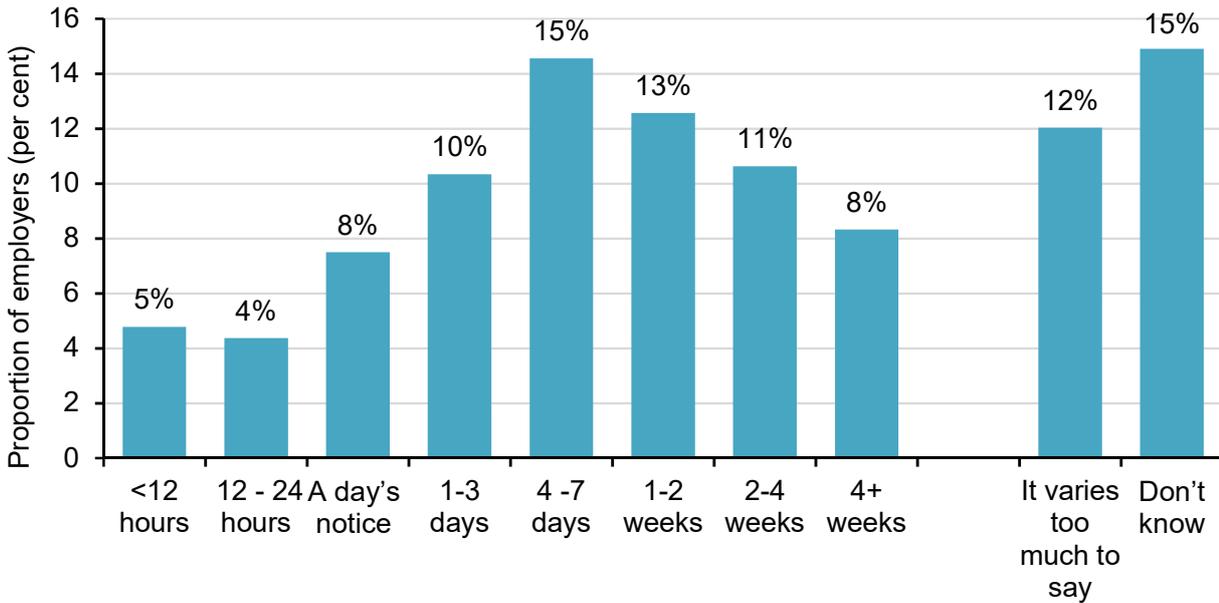
It causes a lot of anxiety and I know it will be a lot worse for the people who aren't as lucky as I am with the scheduling. It's a lot of instability. So some people end up with mixtures of, like, morning shifts, day shifts, evening shifts, overnight shifts, all in the same week.'

1.40 For some, frequently changing shift patterns and work locations can cause problems. This may or may not be accompanied by a fixed number of hours in each week or month, but the exact pattern of hours varies. For example, people might be made to alternate between working mornings, evenings and nights, or be given split shifts (this latter situation is common in hospitality). Changing work locations can go along with or feed into shift pattern instability.

1.41 Reports by Acas (2014/7) highlighted some agency and zero-hours workers subjected to frequently changing shift patterns without prior discussion and at very short notice – sometimes as little as an hour – to present for shifts. This means that workers are put in stressful situations where they can feel unable to turn down work.

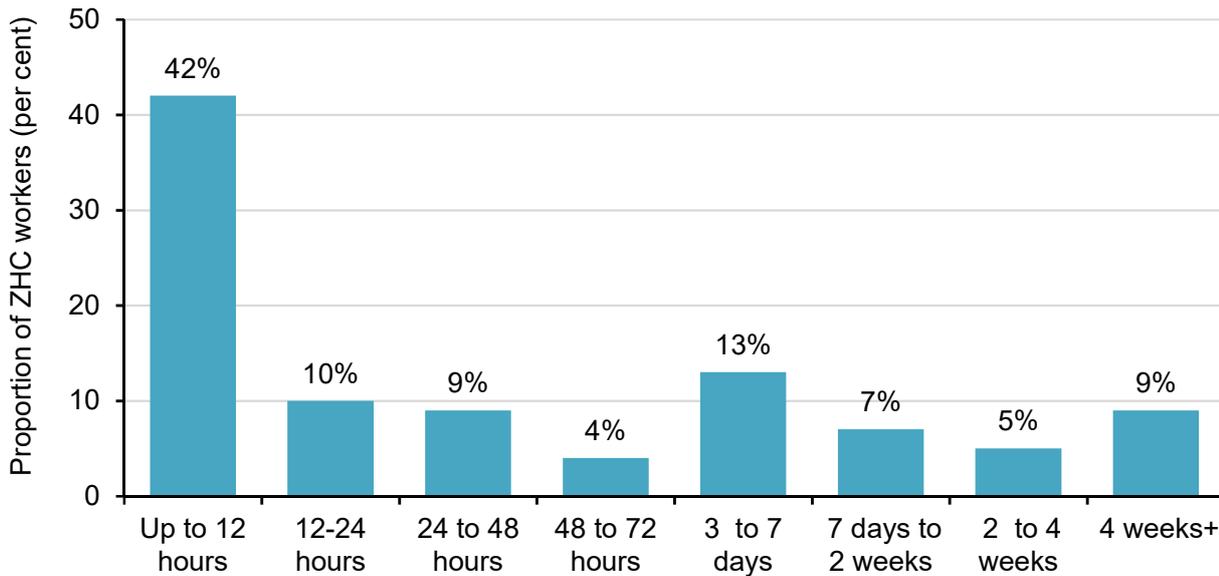
1.42 CIPD's LMO survey of employers found 17 per cent of those with low-paid workers with flexible hours reported giving them notice of a day or less for shifts (Figure 6). In addition, a substantial proportion (27 per cent) either didn't know how much notice they gave or could not say because it varied so much. An earlier study by CIPD (2013) surveyed zero-hours workers and found over half received less than 24 hours' notice of a shift (see Figure 7). A TUC survey (2017b) found 27 per cent of zero-hours workers were often offered shifts with less than 24 hours' notice; another 46 per cent of respondents reported this happening from time to time.

Figure 6: Shift start notice periods for low-paid flexible workers, 2018



Source: CIPD Labour Market Outlook (2018)
 Note: Totals may not sum to 100% due to rounding.

Figure 7: Shift start notice periods for zero-hours contract workers, 2013⁵



Source: CIPD (2013)
 Note: Totals may not sum to 100% due to rounding

1.43 One in four of Usdaw’s members receive less than one week’s notice of hours or shifts (Usdaw 2018b). A poll of 1,000 managers by Citizens Advice (2017b) found one in five said contracted staff didn’t tend to receive more than 48 hours’ notice of their shift times. Some 38% of respondents to IDR’s research (2018) gave between two and four weeks’ notice of their shift schedule. However, 16 per cent of respondents with staff on minimum-hours contracts gave less than one week’s notice and 28 per cent in relation to zero-hours contracts.

⁵ Source: CIPD (2013)

Box D: Notice of work schedules

Acas (2017) reported that an agency worker 'explained she had previously been getting two hours' notice ahead of being due on site, but this had been reduced to one hour's notice, which she had found was not enough time to get ready and get to work'.

University of Greenwich (2017) also found cases like this. A social care worker, Bob, testified that his schedules had been sent to his mobile at only a day's notice because of staff turnover, which subsequently increased to three days' notice – this was still insufficient; 'you can't plan a life at all', he said. A retail worker, Kevin, said that his employers 'phoned me up just as I was at the bar asking where I was. And I'm thinking well, I've not been given a new rota and it's my day off. They're saying, "are you having a laugh"'.

One Citizens Advice service user described how 'it's worse than an inconvenience, it takes over your whole life'.

1.44 We spoke to some workers who reported work or shifts being cancelled at very short notice. In some cases, the shift was cancelled moments before it was due to begin, and the worker sent home. In other cases, the shift was cut short mid-way through. In most situations, there is no penalty for employers acting in this way beyond an unhappy worker, and they are free to send staff home if their labour is no longer required. When shifts are cancelled at such short notice, or truncated, workers often have to pay travel or childcare costs that may not be covered by what they have earned from working.

1.45 IDR (2018) found that only 13 per cent of respondents never cancel shifts. However, those that do generally gave more than 24 hours' notice. Only 40 per cent of respondents said they give compensation when a shift is cancelled.

Box E: Cancellations

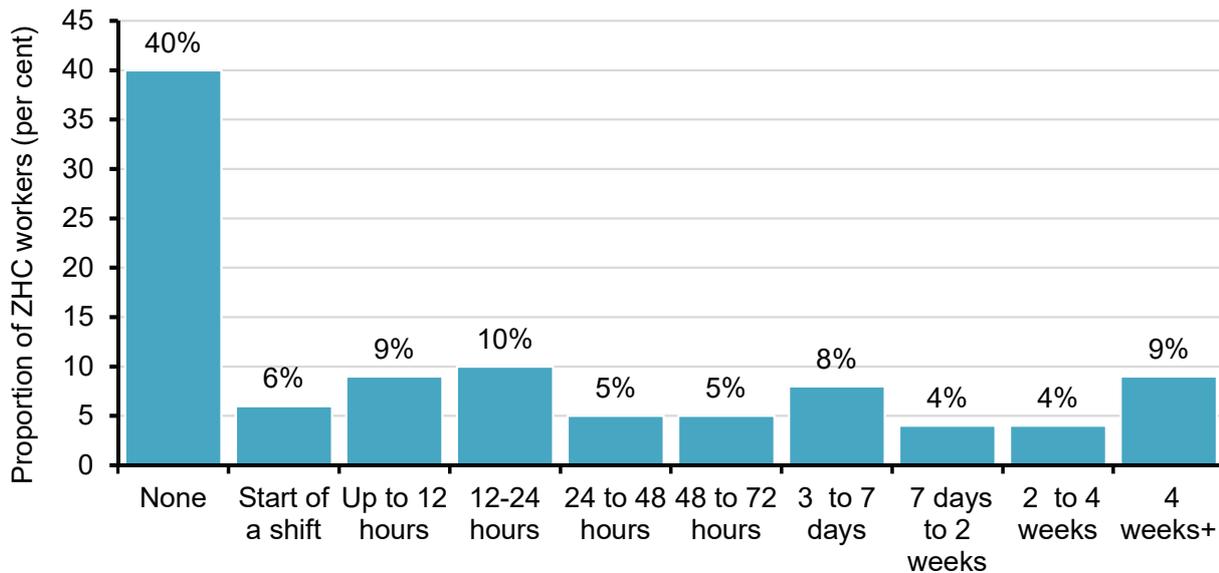
University of Greenwich (2017) quoted Andreas, a hospitality worker: 'It's not steady because if we're not busy I get sent home. There have been days that they've called me and they've told me they don't need me, like an hour before my shift'.

The TUC (2017a) quoted one worker as saying that last-minute cancellations were feeding underemployment and making it hard to afford rent, while Acas (2014) reported a caller to its helpline travelling to work for a scheduled shift only to be sent home on arrival because the shop floor was quiet.

On a Commission visit, a hotelier described how it was easier to cancel shifts than it was to call people in at the last minute, so they routinely scheduled more staff than they needed. One worker told us that she has to give 14 days' notice to her employer for days off work; however, the employer can cancel shifts with only two hours' notice and the worker has also been sent home during her shift.

1.46 The CIPD (2013) asked zero-hours workers how much notice they were given if work was no longer available. The majority received very little: 40 per cent said they received no notice, while 55 per cent had less than twelve hours' notice (see Figure 8). The CIPD returned to this issue in 2015, asking employers of zero-hours workers if they had policies in place for cancelling shifts; only a third had such policies. The TUC's survey found 51 per cent of zero-hours workers had had work cancelled with less than 24 hours' notice (TUC 2017a). These surveys would seem to indicate that short-notice cancellations are relatively common.

Figure 8: Shift cancellation notice periods for zero-hours contract workers 2013



Source: CIPD (2013)

1.47 Some workers feel obliged to accept extra shifts when their employer asks, even if this is at short notice or interferes with other commitments, such as child care. In a 2015 CIPD survey, 42 per cent of employers of zero-hours workers said there was either a contractual or practical obligation on workers to sometimes or always accept any offered work.

1.48 In the qualitative evidence there are examples of people being given verbal warnings for refusing shifts or being told that turning down shifts would result in them being given no further work. The University of Greenwich (2017) found cases where two-sided flexibility existed in theory but not necessarily in practice, as 'workers could refuse work, but there were clear pressures mitigating against this with implications for the allocation of future work'.

Inability to assert rights

1.49 Workers can feel unable to express concerns or assert their statutory rights for fear of being denied work, compounding the issues described above. We found that the fear of losing all their hours, 'zeroing down', was an overarching theme for those on variable hours arrangements. Those working other contract types, but with some non-guaranteed hours, also feared a loss of hours. The potential for losing hours makes workers wary of asserting their rights, whether on holiday or sick pay, their working hours or schedule more generally, or bringing up concerns or complaints. Contractual arrangements give employers the power to assign work as they wish and there are multiple examples in the qualitative research of people's hours being cut, seemingly as a punishment for 'causing trouble' for their employers.

Box F: Fear of ‘zeroing down’

Commissioners met with two union members on a visit, who described an example of ‘zeroing down’. When a member of staff phoned in and their manager did not think they were genuinely ill, the manager simply reduced their hours rather than deal with it through the proper channels or speak to the member of staff about it. They described how unfavoured staff are the first to have shifts cancelled or be sent home.

On a visit to Birmingham we heard from underemployed retail workers who subsequently tried to get a second job, but had been told that their ‘loyalty’ should be to their initial employer.

A care worker interviewed for the University of Greenwich’s research said that their manager ‘can just give me zero-hours one week and he can just change things very quickly using those contracts’.

Citizens Advice Scotland described how one worker was ‘consistently working about 25-27 hours per week for the past year, until recently when her hours were cut back to six per week. The reason given is because there is less work to do during winter, but the client feels the real reason is due to a clash with her new manager, stemming from her refusing to do additional admin work for no extra pay.’

The TUC (2017a) quoted a bar worker as saying that their managers ‘don’t care about staff and anyone who complains is ‘replaced’.

1.50 Workers on zero-hours contracts have, in theory, the right to turn down shifts and since January 2016 have had protections against demands for exclusivity from employers. Workers on guaranteed hours do not have these rights. We heard on visits from workers with short-hours contracts that some employers still enforce unreasonable expectations around availability, overtime and exclusivity.

1.51 We heard that notice periods are a point where workers fear being ‘zeroed down’. Despite in theory having the flexibility to refuse shifts, zero-hours and some other flexible workers can still have contractual notice period requirements of up to three months. Acas (2017) reported receiving calls regarding notice periods from zero-hours or agency workers looking to manage a transition to another job and 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.

1.52 Anxiety about being ‘zeroed down’ can extend to a reluctance to assert basic employment rights. We heard evidence that low-paid individuals on insecure contracts often struggle to access their holiday or sick pay. The University of Greenwich (2017) found that ‘a number of directly employed workers were unclear about holiday and sickness entitlement and there was some reluctance to take holidays, but particularly sick leave’. For some, holiday and sick pay were limited or non-existent. Where entitlements were in place, reluctance was usually accompanied by a perception that asking for or taking leave risked eliciting punitive action from employers. Citizens’ Advice Scotland (2014) and the TUC (2017a) have also reported problems with employers not granting workers certain rights based on their zero-hours contracts.

Box G: Sick and holiday pay – University of Greenwich (2017)

For one national retailer, sick and holiday pay were based on contracted rather than actual hours. One homecare worker reported a similar issue, telling researchers that ‘people don’t go off sick because we don’t get sick pay. We get statutory sick pay. But that’s not a lot, obviously as you know. I went into hospital at the beginning of the year to have an operation on my knee. Now really, I should’ve took about a month off, but I didn’t, I took two weeks.’ Another homecare worker told of how his pay was reduced by his employer when he challenged the lack of sick pay ‘because he wanted to compensate for the fact that he had to pay sick pay’.

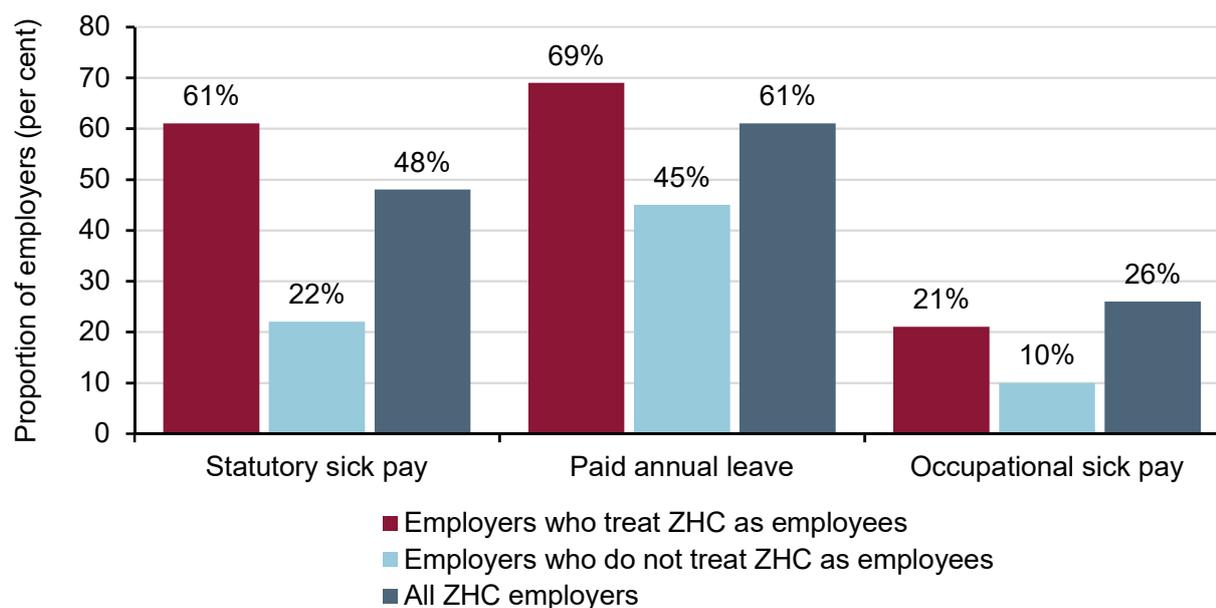
1.53 Citizens Advice (2017a) highlighted that it can be difficult for people with fluctuating hours to prove that they are entitled to statutory sick pay, which should be based on actual rather than contracted hours. The same report found that half of people on zero-hours contracts think they are not entitled to paid holiday. Sick rates are similar between zero-hours and other workers, although this does not cover whether they were paid for their time off sick.

1.54 Even those workers who do have access to paid leave can still face bureaucratic processes to take it, often because of availability requirements. Acas (2017) found that some zero-hours contract workers were frustrated by their employers’ processes for requesting leave up to a month in advance, feeling that this ran against the principle that they should have no obligation to accept shifts.

1.55 In 2015, the CIPD asked employers of zero-hours workers if they provided them with annual leave and statutory sick pay. Overall, around half paid sick leave and under two thirds paid annual leave. Even among those who said they treated zero-hours workers as employees with the associated rights, there were significant numbers who did not provide access to these benefits. As statutory sick pay only applies after four days of sickness, it is likely that some workers will have been ill for a shorter period than this and so were not eligible for statutory sick pay. This may explain some references in CIPD’s survey to ‘no sick pay’. Any sick pay over and above this is discretionary – and sometimes referred to as occupational sick pay – but as can be seen from Figure 9, very few respondents provided this.

One-sided flexibility

Figure 9: Percentage of employers of zero-hours contract workers reporting statutory sick pay, paid annual leave and occupational sick pay provision, UK, 2015



Source: CIPD 2015

1.56 The TUC (2017a) report that low-paid flexible workers are less likely to be paying (or credited into) National Insurance, which only kicks in when workers earn £113 a week or more. Because National Insurance is the gateway to a range of contributory benefits, including statutory sick pay, many workers miss out on these protections when they cannot work. The TUC estimates that nearly 500,000 workers on zero-hours contracts or in insecure temporary work miss out on the right to statutory sick pay because their pay is too low.

Conclusion

1.57 We agree with the Taylor Review that one-sided flexibility is an issue that needs to be tackled. However, it is clear to us that the evidence base on workers' experience of flexible working needs to be improved if policymakers are to understand the real extent of these issues and effectively respond to them.

1.58 As already noted, the Skills and Employment Survey (Felstead et al, 2018) provides a useful benchmark estimate of the scale of one-sided flexibility. This survey is undertaken every five years, and to fully understand and address these issues we need more regular measures. We recommend that the Government considers ways to specifically measure the scale of one-sided flexibility. It will be important to collect evidence on these measures on a regular basis so we can assess the impact of any policy changes.

1.59 We note that the Taylor Review recommended the development of a set of metrics for quality of work and a working group was set up to take this forward. The report 'Measuring Good Work' (Irvine, White and Diffley, 2018) sets out several job quality measures. Additional measures on one-sided flexibility would help to establish the full extent of practices such as notice of shift scheduling and shift cancellations, as well as measuring concern about a reduction or removal of hours.

Chapter 2

Potential impacts of a higher minimum wage for non-guaranteed hours

2.1 Matthew Taylor recommended a higher minimum wage for non-guaranteed hours (which we refer to as ‘the premium’) in response to the issues around one-sided flexibility. In our 2018 remit, the Government asked us to assess what the impact of doing this would be. We have considered two potential ways that this premium could be implemented. Firstly, the ‘loose’ model would require the premium to be paid on all hours above the agreed contract. If no hours are guaranteed, all hours worked would attract the higher minimum wage. The ‘tight’ model is based on Matthew Taylor’s blog from March 2018, in which he suggested a seven-day notice period, with any hours offered or requested within this notice period to be paid at the higher minimum wage. Box H below provides more details on each model.

2.2 We used several criteria to review the impact of the two models:

- Does it tackle the problems associated with one-sided flexibility: of income insecurity, unpredictability and an inability to assert rights?
- What are the potential broader labour market impacts on employment, hours and earnings?
- Are there other trade-offs or unintended consequences for workers or employers?
- Is it simple and enforceable?
- What is the impact on the wider workforce, e.g. higher-paid workers, guaranteed hours workers?

Box H: Models of the premium

Throughout this work we have used two models of the premium as the basis for our assessment.

Tight model

Our starting point was the model proposed by Matthew Taylor in a blog in March this year (Taylor, 'Paying for flexibility: should workers on zero-hours contracts receive a higher minimum wage?' March 2018), which served as his formal submission to the LPC's consultation.

In this model, non-guaranteed hours are those where the worker is given less than one week's notice from their employer. It is these hours which would attract the higher (or premium) level of the NMW/NLW. For example, a worker does ten hours a week regularly; their boss speaks to them on Thursday and asks them to do an extra shift on the upcoming Saturday; if the worker agrees, then these hours must be paid at least the premium rate of the NMW/NLW.

The focus in this model is not on 'contracted' hours; instead it is simply those where notice of under seven days is given. So, regardless of the nature or type of contract, if seven days' notice is provided, the employer does not need to pay the premium.

Loose model

In discussing the 'tight' model, we came across the issue of extreme unpredictability in some sectors. Sectors including agriculture, particularly horticulture, but also social care, find it very difficult to predict their workload, even just week to week, because of unpredictable events, such as the weather or a patient being taken into hospital. However, in speaking with some employers in this situation, it became apparent that predicting over the longer term is easier than week to week on some occasions. This gave rise to the idea of a 'looser' model of the premium.

Under this model, the focus is entirely on the contract and the hours it contains. If the contract guarantees no hours, then all hours worked would need to be paid at the premium. This would be a stronger incentive for employers, as it potentially covers a greater share of hours worked than the tight model. It would incentivise employers to shift to either shorter fixed-hours contracts or longer annualised hours type contracts, which allow more flexibility week to week. For example, a contract that offers a worker 1,200 hours over a year would only need to pay the premium for hour 1,201 and beyond.

Impact on one-sided flexibility

2.3 The impact of the higher minimum wage will depend on how both employers and workers react to its introduction, which is uncertain. To understand how both groups might respond we spoke to them and their representatives, some of whom carried out surveys of their members. This section explores the potential impact of a higher minimum wage for non-guaranteed hours using the criteria set out above.

Tight model

2.4 The tight model would require a higher minimum wage to be paid when shifts were scheduled without sufficient notice, which Taylor has suggested is seven days. We think that under this model employers would be encouraged to plan and schedule in advance in order to avoid paying the premium, thereby reducing the number of short-notice shifts. Short-notice shift cancellations or curtailments might, however, become more common, as the greater cost of the shift will mean there is more incentive for the employer to cancel.

2.5 Income security week to week may be improved if employers plan and schedule more to avoid the premium. But income security over the long term would not necessarily be improved, as workers could remain on contracts with no or few guaranteed hours – it is only the scheduling of these hours that employers would need to change. Some employers may be incentivised to move workers onto guaranteed-hours contracts, as this would remove the need to pay the premium or the need to plan better to avoid the premium. This would diminish – though not eliminate – scope for ‘zeroing down’. However, overall we do not think this model would have a substantial impact on the income insecurity side of one-sided flexibility, with potentially little change in the number of guaranteed hours workers have.

2.6 The tight model is also unlikely to improve workers’ ability to assert their rights, due to the continuing fear of hours being reduced or removed. If employers respond by guaranteeing more hours and undertaking the requisite planning, then this may have some secondary benefits in clarifying sickness and holiday entitlements. We note the Taylor Review recommended that HMRC should take on the role of enforcing holiday and sick pay entitlements, and the Government is looking into this.

Loose model

2.7 With the loose model, where any hours outside of the contract would be paid at the higher minimum wage, employers are more likely to be encouraged to move their staff onto guaranteed hours to avoid paying the higher wage. This could include the use of annualised contracts (or similar) to enable flexibility to be maintained while also guaranteeing hours. We believe this will help to reduce income insecurity, with individuals better able to manage their finances due to a guarantee of hours and thereby income, as well as reducing the likelihood of workers remaining on non-guaranteed hours contracts for a substantial time.

2.8 Because the loose model is more likely to result in workers moving onto guaranteed-hours contracts, particularly annualised hours, this would also help to empower them to assert their rights because the scope for ‘zeroing down’ is diminished. If workers have a greater number of guaranteed hours, they may feel happier to turn down shifts, or to take sick or holiday leave. The loose model is likely to provide further clarity on holiday entitlements as this is likely to be tied to the total number of hours in a guaranteed-hours contract. A guaranteed-hours contract is also likely to introduce a paid notice period, protecting employees from being ‘zeroed down’ when they give notice to leave.

2.9 However, the loose model, with a focus on total hours only, is unlikely to address all problems with unpredictability. Employers may guarantee the total number of hours each week, month or year, but not necessarily when these shifts would take place or where, and there is still the possibility that shifts could be scheduled and cancelled at short notice within the loose model. Requirements for availability over and above actual hours worked are likely to remain.

One-sided flexibility

2.10 If employers move staff onto annualised contracts, then there is the potential for pay to be more uneven throughout the year. For example, if a worker is contracted to work 1,000 hours in a year, and then works an extra 200 hours, the premium will be paid on the 200 hours later in the year, instead of being spread throughout the year.

2.11 With either model, there is the option that employers can simply choose to pay more for non-guaranteed hours. Further analysis of the Chartered Institute of Personnel and Development's (CIPD's) Spring 2018 Labour Market Outlook (LMO) survey found that a third (33 per cent) of employers who use flexible working arrangements for low-paid workers would pay a premium to maintain flexibility, compared with 24 per cent who would increase the number of guaranteed hours to avoid paying the premium.

Summary

2.12 In summary, when looking at the two models in relation to one-sided flexibility, it is a mixed picture and very much dependent on how employers react. For the tight model it is less clear what impact, if any, the premium would have on the type of contract or hours individuals have, and therefore to what extent income insecurity would be reduced. If we want to encourage employers to move employees onto guaranteed hours, then this model may not work effectively. However, if we simply want to reduce unpredictability of shift scheduling then this model could be effective.

2.13 For the loose model, employers are more likely to be encouraged to change their employees' contracts to avoid paying the higher minimum wage and therefore a fear of 'zeroing down' may be less prevalent and employees more able to assert their rights. However, this model will not address the unpredictability element of one-sided flexibility. The two models therefore tackle very different issues of one-sided flexibility. If employers pay the higher minimum wage, concerns around one-sided flexibility are unlikely to be addressed, although the worker will be compensated for their flexibility to some extent.

2.14 Several unions felt that a premium would help to address some aspects of one-sided flexibility. Usdaw stated 'a premium payment could ... encourage employers to plan for more consistent working patterns'. However, both Usdaw and GMB argued that this would need to be high enough to be a deterrent, with GMB stating the premium should be 'set high enough that it would fairly compensate workers on insecure contracts, act as an effective deterrent to employers making insecure work part of their business model and mitigate against unintended consequences of its introduction such as the potential for trapping people on insecure contracts'. The Trades Union Congress (TUC) argued 'a premium of at least 25 per cent would be sharply felt and would militate strongly towards expressing real working patterns in contracts to avoid paying extra for non-contractual hours'.

Impact on employment, hours and earnings

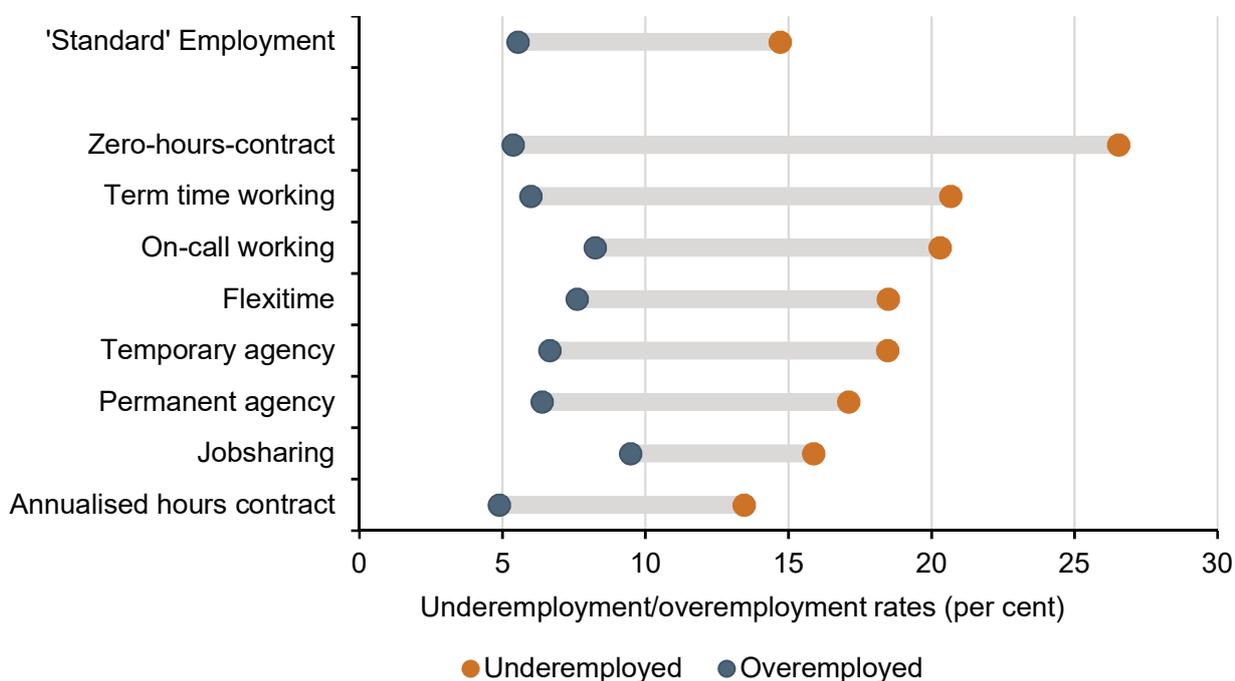
2.15 It is important to consider the impact of a premium on the labour market more generally, including on hours, earnings and employment. A premium would make non-guaranteed hours more expensive and risk reducing the overall hours of work available under both the loose and the tight models. Stakeholders were asked to reflect on this in their responses to our consultation. A range of employer representative bodies, including the British Independent Retailers Association (BIRA) and

the Association of Convenience Stores (ACS), warned that employers would be likely to reduce the number of hours of work overall if a higher minimum wage were introduced. The ACS argued ‘it could have perverse outcomes for employees, with employers looking to reduce paid work hours in their business, reduce staff on short-term contracts or move to annual pay reference periods to avoid the premium wage rates’.

2.16 The CIPD’s 2018 survey found that 20 per cent of employers who use low-paid flexible workers would reduce overall hours because of the higher costs. A Chartered Institute of Payroll Professionals (CIPP) survey⁶ found that only 6 per cent of members would reduce hours, compared with over a third, 36 per cent, of respondents to the ACS survey.⁷ The CIPD’s survey also gives an idea of the extent to which non-guaranteed hours already attract a premium. Of those who currently use low-paid flexible labour 48 per cent pay more.

2.17 While a reduction in hours may be beneficial for those who are overemployed, it would be detrimental to those who are underemployed and generally want more hours. As discussed in Chapter 1, our analysis of the LFS found that underemployment is a bigger issue for low-paid workers, and even more so for those with variable hours. Stakeholders pointed out that where workers are not getting the hours they want they cannot benefit from the premium. As GMB’s submission stated ‘a high hourly rate is somewhat immaterial if you are not being offered any hours or where you turn up for a shift to be sent home significantly earlier than anticipated’.

Figure 10: Underemployment and overemployment for low-paid workers by working arrangement, UK, 2016-2018



Source: LPC estimates using LFS Microdata, income weights and imputation methodology, Q2 2016-Q2 2018, UK.

Notes: Contract type does not include nine-day-fortnight and four-and-a-half-day week due to small sample size. Low paid workers are defined as those earning between the NMW/NLW and 50p above.

⁶ This survey is based on 32 responses from payroll professionals

⁷ The ACS National Living Wage Survey 2018 collected information from 63 businesses representing 3,005 stores and employing 40,444 staff. The data from this survey has been weighted to be nationally representative for the UK convenience sector.

One-sided flexibility

2.18 Several responses to our consultation raised the possibility of employers reducing the number of people employed. Some 37 per cent of respondents to ACS survey (2018) said they would reduce employment overall if a premium was introduced and 25 per cent would make use of technology. The Federation of Small Businesses (FSB) members' survey found '27 per cent may reduce the size of their overall workforce if a premium was to be introduced'.⁸ The National Federation of Retail Newsagents (NFRN) warned that employers would take on the extra hours themselves to avoid paying the premium. The Federation of Wholesale Distributors (FWD) warned also that companies may move towards outsourcing labour. The CIPD's survey found 9 per cent of respondents who use flexible working would outsource their tasks and 16 per cent would use more workers on short fixed-term contracts.

2.19 Some employers raised concerns about the potential impact of the premium on profitability. For example, the NFU reported 'nearly a third of respondents (30 per cent) raising concerns about increased costs, cashflow issues and some fear about future viability of the business'.⁹ There is the possibility that some employers who pay just above the minimum wage rate may seek to reduce their base rate of pay down to the minimum wage rate, so they can afford to pay a higher rate for non-guaranteed hours. The University of Greenwich (2017) found some employers reducing wages to compensate for holiday pay, and therefore it is likely that there would be a similar response if they had to pay the premium. Further, it is possible that employers would seek to alter the base rate of pay and hours of work to pay for this.

2.20 We are therefore concerned by these potential negative impacts of the premium, with employers highlighting risks leading to reductions in hours, numbers employed and potentially pay.

Potential unintended consequences

2.21 Through our conversations with stakeholders and consideration of international evidence we identified and explored several potential unintended consequences of the premium.

Encouraging workers to remain in or take insecure work

2.22 While the premium may help to ensure that workers are compensated for their flexibility (to a greater or lesser extent depending on the amount), several unions expressed concerns that this could weaken workers' rights and encourage individuals to take non-guaranteed hours contracts. UNISON argued 'a differential could act as an inducement that may actually expand low pay employment further and encourage workers in a weak bargaining position to give up the employment rights that are guaranteed by law for a 'worker' or 'employee'".

2.23 Several employer organisations were also concerned about this. For example, the Association of Labour Providers (ALP) argued that as a result of a drop in pay, workers on non-guaranteed hours contracts will be dissuaded from moving to permanent contracts or guaranteed-hours contracts, and may view guaranteed-hours contracts as a demotion. It may also encourage workers to ask to be on non-guaranteed contracts for the extra pay, although employers will not be obliged to offer them. Two social care providers, Dimensions and a disability care provider, raised concerns about the

⁸ This survey was conducted in May 2018, with a response rate of 561 small business owners

⁹ A survey of 439 farm businesses, picked at random and interviewed by telephone; undertaken Spring 2018.

incentive for staff to remain on non-guaranteed hours, with the disability care provider stating their concerns that ‘Taylor’s proposal for an enhanced rate would encourage more people into casual arrangements which in turn leads to greater churn and turnover. This isn’t what we would desire for the consistency and quality of our services’.

2.24 The GMB argued in their consultation response that the ‘casual loading’ premium in Australia¹⁰ can ‘trap people into insecure work – the conversion into secure work could mean taking a pay cut, and many cannot afford the initial hit even though they may be better off overall as a result of being eligible for other employment rights such as paid sick leave, annual or holiday leave, personal or carer’s leave which they were not eligible for as casual workers’. In Australia, a large proportion, around quarter, of the population are classed as ‘casual workers’. We consider the Australian system in more detail later in this chapter.

Gaming of the system

2.25 Employers have raised other issues around potential gaming by employees, particularly where workers currently have a degree of control over their hours. For example, some workers have discretion to swap shifts with one another and could potentially game this to receive the premium. Some employers told us that the premium would cause them to take a backwards step away from the worker-led flexibilities they are introducing; for example, smartphone apps where workers can choose and swap shifts with ease. Their view is that this kind of worker flexibility may not be compatible with the premium because of the potential gaming, and so would need to be removed. We expand on this issue in the following section.

2.26 A social care company told us that it had introduced a premium for short-notice hours to encourage workers to take on extra late-notice shifts. However, this created a perverse incentive, with staff no longer signing up for regular shifts in advance, and instead, waiting until they were able to get paid the premium before providing their availability.

2.27 There is a risk that with the tight model in particular, employers could game the system by booking staff in for lots of shifts, and cancel when needed, as this would not cost the employer anything, while calling in someone within the required seven days’ notice period would be expensive. This would substantially worsen issues around availability and flexibility for workers.

Reductions in flexibility and worker discretion

2.28 We heard from many employers and employer representatives that workers like flexibility. The British Retail Consortium (BRC) told us that ‘for three years low paid retail colleagues have ranked flexibility in hours as one of the top three reasons for working [in] retail.’ Several organisations, such as McDonald’s and a number of social care providers, have told us that they offered their staff guaranteed-hours contracts, but most turned them down as they preferred to stay on a zero-hours contract. Zero-hours workers, in theory, have the freedom to turn down shifts, while with guaranteed-hours contracts, employers generally set shifts, with less choice or control for workers.

¹⁰ Casual workers are entitled to a wage premium of 25%, known as casual loading, to compensate for their lack of employment rights

One-sided flexibility

2.29 Employers and employer representatives described the benefits of the flexibility of non-guaranteed hours contracts, meaning they have the flexibility to adjust to weather and demand. There was therefore a concern among employers and employer representatives about the negative impact a premium could have on two-sided flexibility. The British Beer and Pub Association (BBPA) argued 'In our industry there are significant peaks and troughs in demand through the year and many who want the freedoms that flexible hours provide.' ACS's response to our consultation stated '70 per cent of colleagues have commitments outside of work such as childcare or supporting elderly relatives, which restricts the working hours they can commit to and demonstrates the value of flexible employment in the sector.'¹¹ ACS does not believe one-sided flexibility exists in the convenience store sector and is concerned about the negative impact on flexibility of a premium.

2.30 The Confederation of British Industry (CBI) highlighted in their response that the premium 'would make every flexible working hour more expensive for employers, and could not practically differentiate between flexibility that exists to the benefit of the employer and that which benefits workers. A premium rate would uniformly discourage flexibility, damaging the employment and earnings prospects of those lower-paid workers who rely on flexibility to work.'

2.31 Some employers allow workers to choose to do extra hours at the end of a shift if there is a need for more staff. However, these hours would not be guaranteed and so would attract the premium. This means that the employer might have to remove this discretion, particularly as the premium creates an incentive for workers to stay at the end of their shifts.

2.32 The loose model, however, would enable some flexibility and would be helpful for employers who are not able to predict demand in the short-term, but can predict demand in the longer term, such as in agriculture or social care. Within a looser annualised hours framework there could still be room for employees to keep some discretion. Around a fifth of CIPD respondents (21 per cent) who use flexible working arrangements said they would utilise other forms of flexible working (such as annualised hours) if a premium was brought in.

Adopting a self-employment model

2.33 There is a risk that the premium would encourage organisations, particularly less scrupulous ones, to increasingly use a self-employment model. According to the CIPD's survey of its members, 13 per cent of those employers who use flexible working arrangements said they would use more temporary staff, including agency workers and 7 per cent of respondents would use more self-employed contractors. Furthermore, unions told us that the issues with one-sided flexibility are also a problem with self-employment and yet the premium would not help these workers at all. Some 72 per cent of respondents to the National Hairdressers' Federation (NHF) survey felt that the rules on self-employment needed to be tightened¹². We understand that the Government is looking into issues around employment status.

¹¹ ACS' Colleague Survey 2018, sample of nearly 4,000 colleagues working in the convenience sector

¹² A survey of 379 NHF members carried out in April 2018

Employee relations and fairness

2.34 Several employers raised the issue of fairness, with the ALP arguing that the premium ‘flies in the face of the principle of equal pay for work of equal value’. The Food and Drink Federation (FDF) argued that it did not seem fair that a new or temporary member of staff could earn more than a permanent one due to the premium. Winander Leisure, a tourism operator based in the Lake District, wrote in its response that ‘to suggest that these fixed term, “casual” employees should be paid a higher hourly rate, despite, in our case, them working at least as many hours as permanent staff would seem illogical and impossible to justify to other employees.’ Mencap agreed with this, arguing ‘If we were required to pay a higher minimum wage for our workers this would cause significant employee relations issues. We actively encourage our workers to take on [guaranteed-hours] contracts as it provides more stability for them and us as employers – a higher pay rate for workers would be a disincentive. Also, the work they undertake is less involved and has less responsibility than the contracted staff they are working alongside which would be very divisive and could cause resentment.’

Equalities issues

2.35 The Low Incomes Tax Reform Group (LITRG) highlighted research suggesting that 55 per cent of zero-hours workers are women and therefore more likely to be affected by any changes caused by the premium. Others, including the BRC, argued that women would be less able to benefit from the premium as they more often have caring responsibilities and therefore do not have the flexibility to take on extra hours at short notice to get paid the premium. The BRC felt this would be true for anyone with caring responsibilities, as well as disabled people, as they may be less able to take up work at short notice. Usdaw highlighted that the premium would need to be paid on the youth rates to ensure that they ‘could not be exploited as a cheap stopgap to avoid paying the premium’.

Penalising employers for unavoidable variability

2.36 Some responses highlighted that the premium could cause employers to be penalised for things they have no control over, such as sickness absence, the weather and variability in social care. The BRC argued that it would be disproportionate to require employers to pay the premium to cover for workers who cannot make it into work due to unforeseen circumstances such as adverse weather. Employers could potentially manage this issue more easily under the loose model if they move to annualised hours, which maintains some flexibility.

Legitimising poor practices around flexibility

2.37 There were concerns among some trade unions that under the premium, employers may feel they have ‘bought’ maximum flexibility and have the right to expect total flexibility from workers, such as no notice of shift changes, or day shifts one day and night shifts the next. The Communication Workers’ Union (CWU) said ‘We are concerned that, without additional protections, this will simply serve as an excuse for employers to continue engaging workers on a precarious basis and paying them poverty wages.’

One-sided flexibility

2.38 Under both models, an employer could choose to maintain flexibility and pay the premium. A third (33 per cent) of respondents to the CIPD survey who use flexible working arrangements said they would pay the premium to maintain flexibility. A slightly lower percentage of respondents to the CIPP's survey (24 per cent) said the same, although this was a small sample.

Work intensification

2.39 The premium could lead to intensification of work; according to the Skills and Employment Survey (Felstead et al, 2018), this has already increased across the workforce since 2012. Staff could be pressed to complete more tasks in their guaranteed hours as employers seek to avoid hours that command a premium. Equally, if employers instead choose to pay the higher rate in return for flexibility, they may also expect greater work effort from employees. This would be consistent with responses we have seen to the National Living Wage (NLW). To mitigate the increased cost of the NLW, businesses often report the intention to raise productivity. However, in survey findings shared with us by the CIPD, the main change businesses have made in pursuit of higher productivity has been work intensification: in a survey of firms affected by the NLW, 27 per cent required staff to take on additional tasks, 25 per cent required staff to be more flexible with their hours and 15 per cent increased the pace of work or raised performance standards.

Specific impacts on temporary work

2.40 We heard from the Recruitment and Employment Confederation (REC) that agencies that supply temporary staff would be very concerned by a premium. By its very nature, agency workers don't generally have guaranteed-hours contracts and receive very little notice, and the proposal 'will effectively mean therefore that low paid agency work will be premium rated.' There would likely be similar impacts regardless of the model of the premium. The nature of temporary work means that very few temporary workers get a week or more notice, and moving to annualised hours (or a similar longer period) is not practical. A premium would increase the costs of employing agency staff and the REC argued that it would be very difficult to pass on any price increases to their customers. The REC survey of its members found 64 per cent believed employers would reduce their use of agency workers and 63 per cent would reduce agency worker hours.

Specific impacts in social care

2.41 Social care-focused responses to the consultation warned of a potential negative impact in that sector if a premium is introduced. The UK Homecare Association (UKHCA) argued that a premium would not reduce the use of zero-hours contracts; instead companies would need to hand back contracts, or decline to provide some services because there is no capacity to absorb or pass on these costs, reducing the availability of social care. In an already fragile market of rising costs and much reduced margins Athena Care argued in their response that the premium could lead to reduced 'service hours and reduced contact time ... this would affect the quality of service and well-being for thousands of service users'.

2.42 UKHCA argued that 'high use of zero-hours contracts, in the homecare sector, is largely the result of the way that councils have purchased homecare and only willing to pay for the amount of time that direct care services are delivered (rather than paying for a sufficient number of people to

be engaged to deliver the services).’ The social care sector would therefore find it difficult to either change contract types for staff due to the need for flexibility, or to fund increases in costs as a result of a premium.

2.43 We have heard from numerous social care stakeholders that they are finding it increasingly difficult to recruit and retain staff, and cannot compete with other, better paying employers, such as healthcare and retailers. In Wales, there are new requirements for qualifications among care staff, which, we are told, is creating an additional barrier to joining or staying in the sector. Stakeholders are fearful that the premium will create further difficulties in recruiting and retaining permanent contracted staff and tell us therefore it would only be treating a symptom of the problem with social care rather than the problem itself, that social care is generally underfunded.

Interactions with tax and benefits

2.44 Some stakeholders raised concerns about the potential impact of a premium on individuals’ tax and benefits. The LITRG argued ‘While much may be made of the workers’ pocket being bolstered by the benefit of a premium, our view is that it may be largely illusory and at worst, could leave people facing unexpected burdens.’ A higher income could lead to workers facing higher tax, pension contributions and National Insurance, and a reduction in benefits, including potentially a loss of free school meals, which could mean that workers are worse off than before.

2.45 Unite also raised this issue in its response; however, they argue this could lead to government savings. It discussed a report by Landman Economics analysing the impact of the National Minimum Wage (NMW) which ‘found there would be a decrease in social security payments which include Universal Credit. This is because higher gross wages mean that some families on the taper for tax credits, benefits or Universal Credit receive lower payments’.

2.46 In its submission, the LITRG said ‘it is possible that some workers will feel unable to claim tax credits, even if they are otherwise entitled to them. This is because the variation in their hours will take them above and below the thresholds for claiming Working Tax Credit too frequently to claim without the risk of overpayments and/or the starting and stopping of claims’.

Simplicity and enforceability

2.47 A number of stakeholders expressed concern about the potential complexity of the premium. If there is a premium for each of the current minimum wage rates this would double the number of minimum wage rates to ten. In their consultation response, UNISON argued ‘With five tiers of the National Minimum Wage already in place, such a proposal would add a further tier to the system and UNISON has always argued for a simple, single unified system that treats all workers equally in the interests of fairness.’ EEF, the manufacturers’ organisation, argued ‘introducing a new rate would complicate the system at a time when manufacturers are calling for simplification’. The CIPD stated that ‘it is important that it does not undermine the effectiveness of the NMW by introducing additional complexity. The NMW owes some of its success to the fact that the rates are relatively easy to understand and apply across the employee workforce, which in turn makes enforcement more effective’. The CBI felt that this would increase the risk of accidental non-compliance.

One-sided flexibility

2.48 The LITRG has highlighted that it would be difficult to define non-guaranteed hours. They question whether the premium would apply to ordinary overtime as well as zero-hours contracts. The LITRG stated that ‘there will need to be detailed definitions provided so that employers and employees are clear of the position’.

2.49 HMRC is currently responsible for enforcing the NMW on behalf of the Department for Business, Energy and Industrial Strategy (BEIS) and therefore it would be likely that HMRC would take on the role of enforcing the premium. They would likely require extra resources to support this.

2.50 Equity and Usdaw suggested that the premium would need to be set at an appropriate level to incentivise a change in employer behaviour, with Usdaw arguing that this would need to be set ‘at such a level that employers would take it seriously’ which they suggest is ‘a significant premium above the normal hourly rate’. The TUC recommended ‘at least 25 per cent above the normal rate’, which they argue would ‘be sharply felt’ and would encourage employers to avoid the premium.

2.51 Several consultation responses representing employer organisations and employers themselves raised concerns about the cost of implementing this policy. The Universities and Colleges Employers Association (UCEA) and UKHospitality were concerned the premium would create a substantial administrative burden. Whitbread thought it would ‘require significant investment in technology and support for companies to properly comply’. ACS argued that the premium ‘would complicate forecasting employment budgets and payroll administration and be detrimental to flexibility in working hours for colleagues’. This would be particularly the case in sectors where there are already a range of pay rates, such as for overtime and bank holidays. If a worker or enforcement body is to successfully prove a breach has taken place they will need evidence that notice periods have been breached; payroll practitioners have told us that accurately recording this would be challenging. The employer would need to record hours worked, broken down by guaranteed and non-guaranteed hours. FSB stated ‘We are also concerned as to how this proposal would be enforced and whether such a proposal will place further bureaucratic burdens on small businesses in administering what pay rates applied to which hours of work.’

2.52 The loose version of the premium should have fewer requirements on employers as they won’t be required to provide notice periods and the accompanying evidence. If the loose version encourages employers to move to annualised hours they will simply need to record the total number of hours worked over the course of the contract, which should be standard practice. However, employers told us that annualised hours contracts come with their own challenges; they required detailed planning and risks of having to pay workers for unnecessary hours.

2.53 Some employers seemed to have good practice in the form of annualised hours/banked hours contracts. This kind of working seemed to benefit workers, as they have security over their income over the year, but still allowed flexibility for both them and their employer. But there is a compliance issue here – in months where workers ‘flex up’ their hours, but are paid for a steady number of hours each month, this can be technically non-compliant, even though over the long term they are paid the right amount. We have heard examples of employers abandoning these arrangements and moving (or considering moving) to flexible arrangements such as zero-hours instead. In this situation workers would lose their security of income. Thus, the existing compliance framework may already be crowding out good practice.

2.54 There would also be an ongoing issue with awareness of rights, and workers being willing and able to challenge their employer when they don't meet their responsibilities. If workers are not aware that they are eligible for the premium, or do not feel able to challenge their employer to get the premium, then this policy would have little impact. This would need to be addressed.

Impact on wider workforce

2.55 This policy is by its nature focused on the lowest paid. However, there would likely be some impacts for those higher up the pay scale, particularly where employers chose to pay the premium instead of guaranteeing more hours. Whitbread thought 'introducing another rate of pay unconnected to skills would impact our current pay for progression model where employees can progress pay in line with progressing skills. Meaningful uplifts in pay progression could come under pressure in order to absorb further potential costs'.

2.56 The NLW has increased the pay of the lowest paid and brought their earnings nearer to those at the level above them. As set out in Chapter 2 of this year's LPC Report (LPC 2018), this has decreased the differentials between earnings brackets and employers have told us that they are finding it difficult to increase the pay of people in more senior positions. For some organisations this has meant that it is more difficult to recruit people into supervisory roles as the pay does not compensate sufficiently for the increase in responsibility. The premium would therefore likely have a similar impact, with pay for non-guaranteed hours likely to reach or exceed the pay of those at the next level in many organisations – although, of course, employers could avoid this by moving staff to guaranteed hours.

2.57 There was also a concern among employers that other workers will seek pay increases to achieve pay parity with non-guaranteed hours workers, placing further pressure on wages.

2.58 Some have noted that the problems that face minimum wage workers on flexible contracts are also faced by those slightly above the rates, and question the fairness of this. The LITRG told us that 'if the premium is 15 per cent – then someone on the £7.83 rate will have their hourly rate lifted to £9. But if they are already on £9, their pay will stay £9? If the proposal goes ahead, we question whether the same justifications apply to those who are paid at higher rates'.

2.59 Some unions suggested that the premium should apply to all non-guaranteed hours, not just to low paid roles. The TUC, for example, stated that 'the enhanced hourly pay rate should be linked to the individual's normal pay rate rather than an enhanced NMW rate'. However, this would move it away from being a minimum wage, towards being an overtime/flexibility premium.

2.60 The loose model of the premium could affect those on other contract types who may work overtime, such as, salaried workers contracted to work 40 hours per week. If they work more than those 40 hours then in theory they should be paid the premium for those hours. Matthew Taylor, in his blog in March 2018, highlighted this as a benefit in tackling the rising numbers of people who do unpaid overtime.

International lessons

2.61 The idea of requiring employers to pay a premium for types of work or contract is not uncommon across the world, particularly around overtime, where the majority of EU and OECD countries have some form of statutory requirement, or one agreed via collective bargaining. There are countries that require a premium in relation to non-guaranteed hours or short-term contracts, but these are generally not linked to the minimum wage rate.

2.62 For example, in France there is a 'precarity bonus' of 10 per cent for fixed-term contracts. French employers must justify their use of fixed-term contracts under a set number of criteria (for temporary increases in business activity, to replace absent employees or in certain sectors or seasons of work). The 10 per cent premium is paid in a limited number of cases. However, the evidence suggests that 'despite this, French temps are paid less, all other things being equal, than permanent workers, especially male temps' (Kornig et al 2016).

2.63 In Australia, casual workers do not have access to paid leave or sick leave, and can face unpredictable hours and earnings. To compensate for this, employers are required to pay a 15-25 per cent premium for casual employees compared with a permanent employee doing the same job. This is, in part, to make up for their lack of employment benefits, but also to discourage too much casual working.

2.64 However, the evidence suggests that the 'casual loading' does not compensate workers sufficiently and nor has it discouraged the use of casual workers among employers. By comparing median wages of casual and non-casual employees for adult non-managerial employees in ten occupations researchers found that the premium, on average, is only about 4-5 per cent rather than 25 per cent, with the exception of school teachers (Healy and Nicholson 2017). One study, which controlled for occupation, age, education, job location, and employer size, found a ten per cent premium for men and a 4-7 per cent premium for women (Watson 2005).

2.65 Neither has it reduced the numbers of workers on these types of contracts, with one in four Australian employees classed as a casual worker, increasing to around half of young people (Healy and Nicholson 2017). A 14-year longitudinal study found scarring effects on the wages of casual workers, 10 per cent for men and 4 per cent for women, and with very few casual workers earning more than permanent workers in the long term (Mooi-Reci and Wooden 2017).

2.66 Both the French and Australian examples raise questions about the impact of wage premia type policies on workers' actual pay. It is clear that effective enforcement can be difficult but necessary to ensure that any premium is paid. The GMB in their written evidence response argue that such casual loading is less effective due to the much greater bargaining power of permanent employees than casual employees.

Conclusion

2.67 The effects of either form of the premium on the problems associated with one-sided flexibility are uncertain. Each model has its own advantages and disadvantages. The tight model would seem to tackle more of the issues around predictability of scheduling of work, while the loose model appears more effective in securing income over the longer term for the worker through a guaranteed-hours contract and supporting them to assert their rights.

2.68 It is clear that neither model addresses all of the problems associated with one-sided flexibility, and there are concerns that the premium could reduce the number of hours of work available, and the numbers of people employed, and therefore damage the earnings of some low-paid people. This would be particularly detrimental for underemployment, which is an issue for many low-paid workers.

2.69 There is a risk that workers could be encouraged to take non-guaranteed hours contracts to benefit from a higher wage, thereby further encouraging insecure work whilst not resolving the issue of one-sided flexibility. Worker flexibility could also be reduced, either by employers shifting to guaranteed-hours contracts that are less flexible, or by limiting worker discretion and flexibility to avoid gaming.

2.70 Employers are concerned that it will be difficult to implement and enforce the premium, especially if there were potentially five extra rates to manage. The premium could also further reduce differentials for managers and supervisors towards the bottom of the pay structure. Therefore, while the premium may solve some problems, it could create others.

Chapter 3

Conclusions and recommendations

3.1 We agree with the conclusions of the Taylor Review that one-sided flexibility is an issue for some workers and should be addressed. The evidence base is not yet sufficient to establish the true scale of the problem and therefore our first recommendation to Government concerns improving this evidence base.

3.2 **We recommend that Government considers ways to specifically measure the scale of one-sided flexibility.** It would be useful to collect evidence on these measures on a regular basis so we can assess the impact of any policy changes. We note that Government is considering the recommendations from the Carnegie UK Trust and RSA's report 'Measuring Good Work' (Irvine, White and Diffley, 2018).

3.3 Matthew Taylor proposed a higher minimum wage for non-guaranteed hours to address the problem of one-sided flexibility. As the previous chapter has shown the premium does have potential to address some of the issues related to one-sided flexibility, through encouraging employers to review contracts and consider scheduling. However, we believe that there are too many potential trade-offs and unintended consequences of the premium. The principle underlying the premium, of encouraging firms to schedule in advance, is right. So instead we believe a package of policies aimed at broader employment rights would help to address the problems associated with one-sided flexibility more effectively than the higher minimum wage for non-guaranteed hours.

3.4 In our work, we found evidence of positive examples of flexibility, and so it is important that any measures preserve genuine two-way flexibility. We found widespread support for the idea that workers should have better notice of their working schedules, more security of income, and the confidence to assert their rights. The goal of the premium proposal was to address these concerns, but in our view it does not do so effectively. We didn't hear unqualified backing for the premium from any of the stakeholders we spoke to. **We therefore recommend an alternative package of measures:**

- **a right to switch to a contract which reflects your normal hours;**
- **a right to reasonable notice of work schedule;**
- **compensation for shift cancellation or curtailment without reasonable notice; and**
- **information for workers.**

3.5 This following section provides further details about each of the policies in the package. We also reviewed other ideas, including banning zero-hours contracts, a minimum shift length, and payment for availability. A discussion of these other options is given in the appendix.

A right to switch to a contract which reflects your normal hours

3.6 The Taylor Review recommended a right to request a more stable and predictable contract. Government has since consulted on such a measure based on the right to request flexible working. However, we are of the view that a stronger framework is appropriate, as the issue is not about a worker requesting a change to the amount of work they do, but rather the proper recognition of their normal hours. Workers already worried about raising issues in the workplace, because of fears of employer retaliation, are less likely to raise a 'request' – so the right needs to be stronger than this.

3.7 An employer would need to objectively justify any refusal according to conditions clearly defined in legislation. These would include the reference period for determining normal working hours, a qualifying period, and the specific circumstances in which an employer would not be required to offer a contract guaranteeing normal hours worked. We give examples of these specific circumstances below, but recommend that the Government consult widely on these qualifying conditions. This right should be enforced through employment tribunals, and Government should also consult on appropriate penalties for non-compliance.

3.8 The Government needs to set out specific circumstances in which an employer would not be required to offer a contract guaranteeing normal hours worked. An example of these circumstances can be found in an Employment Bill that is currently going through the Irish Parliament, aimed at tackling similar issues to the UK around insecure working. Detail on the Irish Bill is set out in Appendix 2. They too are proposing an entitlement to a contract which reflects the number of hours worked. This Bill contains a list of circumstances in which an employer can refuse the right to switch:

- agreements made under collective bargaining;
- where there is no evidence to support a claim in relation to hours worked;
- significant, adverse change to the business;
- exceptional, unforeseen or emergency circumstances; or
- where average hours worked were affected by a temporary situation that no longer exists.

3.9 We recommend the Government consults on the specific circumstances in which this right can be turned down, as well as consider the appropriate reference period and qualifying period. Usdaw, for example, suggested a reference period of twelve weeks, in line with the Employment Rights Act method to calculate average pay. By contrast, the Chartered Institute of Personnel and Development (CIPD) suggested twelve months. We believe it is important that this legislation creates an environment for discussion between the employer and worker where they can agree a working arrangement that meets both their needs.

3.10 The aim of this policy is to encourage employers and workers to review contracts to ensure they reflect the worker's typical hours of work, thereby helping to resolve many of the issues associated with one-sided flexibility. We came across examples of employers who already do this.

3.11 This policy has the potential to improve a range of aspects of one-sided flexibility. It should encourage employers to think about what hours they actually need workers to do and when, with the improved planning and scheduling that goes with this. Once the contract is offered and accepted, the worker will have greater income security and, with their fear of being 'zeroed down'

One-sided flexibility

reduced, should be empowered to assert their rights. This security should support individuals to manage their finances more effectively and to facilitate access to credit, including mortgages. Finally, steadier and more predictable hours should make holiday and sick pay entitlements, and appropriate notice periods, easier to calculate.

3.12 This measure would avoid the unintended consequences of the premium. It would avoid the risk of workers becoming trapped in non-guaranteed hours contracts. Although moving to a guaranteed hours contract could reduce worker discretion over the shifts they then accept, it would be the worker's choice to exercise this right in the first place. As a right available to all workers, it would avoid perceived unfairness and we believe it could be designed to avoid gaming of the system. Calculating average hours over an appropriate reference period would avoid penalising employers for unavoidable variability.

3.13 It is possible that more unscrupulous employers may put pressure on individuals not to request a guaranteed-hours contract or to turn it down when offered. They may move to using temporary contracts that end before the qualifying period, or keep hours low to reduce the number of hours they need to guarantee. A clear complaints and enforcement procedure is therefore needed.

3.14 We accept that not everyone will want to change their working arrangements and so it is important that workers have the flexibility to turn any offer down.

3.15 The Recruitment and Employment Confederation (REC) raised a concern over who would be responsible for this with regard to agency workers, and this would need to be clarified in government guidance. A qualifying period and a reference period is one way in which this policy can ensure genuine temporary work is not adversely affected.

Box I: International examples

There are numerous examples around the world of policies that support insecure workers onto secure contracts.

In the Netherlands, after six months workers must be paid at least the average number of hours they have worked in the previous three months. For on-call contracts (fixed term and paid by the hour) if a worker is offered four contracts within a three month period, i.e. their contract is renewed or extended four times, then the fourth time must be a permanent contract. In the Netherlands, they have also introduced min-max contracts, which specify a minimum number of hours the employer must pay for and a maximum number of hours the employer can oblige the individual to work.

In Italy, the number of hours a worker can be on an on-call contract is limited to 400 days over three years. After this point the worker has a legal entitlement to a full-time contract.

In Norway, part time workers who regularly work more than their agreed hours have a right to a corresponding increase in their contracted hours, unless the increase in hours will not continue and the worker is not required to continue to work beyond their contracted hours.

In Ireland, the Employment Provisions Bill will mean employees without specified hours will be entitled to be placed in a band of working hours based on their average hours over a twelve-month period.

3.16 Stakeholders were generally supportive of this right, with Usdaw calling for a 'statutory right to a contract to reflect a worker's normal working hours' (Udaw 2018b).

A right to reasonable notice of work schedule

3.17 Employers of flexible workers need to be encouraged to undertake more and better planning. We came across a range of examples of poor business practices where planning was simply not considered. Stakeholders have told us that some workers are allocated shifts with limited notice which makes it difficult for them to plan their lives or to find other work if needed. By contrast, other employers work hard to plan ahead and give notice of forthcoming requirements, and find that this benefits both the worker and the business. We consider that every individual should have a right to reasonable and recordable notice of their working shifts, such as by printed document, email or text, to enable this right to be recorded and enforced. We recognise the difficulty of setting a single fixed period across industries and forms of work. There are differences between the notice periods individuals might reasonably expect. For example, we would not expect a supply teacher to have the same notice periods for work as a teacher employed by a school. It is not our intention to stop people taking work when it is offered, particularly given the number of low-paid workers who would like more hours. We recommend the Government provides guidance in this area.

3.18 This right is not subject to the unintended consequences of a premium. Implicit within the notion of a reasonable notice period is the acceptance of some variability. This allows a more flexible approach than the premium and should prevent employers being penalised for unavoidable variability. The right would discourage poor scheduling practice by employers and does not create a risk of unequal treatment between different groups of workers.

3.19 We believe this right should be enforceable by employment tribunal and be subject to penalty. Again, we recommend Government produce statutory guidance which could include advice to employers as to what timescales might be reasonable for different settings and sectors. We recognise that different industries and forms of work have different requirements, with some, such as agency work, less able than others to give notice of work schedules.

3.20 Successful implementation of this policy would reduce unpredictability for workers. This could help with income insecurity, enabling workers to better manage their finances and their domestic lives, as they would know their shifts in advance, and potentially find other work if needed.

3.21 This policy was supported by some employers and employer representatives such as Whitbread, which recommended we 'set minimum standards of performance for employers on work schedules and notice periods based on good practice'. UKHospitality told us that their members do try and give as much notice as possible, and acknowledge the importance of this. The Trades Union Congress (TUC) also recommended reasonable notice of shifts, suggesting 'working parents often need four weeks' notice in order to arrange childcare'.

Compensation for shift cancellation or curtailment without reasonable notice

3.22 The practice of cancelling shifts at the last minute, sometimes on arrival at work or partway through a shift, was thought unfair by both employers and workers in our consultations, but we found it was not uncommon. For this reason, we recommend that where shifts are cancelled without reasonable notice workers should be compensated. A requirement to pay compensation could reduce the likelihood of this happening, by encouraging employers to plan more effectively and help workers to better manage their finances and their lives.

3.23 There was general support for this policy from bodies such as the REC, CIPD and UKHospitality, seeing it as good practice and ethical. Trade unions were also in support of this, including the TUC, who suggested that the compensation should be full pay for the shift, as well as travel and any childcare costs.

3.24 We believe this proposal would not involve the unintended consequences associated with the premium, although the detail of penalty provisions would affect how it worked in practice (see Table 2). This measure would discourage rather than legitimise poor practice and we think it unlikely to affect overall flexibility in the labour market. Depending on the method for calculating the appropriate compensation, potential for gaming (e.g. by employers reducing shift length to limit the number of hours they cancel) could be limited, in particular given the interaction with the proposal for reasonable notice of shifts.

Box J. International examples

In Ireland, as part of its Employment Provisions Bill, workers will get compensation for missed shifts. If an employee is called into work but sent home without working, they will be entitled to a minimum payment of three times the national minimum wage, the hourly rate or the rate specified in an agreement known as an Employment Regulation Order. There are exemptions to this if the circumstances were unavoidable due to exceptional or emergency circumstances. The minimum payment is not applicable to on-call work. Further details of the Bill are included at Appendix 2.

New Zealand requires employment agreements to set out the notice periods for cancellations and the appropriate compensations if this notice period is breached. If these terms aren't in place or if no notice is given, workers are entitled to what they would have earned had the shift taken place.

3.25 Good record keeping would be required to adequately enforce this policy. Both employers and workers would need proof a shift had been offered and that this shift was then cancelled with little notice. This is likely to require new administrative processes to record this information.

3.26 We have considered a range of options as to how the compensation level could be determined. It could be tied to the actual value of the cancelled shift; the minimum-wage value of the cancelled shift; or a simple multiple of the minimum wage rate. These are set out in Table 2. Our view was that there are advantages and disadvantages to all and we suggest the Government consult on how best to make this work. We do not believe option B would be suitable due to our concern that this would encourage employers to reduce shift lengths.

Table 2: Compensation options

Compensation method	Advantages	Disadvantages
A. The value of the shift in question	<p>Will ensure workers are compensated fully for the money they were expecting from the shift.</p> <p>Will enable workers to cover planned fixed costs e.g. travel and childcare.</p>	<p>Could encourage employers to schedule short shifts, and then ask staff to stay on to reduce the cost of cancelling shifts.</p> <p>Would be expensive for employers of higher wage employees.</p>
B. Minimum wage rate (appropriate to age) multiplied by the scheduled number of hours	<p>Will ensure minimum wage rate workers (and those near the minimum wage) are compensated fairly – they are the individuals this policy is aimed at.</p>	<p>Those who earn above the minimum wage will miss out on some of their planned earnings.</p> <p>We believe this option would encourage employers to schedule short shifts.</p>
C. A multiple of the minimum wage (e.g. in Ireland they have proposed three times the minimum wage). This could be related to the amount of notice given, e.g., a greater multiple of the NMW the less notice is given	<p>Directs the policy at the low paid and avoids potential gaming by altering shift lengths. It is simple and consistent.</p> <p>Provides a minimum shift payment of three hours.</p>	<p>There is a question as to whether this is high enough to discourage short-notice shift cancellations and compensate workers, particularly if the shift in question is long. Further, the policy would have a relatively weaker effect further up the wage distribution, potentially raising questions over fairness.</p>
D. Combination of A and C, or B and C, whichever is higher	<p>Provides a minimum shift payment of three hours.</p>	<p>Would affect higher paid staff.</p>

Information for workers

3.27 The Taylor Review recommended ‘the government should build on and improve clarity, certainty and understanding of all working people by extending the right to a written statement to ‘dependent contractors’ as well as employees’. The Government accepted this recommendation and have since consulted on this. We recommend the Government also require information regarding the above three rights to be included in a written statement for workers: how to switch to a guaranteed-hours contract; the notice employers will give their staff of their work schedule; the amount of compensation given for cancelling or curtailing a shift at short notice, and what employers would consider as short notice.

Appendix 1

Other policy options discussed

Ban or restrict zero-hours contracts

1. There are many potential approaches to tackling the problem of one-sided flexibility. In this appendix, we set out some of those that we discussed in the course of our work on this subject.
2. Some trade unions have called for the banning of zero-hours contracts. There have been claims that this has happened in other countries; however, in practice, some form of flexible labour availability always remains. In New Zealand the legislation requires employers to specify the number of guaranteed hours of work that the employee is entitled to, although this can be zero. Additional hours cannot be required unless there are reasonable grounds for doing so and adequate compensation is provided to the employee for being available. This means that employers cannot require workers to be available for work unless they guarantee some hours; i.e. workers can refuse shifts if they wish, which is a right that zero-hours workers in the UK have already.
3. At the time of drafting, Ireland were about to ban some zero-hours contracts, except in cases of genuine casual work, or where they are essential to facilitate cover in emergency situations or short-term absences. However, the legal definition of zero-hours contracts in Ireland means that they require individuals to make themselves available for work and it is this type of contract that will be restricted. The use of an 'If and When' contract (which is more like a UK zero-hours contract and does not oblige the individual to work) is not being restricted.
4. We heard from many employers about the need for contracts to help adapt to changes in demand and supply. Other employers told us that even when offered a guaranteed-hours contract, staff will not always accept, preferring the flexibility of a contract where they can choose to turn down shifts.
5. It is also clear that banning zero-hours contracts will not resolve all the problems associated with one-sided flexibility, since this is also a feature of other contract types. This would only tackle one part of the issue, and we believe a holistic approach would be more effective.
6. We looked at other potential restrictions on zero-hours contracts that are used internationally. In Italy, zero-hours contracts are restricted to workers aged 25 and under, and 55 and over. They cannot be used in the public sector and their use must be justified. Some countries impose organisation-level quotas on the number of certain types of contract that they use. For example, in Norway, a maximum of 15 per cent of the workforce can be on fixed-term contracts, and in Italy, fixed term and temporary agency workers cannot exceed 20 per cent of standard workers employed by the firm. Here in the UK, the Living Wage Foundation is currently testing the idea with some employers of only using zero-hours contracts where the employee asks for one.

Minimum shift length

7. We were concerned that if employers were deterred from cancelling shifts at the last minute, this could instead lead them to send staff home early to avoid costs. If a minimum shift length were in place, this could ensure a minimum amount of pay for the worker. However, we now believe that the policy to provide compensation for shift cancellations can be designed in such a way as to reduce this risk, meaning that a separate minimum shift length is not necessary. We have included our analysis of a minimum shift length below for information.

Box K: International examples of minimum shift lengths

Several countries have a minimum shift length. In Germany, this is three hours per day for certain types of workers. In France, there is a minimum of 24 hours per week, though there are numerous exceptions to this rule. In the Netherlands, employers with contracts for less than 15 hours, including zero-hours contracts, must have a minimum shift length of three hours. However, research from the Netherlands has found that employers often violate these regulations and employees often do not report this, either because they do not want to lose their shifts, or because they are not aware of their rights (Eurofound 2015).

8. The Chartered Institute of Personnel and Development (CIPD) discuss minimum shift lengths as an example of good practice in the use of flexible employment arrangements for low-paid workers. In its survey, the CIPD found that ‘among the 54 per cent that do give a minimum shift length, 44 per cent guarantee at least four hours or more while 10 per cent offer less than this amount’. The CIPD recommended four hours as an appropriate minimum shift. Usdaw were campaigning for a minimum contract of 16 hours per week.

9. From talking to employers and employer representatives, there are some jobs where a minimum shift length would be problematic. For example, the Association of Convenience Stores (ACS) raised the issue of home news delivery and cleaners in small stores, who work only short hours. This policy could also be potentially difficult for people working in residential care, as they may not have constant shifts, but rather short bursts of activity throughout the day when visiting clients.

Compliance and guidelines for employers

10. Several organisations suggested codes of practice or improved guidance as a means of tackling the problems set out in the Taylor Review, including: EEF, the manufacturers’ organisation; the Confederation of British Industry (CBI); and Equity, which called for sector-specific guidance. The Low Incomes Tax Reform Group (LITRG) suggested providing basic information about rights and protections for workers, while the social care employer, Housing and Care 21, suggested providing guidance on appropriate use of zero-hours contracts.

11. Guidance or codes of practice would also enable best practice examples to be shared and encouraged. For example, we heard that annualised contracts could be another option that provides flexibility for both the employer and employee, but enables some flexibility throughout the time of the contract. A social care provider and charity stated: ‘We encourage our workforce to have an

One-sided flexibility

annualised hours contract rather than work more casually as we believe that relationships and relationship building are key to the quality of our services.’ This enables employees to have more certainty about hours and income over a longer period of time, and enables employers to be flexible about peaks and troughs in demand. However, we have also heard that such contracts can present challenges to manage, and that guidance on best practice might help.

12. Another example is the use of rostering software. Several consultation responses discussed rostering software, which enables employers to manage supply and demand for work more effectively (for example, the UK Homecare Association (UKHCA), the British Retail Consortium (BRC), and Citizens Advice). Guidance as to what this software can do and how it can work for business may be beneficial for employers who have little or no experience of it.

13. Similar to the use of rostering software, the Employment Lawyers Association (ELA) discussed how improved communication and matching of shifts would help to mitigate security issues through matching hours better.

14. Citizens Advice suggested the need for a single dedicated organisation to enforce all workplace rights and to be proactive in raising awareness of rights. Currently, HM Revenue and Customs (HMRC) enforces rights in relation to minimum wage payments, with enforcement for other rights only via employment tribunals. Housing and Care 21, suggested audits of organisations to understand their use of zero-hours contracts and to suggest improvements.

Worker rights

15. One-sided flexibility often comes about because employers have greater power than workers. Manchester City Council’s response supported the need to strengthen workers’ voices, and several consultation responses suggested ways to build workers’ power. The Scottish Trades Union Congress (STUC) argued that there is a low level of union recognition in some of the low-paying sectors which weakens employment rights and their enforcement. The Trades Union Congress (TUC) called for ‘the abolition of the Trade Union Act 2016 and for the right for trade unions to have access to workplaces so that they can organise and represent members’. The TUC, supported by Unite, also suggested having workers on the boards of organisations to bring their views into the decision-making process. Unite argued the ‘Swedish Derogation should be removed from the Agency Worker Regulations to ensure that employers cannot use agency workers to undercut the pay and conditions of other workers’.

16. The STUC argued in their response that workers are often unaware of their rights or how to enforce them, and so the provision of information to, and education of, workers on these issues would help to increase the power of individuals in the workplace. The LITRG cited evidence from Citizens Advice about a lack of knowledge among workers of their rights to paid holiday leave. It argues that many of these workers are: young; inexperienced; have low levels of education; have English as a second language; and/or do not know the UK system, all of which puts them in a weak position. Workers therefore need to receive basic information about their rights.

Changes to tax and benefits

17. The LITRG argued that National Insurance credits should be extended to the low paid. It also suggested a review of the interaction of tax credits and Universal Credit with low pay on volatile income/hours, with the aim of easing the burden on those who are low paid.

18. The National Hairdressers Federation (NHF) argued that the way the tax system is set up encourages employers to make incorrect use of self-employment contracts. 'The current tax system, especially VAT, and the financial savings available to business owners choosing this option gives rise to the potential for 'bogus' self-employment where workers are treated like employees but with none of the benefits, including minimum wages.'

19. Both the TUC and UNISON suggested that it is important to tackle the false classification of workers as self-employed. UNISON states, 'the more effective way of addressing the way these contracts contribute to expanding the scale of low pay in the UK lies in legislation that assists in preventing the bogus classification of workers as 'self-employed' and extending the employment rights of 'workers'.' Manchester City Council suggested extending employment rights and social security protection to include the self-employed. Equity argued that there needs to be greater understanding and recognition of the employment status of entertainment industry workers. We are aware that the Government is currently looking into the issue of employment status.

Sector-specific approaches

20. The ACS said that the LPC 'could ... take a sector-specific approach by identifying where zero-hours and short-hours contracts are most prevalent and working with these sectors to improve their employment practices'. Instead of a general premium across the workforce, there would be more targeted policy changes to sectors where one-sided flexibility is considered a greater issue.

21. The UKHCA argued in its response that the problems of funding in social care need to be addressed before it is able to tackle the use of non-guaranteed hours contracts. 'Greater use of guaranteed hour's contracts (and less unpredictability in the operation of zero-hours contracts) could be facilitated if homecare services commissioned by councils were undertaken in a more organised manner than they are at the moment... Some councils are beginning to award contracts in ways which are a little more systematic, by dividing contracts into geographic zones and awarding the zones to specific providers. This has the benefit of providing more concentrated coverage and with reduced care workers' travel time, a positive effect on providers' costs.'

Compensation for availability

22. Some employers require workers to give their availability in advance and to keep this time free in case they are required to work. We considered whether workers should be paid for this time. For example, if an employer requires a worker to be available Monday to Friday 9-5 in case a shift becomes available, then the employer would need to compensate for this.

23. This policy would be likely to reduce the unpredictability side of one-sided flexibility; however, we believe this would be picked up by our package of options. We were concerned that this option is linked with what constitutes working time, which is a complicated area.

Appendix 2

Employment (Miscellaneous Provisions) Bill – Ireland

At the time of publication, this Bill was going through the Irish Parliament and was therefore subject to change. The information below was correct as of end of October 2018.

The Bill aims to improve the security and predictability of working hours for employees on insecure contracts and those working variable hours.

Zero hours contracts will be banned in most circumstances apart from genuine casual work. Where people are called into work but sent home without work, they will be entitled to a minimum payment of 3 x the minimum wage.

Workers will be entitled to be placed in a band of weekly working hours ranging from band A 3-6 hours through to band H which is 36 hours plus where their contract does not reflect the number of hours worked per week over a reference period.

In relation to banded hours, the Bill states:

- 1) Where an employee's contract of employment or statement of terms of employment does not reflect the number of hours worked per week by an employee over a reference period, the employee shall be entitled to be placed in a **band of weekly working hours** specified in the Table (see below).
- 2) In accordance with subsection 1), where an employee believes that he or she is entitled to be placed in a band of weekly working hours, he or she shall inform the employer and request, in writing, to be so placed.
- 3) The employee shall be placed by the employer in a band of weekly working hours from a date that is not greater than 4 weeks from the date the employee made the request under subsection (2).
- 4) The band of weekly working hours on which the employee is entitled to be placed shall be determined by the employer on the basis of the average number of hours worked by that employee per week during the reference period.
- 5) An employer may refuse to place an employee on the band requested –
 - a. Where there is no evidence to support the claim in relation to the hours worked in the reference period
 - b. Where there has been significant adverse changes to the business, profession or occupation carried on by the employers during or after the reference period

- c. In circumstances to which section 5 applies, [exceptional circumstances or an emergency, or unusual and unforeseeable circumstances beyond the employers control where it would not be practicable to comply] or
- d. Where the average of the hours worked by the employee during the reference period were affected by a temporary situation that no longer exists

Bands of weekly working hours

Band	From	To
A	3 hours or more	Less than 6 hours
B	6 hours or more	Less than 11 hours
C	11 hours or more	Less than 16 hours
D	16 hours or more	Less than 21 hours
E	21 hours or more	Less than 26 hours
F	26 hours or more	Less than 31 hours
G	31 hours or more	Less than 36 hours
H	36 hours and over	

Appendix 3

Source of statistics

Labour Force Survey (LFS)

The official source of data on employment and unemployment. It is a quarterly survey of around 60,000 UK households conducted on a monthly rolling basis.

Some caveats to note:

- LFS does not categorise short-hours or minimum-hours contracts. We therefore only have data about some 'flexible' contracts such as zero-hours contracts, 'on-call' working and agency working, which are categorised.
- Individuals can belong in multiple flexible work categories.
- The flexible work definition only applies to main jobs and so analysis is only based on an individual's main job.

Annual Survey of Hours and Earnings (ASHE)

A survey of employees completed by employers annually. The sampling frame is 1 per cent of employee jobs in Pay-As-You-Earn income tax schemes obtained from HM Revenues and Customs (HMRC). It does not include the self-employed.

There are several caveats to our use of the ASHE data:

- We have taken high overtime hours as a proxy for short-hours contracts, but this is only an assumption.
- There is a lack of personal characteristic information in ASHE to provide us with details about who these people are and this therefore makes comparisons with other groups difficult.

Appendix 4

Consultation

We are grateful to all those people and organisations that contributed to the preparation of this report. We would like to thank, in particular those who provided evidence, either written or oral, and those who organised or participated in Low Pay Commission visits and meetings. All such individuals and organisations are listed below, unless they expressed a wish to remain unacknowledged.

ACAS
Anglesey Sea Zoo
Association of Convenience Stores
Association of Directors of Adult Social Services
Association of Labour Providers
Athena Care
Barnstaple Chamber of Commerce
Better Than Zero
Blackmore Retail
British Independent Retailers Association
British Beer & Pub Association
British Chambers of Commerce
British Institute of Facilities Management
British Retail Consortium
Broadway Premier
Care England
Care Forum Wales
Castle Green Hotel
CBI
Chartered Institute of Payroll Professionals (CIPP)
Chartered Institute of Personnel and Development
Citizens Advice
Citizens Advice Scotland
Citizens UK
Coleg Menai
Colliers International
Communication Workers Union
Cumbria Chamber of Commerce

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Cumbria Tourism
Cygnet Care (Devon) Ltd
Cymorth Cymru
Dimensions
EEF, the manufacturers' organisation
Employment Lawyers Association
English Lakes Hotels
Equity
Ernst and Young LLP
Eutopia
Extraman Ltd
Fair Hospitality
Fair Work Commission (Australia)
Federation of Small Businesses
Federation of Small Businesses Wales
Federation of Wholesale Distributors
Flame Urban Spa Ltd
Food and Drink Federation
FSB Cumbria
FSB Devon
Gingerbread
GMB
Government of the French Republic
Greater Birmingham Chambers of Commerce
HM Government
Housing and Care 21
Incomes Data Research
Institute for Fiscal Studies
Intergenerational Foundation
International Transport Workers' Federation
Irish Low Pay Commission
JMK Solicitors
Jobcentre Plus
Joseph Rowntree Foundation
Kanes Foods
Kilmorey Care
Labour Research Department
Lakeland Limited
Living Wage Foundation
Local Government Association
Low Incomes Tax Reform Group

Manchester City Council
Orlaith Mannion, Department of Employment Affairs and Social Protection, Republic of Ireland
McDonalds
National Care Association
National Care Forum
National Day Nurseries Association (NDNA)
National Farmers' Union
National Farmers' Union Scotland
National Federation of Retail Newsagents
National Hairdressers Federation
National Institute of Economic and Social Research
National Union of Rail, Maritime and Transport Workers (RMT)
National Union of Students
Newry & Mourne Co-operative and Enterprise Agency
Newry Chamber of Commerce & Trade
New Zealand Government
Office of the German Minimum Wage Commission
The Order of St John Care Trust, a member of the UK Health Forum
Perth Citizens Advice Bureau
Petroc
Place UK Ltd
Recruitment & Employment Confederation
Research and Innovation Group
Resolution Foundation
Retail NI
Royal Mencap Society
Scottish Grocers' Federation
Scottish Trades Union Congress
Sense
Sheffield Political Economy Research Institute, University of Sheffield
Sodexo UK and Ireland
South Lakes Citizens Advice
Southern Regional College
SPAR Luncarty
Swallowfield
The Management Centre
Trades Union Congress
Tre Ysgawen Hall Country House Hotel & Spa
UK Cinema Association
UK Fashion & Textile Association
UKHospitality

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UKHospitality (Scotland)

Union of Shop, Distributive and Allied Workers

UNISON

Unite the Union

Unite, NI

Unite, Scotland

United Kingdom Home Care Association

Universities and Colleges Employers Association

University of Sterling

Usdaw, NI

Wallis Events

Welsh Government

Whitbread Plc

Winander Leisure Ltd

Windermere Lake Cruises

Working Families

XpertHR

Young Devon and Space PSM Youth Club

Young Women's Trust

Your Accounts Squared Ltd

Youth Employment UK

Appendix 5

Research summary

- 1.** Since the Low Pay Commission (LPC) was established in 1997, research has played a vital role in informing Commissioners about the impact of the National Minimum Wage (NMW). This continues to be the case.
- 2.** For this report, and in addressing our terms of remit regarding the review of the Taylor premium, we commissioned two research projects.
 - a. an assessment of the use of zero-hours and minimum-hours contracts and the volatility of those hours and its impact on earnings; and
 - b. an overview of what other countries do to tackle insecurity of work (and earnings).
- 3.** The first of these projects – Incomes Data Research (2018) – gathered evidence from employers on the extent to which low-paid workers work beyond their contracted hours, and the degree of volatility in those hours from week to week. The information was gathered from HR managers and other HR professionals using an electronic survey of around 40 questions, supplemented by semi-structured telephone interviews with a sub-sample of respondents. Respondents ranged from micro firms to large retailers covering many low-paying sectors, including many household names. It focused on firms that use some form of minimum-hours contract or zero-hours contract for workers paid less than £10 an hour.
- 4.** Among respondents, zero-hours contracts appeared to be more prevalent (widespread across companies) than guaranteed minimum-hours contracts but tended to cover fewer staff. They also found that staff were generally not given a choice over the type of contract. The number of hours guaranteed under a minimum-hours contract varied with individual circumstances with four and six-hour contracts common. Responses suggested that typical hours per week (around twelve) were similar for staff on zero-hours contracts and minimum-hours contracts with a minimum of four hours for minimum-hours contracts and only 90 minutes for zero-hours contracts. Staff were also working virtually full-time (up to 41.4 hours a week for Minimum-hours contracts and 38.4 hours a week for zero-hours contracts) on both contract types. Around a fifth of respondents reported that these contracts were reserved for certain jobs such as sales assistants, housekeepers and cleaners.
- 5.** Respondents reported using these contracts to mainly manage demand and cope with temporary and seasonal increases in demand. Around two-thirds of respondents did not provide a minimum shift length. Those that did generally used 4-5 hours. Few firms used app-based software for shift scheduling with most respondents using phone calls, texts or a rota published on notice boards. The most common notice period for shifts was 2-4 weeks, but there was a high degree of variation around this. Hardly any respondents provided compensation for cancelled shifts. Employers provided zero-hour contract staff with more flexibility to turn down or request an alternative shift than those on minimum-hours contracts.

One-sided flexibility

6. Incomes Data Research (2018) concluded that the research had identified a wide range of scenarios for the use of variable hours contracts. This made it difficult to develop policies that would tackle some of the worse examples of poor employer behaviour without having unintended consequences on other practices. Minimum-hours contracts seemed to have more one-sided flexibility and more volatile hours than zero-hours contracts. Further, variations in working hours appeared to be more seasonal than weekly, although employers did attempt to smooth earnings in various ways.

7. The other Taylor Review-related commissioned research project – D’Arcy and Rahman (2018) – took on a more international perspective and investigated how other countries addressed insecurity of income for low-paid workers. Debates about atypical work have emerged amid a restructuring of typical working relationships across industrialised countries. Atypical work covers a wide range of employment relationships and involves different terminology across countries. While part-time work, zero-hours contracts, temporary contracts and self-employment are all terms used to describe atypical work in the UK, elsewhere other terms can be used to describe very similar working relationships: on-call work, just-in-time scheduling, if-and-when contracts.

8. International comparisons were not straightforward as the context varied by country, including: institutional frameworks; the industrial composition of the economy; the broader strength of the labour market; the extent of collective bargaining; labour market regulation; and enforcement.

9. In many countries, governments had introduced policy changes to enable both the increased flexibility required by firms and the security required by workers. This generally required a move away from the framework provided by the ‘typical working relationship’. These can be broadly grouped into four types of responses: boosting legal protection for insecure workers; increasing the cost of insecure work; ensuring the social safety net catches such workers; or allowing market forces and tightening labour markets to resolve the issues.

10. First, the most common approach was boosting legal protection. This included bans on zero-hours contracts with some exceptions (as in France); or imposing a minimum number of hours at the minimum wage which must be paid (as in the Netherlands). Others had adopted restrictions on overtime and non-guaranteed hours. These included: needing to register and apply at the employment department (as in Luxembourg); imposing a maximum number of hours of overtime per year (as in Spain); restricting coverage to certain age groups (as in Italy) or certain sectors (as in Hungary); limiting the proportion of staff that can be employed on zero-hours contracts (as in Norway); enabling transition from zero-hours contracts to guaranteed hours after a period of time (as in Italy); imposing minimum shift notification periods (as in Germany); allowing workers the freedom to refuse hours without retribution (such as in New Zealand and New Hampshire, USA); imposing a minimum number of shifts (as in San Francisco, USA) or a minimum number of median hours offered (as in Seattle, USA); giving the right to request extra shifts, hours and timings (as in Emeryville, California, USA); or ensuring that additional hours must be offered to existing staff before new employees can be hired (as in San Jose, USA).

11. A second approach taken was to try and increase the cost of insecure work. Examples included: casual loading premia (which are 25 per cent in Australia); enforcing an overtime premium linked to base wage (as in Austria) or the minimum wage (as in Newfoundland and Labrador, Canada, where there is a percentage premium on the minimum wage). The latter was the closest example to

the Taylor premium (a higher minimum wage for non-guaranteed hours), that we had found anywhere in the world. Other examples included imposing 'call-in' pay for unscheduled or cancelled shifts (as in New York); and raising non-wage costs (such as varying social security contributions in Slovenia or introducing a flat rate for mini-jobs in Germany)

12. The third approach identified was ensuring the social safety net catches such workers. These included: in-work benefits, such as tax credits, to offset the risk to workers of not working enough hours; a strong safety net to make insecure work less appealing; amendments to the treatment of the self-employed and others to broaden coverage within social security systems to cover insecure work; special protections for non-standard employment (some countries such as Belgium and Sweden have introduced such measures); and enabling collective bargaining agreements to enhance legal protections where they did not currently exist in law (as in Belgium).

13. The fourth and final approach had been to not intervene and let the tightening labour market resolve any issues. However, that was not guaranteed to produce the desired outcomes.

14. There was limited evidence so far on the effectiveness of any of the four approaches but there were some lessons on complexity and enforcement.

15. D'Arcy and Rehman (2018) concluded with some reflections for the UK. They noted the very different environments, legal structures and collective agreements that existed among countries and the consequent difficulties in applying insights to the UK context. Insecure work appeared to be a growing issue across many countries, with legal restrictions the most common approach adopted to tackle insecurity of work (and earnings). No other country had an existing premium that replicates Matthew Taylor's proposal exactly. The premium in Newfoundland and Labrador, Canada was probably the closest existing equivalent.

16. These two Taylor Review-related research reports are to be published alongside other LPC-commissioned research in autumn 2018.

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