The Acas Policy Discussion Papers series is designed to stimulate discussion and debate about key employment relations issues. The series is edited by Gill Dix.

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Give and take? Unravelling the true nature of zero-hours contracts

Zero-hours contracts are something of an enigma: there is no legal definition for them and even common-usage has not clarified precisely what they are. What is not in question, however, is the strength of feeling expressed about the way zero-hours contracts are used and the part they play in the economy and society more widely.

Acas has undertaken an analysis of calls to the Acas Helpline (tel: 0300 123 1100) with queries relating to zero-hours contracts – mostly from workers, but also employers – and this paper analyses some of the key findings within the context of wider research and debate on the subject.

Although zero-hours contracts can benefit employers and workers, particularly in terms of the flexibility they offer, they can also pose very real questions about reliability of income, security of employment, employment status and the balance of power between employer and worker. Of course, people largely ring the Acas Helpline with problems and the Acas analysis has to be seen within a much wider debate about the pros and cons of using these kinds of contracts.

The paper begins by looking at the background statistics relating to zero-hours contracts and then goes on to ask:

- How are these contracts being used and why? What are the arguments for and against their use for employers, individuals and the economy?
- What do people on these contracts think of them? What are the problems that lead employers and workers to ring the Acas Helpline?
- What impact are zero-hours contracts having, or likely to have, on the psychological contract between a worker and an employer that underpins the trust and commitment needed in good employment relationships?
**Background**

The number of people on zero-hours contracts is contested. In 2013 the Chartered Institute of Personnel and Development estimated that 4% of the UK workforce might be on zero-hours contracts, which would equate to 1 million workers. In March 2014, the Office for National Statistics (ONS) upgraded its original estimate, based on Labour Force Survey analysis, and reported that 583,000 workers were on zero-hours contracts. However, the ONS have urged caution in reading too much into the latest figures, arguing that getting accurate data is partly dependent on an individual’s awareness of their contractual status and that this perception may have been influenced by the increased media coverage. In April 2014 the ONS released figures showing that employers in Great Britain are “using around 1.4 million employee contracts that do not guarantee a minimum number of hours.” The ONS estimate includes zero-hours contracts, as well as other contract types that do not guarantee a minimum number of hours.

Whatever the exact numbers, there is broad agreement about a growth in the prevalence of zero-hours contracts, with the latest Workplace Employment Relations Study published in 2013 reporting that 8% of workplaces now employ people on such contracts (up from 4% in 2004). A House of Commons briefing note highlighted the widespread use of these contracts in certain sectors – for example, 100,000 zero-hours contracts are reported to be in use in the NHS.

As there is no legal definition of a zero-hours contract, there is some understandable confusion as to what they are. The current government consultation on zero-hours contracts states that “In general terms a zero-hours contract is an employment contract in which the employer does not guarantee the individual any work, and the individual is not obliged to accept any work offered.”

A key feature of a zero-hours contract is that there is, in theory, no ‘mutuality of obligation’ – in other words, there is no obligation to offer work or accept it. This absence of a formal employment relationship means that an individual on a zero-hours contract is often a ‘worker’ rather than an ‘employee’. Although workers are covered by some employment laws – such as the National Minimum Wage, the Working Time Regulations, and the Equality Act 2010 – they are not covered by others, notably those relating to redundancy pay, minimum notice periods, maternity and paternity leave and pay, and protection from unfair dismissal.

In reality, the way ‘obligation’ is interpreted varies significantly. In some instances, for example, an individual on a zero-hours contract is obliged to agree to be available for work as and when requested by the employer. Where such an arrangement is in place, zero hours contracts can effectively provide employers with a pool of people who are ‘on-call’ or ‘on standby’ to be used when the need arises. In other cases, as the Acas research found, zero-hours contracts are being used to provide students with a few hours work in their holidays or, at the other end of the spectrum, to employ caring and teaching professionals on regular hours over prolonged periods. As the government has made clear, people working on such a quasi-permanent basis are likely to be employees and not workers.

**The arguments for and against**

The arguments for and against the use of zero-hours contracts often tend to polarise around the themes of flexibility versus exploitation. For some people, zero-hours contracts are directly responsible for higher than expected rates of employment. As Neil Carberry, Director for Employment and Skills at the CBI, claimed: “It’s zero hours contracts and other forms of flexible working that mean there are half a million fewer unemployed people than there might otherwise have been.”
Other organisations, such as the Resolution Foundation, while acknowledging the role zero-hours contracts play in offering flexibility for employers, also pick up on some of the negative consequences of their use, such as low wages and rising rates of under-employment. In their recent response to the government consultation the Resolution Foundation are calling for the use of zero-hours contracts to be “reformed to ensure that flexibility can be maintained and workers’ rights strengthened”.

The economic benefits sometimes associated with an increasing use of zero-hours contracts, have been more directly questioned by the Work Foundation. Writing on their website, Ian Brinkley wrote that a further growth in the use of zero-hours contracts would: “greatly increase job insecurity and leave many low income working households hard pressed to handle unpredictable fluctuations in income without going into debt. None of these developments would help put the UK economy back on a sustainable growth path.”

In terms of the worker experience, similar arguments are put forward. Zero-hours contracts can provide flexibility, it is argued, particularly for students or those reaching retirement age. A report by the CIPD found zero-hours workers were just as satisfied with their job as the average UK employee (60 per cent and 59 per cent respectively), and more likely to be happy with their work-life balance than other workers (65 per cent versus 58 per cent).

However, a recent article in ‘The Guardian’ highlighted the impact that continued use of these contracts can have on relationships at work, quoting one university academic’s view that “The whole thing is completely dependent on my relationship with the course leader. If the course leader changed, I could lose it all.” The academic also described an employment relationship based upon “grace and favour”, which involved “ingratiating yourself to be given teaching the next year”.

In a recent press notice to accompany their response to the government’s consultation, the TUC describe workers on zero-hours contracts as “dogged by low pay, under-employment, and job and income insecurity”.

Zero-hours contracts: just another form of casual work?
Some commentators argue that focusing on counting the numbers of people on zero-hours contracts is missing the point since they represent just the latest incarnation of a form of employment relationship that has always existed and is always likely to exist. Such relationships are often commonly referred to as ‘casual’ – a working arrangement which is not new, tends to be cyclical and is predicated on the need to respond to fluctuations in demand for labour. One employer who called the Acas Helpline ran a carpentry business and employed staff on fixed-term contracts. The media interest in zero-hours contracts had alerted him to the possibility that these contracts might help him save money by only having to pay staff when there was enough work to go round.

A report by the Resolution Foundation, ‘A matter of time – the rise of zero-hours contracts’, describes how many zero-hours contracts do not always conform to this idea of casual work, but are in fact often characterised by an employment relationship that “persists over time”. Several callers to the Acas Helpline had been working on zero-hours contracts for many years and saw themselves as “like permanent members of staff”.

In a recent article for Acas, Stephen Overell argues that the increasing use of zero-hours contracts points towards a deeper structural shift in the use of non-standard forms of employment that goes beyond what might be expected from purely economic cycles. The Acas research indicates that although some
people on zero-hours contracts, such as students, would consider their work ‘casual’, others see themselves as anything but casual workers. For example, those working as personal carers for the disabled or elderly, often describe an ongoing commitment to their work (including an anticipation of an ongoing relationship with individuals they care for) and exhibit a very deep sense of connection. Any ‘casualisation’ may, therefore, say as much about the specific terms of their contract and the way they are being used, as it does about the nature of the work itself or the hours worked.

This juxtaposition of high commitment jobs with (theoretically) low commitment contracts may be fuelled, according to a report from IDS\textsuperscript{13}, by the ongoing drive to outsource services, particularly in local authorities and the NHS. A study by Unison\textsuperscript{14} argues that problems with contract management in the homecare sector, for example, originate from the commissioning models used by local councils. The report claims that the huge number of private contractors used by Councils, combined with a need to cut costs, means that contractual arrangements cannot always be monitored. In practice, this might mean that not all employers are meeting their obligations relating to the National Minimum Wage and the Working Time Regulations – something the government identified in its own information gathering exercise. One caller to the Acas Helpline who worked as a carer said that she was not paid for travelling time between her client’s homes and was expected to work all day without any rest breaks.

The report by the Resolution Foundation (cited above) found that workers on zero-hours contracts are most common in the hospitality, health and education sectors – strikingly, it found that 56% of all domiciliary care workers are now employed on zero-hours contracts. Unsurprisingly, workers on zero-hours contracts are more likely to be on low pay – earning on average £9 per hour, compared to £15 per hour for those not on zero-hours contracts – but, perhaps surprisingly, they work an average of 21 hours per week. This does not seem to chime with the notion of a ‘casual’ worker who does a few hours here and there.

If a deeper structural change is taking place in the UK labour market, then it may be affecting young people most. The prevalence of zero-hours contracts appears to be highest among people aged between 16 and 24, with an estimated 37% of those employed on zero-hours contracts falling within this age group. Although the government’s fact-finding exercise found that zero-hours contracts provide many young people with “opportunities to enter the labour market and a pathway to other forms of employment”, a recent report from Usdaw\textsuperscript{15} reported that many young people on zero-hours contracts are not getting enough working hours and are struggling to keep up with the cost of living, particularly when it comes to housing, travelling costs and paying bills. One young caller to the Acas Helpline reported travelling to work for a scheduled shift only to be sent home on arrival because the shop floor was quiet.

The current context
The rise of the use of zero-hours contracts has attracted a great deal of attention from the media, HR communities, academics and politicians. The government has held a formal consultation on their use, which closed on 13 March 2014, following the informal talks they held with unions, research organisations and employers’ groups last summer. The consultation focused on the following two broad areas of concern:

- **Exclusivity**: the practice whereby workers, although not necessarily guaranteed any hours, are still prevented from working for other employers
• **Transparency**: as there is no clear definition of a zero-hours contract, and they can take many forms, there is an inevitable lack of clarity about the consequences of agreeing to work on a zero-hours contract as well as a lack of awareness about employment rights and routes for redress.

The original Cabinet Office press notice from 16 September 2013 set out some of the findings from the government’s information gathering exercise. It highlighted concerns around ‘uncertainty of earnings’, particularly about paying bills and the impact work may have on any benefits a worker receives, as well as an ‘imbalance of power in the employment relationship’ (the press notice refers to some people living in a ‘climate of fear’, often caused by an employer’s threat, explicit or implied, to ‘zero down’ a worker’s hours if they do not work when they are asked to).

The Labour Party has recommended, amongst other things, a ban on the use of zero-hours contracts in cases where employees are working regular hours over a sustained period. In its response to the government consultation, the TUC focuses on the imbalance of power between employers and workers and is calling on the government to introduce compensation, including travel costs, where shifts for zero-hours workers are cancelled at short notice, as well as written contracts with guaranteed hours where a zero-hours worker does regular shifts.

In their response, the Work Foundation’s Ian Brinkley expressed the view that zero-hours contracts should not be banned but “the strategic aim of the Government should be to discourage the use of zero hours contracts except where employees have entered them voluntarily and there is a good business case for doing so”.

**User experience: the Acas helpline**

Every year the Acas Helpline receives nearly a million calls on a wide range of employment related issues. In order to get a snapshot of the issues most affecting callers with regard to zero-hours contracts, Acas carried out an analysis of relevant calls taken between June-August 2013. This involved logging the number of calls on zero-hours contracts, recording some of their chief characteristics – for example, the gender of the caller and whether they were an employer or worker – and doing a qualitative analysis of seventy individual calls. Some headline statistical findings include:

- 70 calls a week, on average, to the Helpline on zero-hours contracts: around 0.4 per cent of all calls
- 68% of the calls were from employees (of the 297 that were recorded)
- 83% of callers concerned work in the private sector and the most common industries (using Standard Industrial Classifications) were:
  - ‘other’ (28%)
  - ‘other community, social and personal services’ (20%)
  - ‘health and social work’ (18%)
  - ‘hotels and restaurants’ (11%)
  - ‘wholesale and retail’ (9%)
- the majority were from organisations employing fewer than 250 people (62%).

Many of these findings – for example, on the sector the calls were coming from and the size of the organisation – are typical of calls to the helpline more generally.
When Acas analysed many of the calls on zero-hours contracts, two broad themes emerged. The first was to do with a lack of clarity over employment status, and a lack of awareness of employment rights, as described by both workers and employers. The second was to do with a disparity that often seems to arise between the emotional attachment many people form with their job or workplace and their contractual status. This disparity often expressed itself in a sense of fear about future earnings and a sense of unfairness about the way they were being treated.

**Contractual problems**
The calls from people on zero-hours contracts are, in one sense, no different from many calls to the Helpline from people on permanent or other forms of contract. Underlying all the uncertainty about rights and responsibilities, is the age old problem of contracts that are not issued and/or not read. Many employers and workers do not, on face value, seem to take their contracts very seriously – in terms of coming to an understanding of what they say and the likely future consequences. This may be because they are poorly written, not communicated to the worker or employee very well (if at all), or they may simply not seem very relevant to the day-to-day experience of getting on with one’s work. Although Acas has published advice on rights around contracts, more guidance covering how to manage the different kinds of contractual arrangements, including zero-hours, is planned.

Although callers do ring Helpline advisors to ask about their contracts, the trigger for the call is often to do with a specific employment right, such as holiday pay or maternity rights. There were numerous calls to the Acas Helpline, for example, from both workers and employers unsure if people on zero-hours contracts are entitled to holiday leave and pay and how this is calculated.

This contractual confusion was often also characterised by an uncertainty about how to approach an employer about a particular problem. For example, one woman working as a carer became pregnant and, on her doctor’s advice, was told she should no longer lift clients. She was anxious about how to broach the subject with her manager.

Talking to Acas Helpline advisers about the wide range of calls they take on this subject, one gets the impression that many individuals often experience a false sense of security when it comes to their contractual relationship. Many callers appear to be working quite happily on a zero-hours contract until a sudden change, often to do with a reduction in hours, brings home the precarious nature of their employment – the scenario below is typical of this lack of understanding about contractual issues and the problems these can cause.

**Typical Scenario 1: contractual confusion**
One caller has, unknowingly, been on three different contracts during the five years in her current job. She started straight from college on a permanent contract for 40 hours a week. When economic difficulties hit and the company was taken over, her first concern was: is my job safe? She kept her job and was happy to work less (30) but was unaware that the new contract was only temporary.

Eleven months later she went on maternity leave. On her return, she said she would now like to reduce her working time to 15 hours a week. The manager agreed and she was given a new contract. She was aware that this was a zero-hours contract but did not have a clear understanding of what this meant. For a few months everything was fine, until suddenly the hours started to reduce. She complained to her manager but was given the impression that her hours would stop completely if she made a fuss. She rang the Helpline to ask about her entitlement to redundancy pay.
Exclusivity and transparency
The government consultation focuses very heavily on the misuse of exclusivity clauses in zero-hours contracts and the way that they potentially undermine their wider vision of a “labour market that is flexible, effective and fair”. They are keen to identify in what circumstances these clauses might be appropriate and how they might be agreed or challenged.

Although explicit use of exclusivity clauses did not emerge as an employment relations issue in the Acas research (they cropped up in only one of the seventy calls analysed), the issue of what might be termed ‘effective exclusivity’ did emerge as a very major concern and was highlighted by the Acas Council in its response to the Government Consultation. Workers are often frightened to turn down work or look for other work in case their employer starts zeroing down their hours. These anxieties appear to reflect the imbalance of power between the worker and the employer in these contractual arrangements as workers are also fearful of raising queries regarding their rights and entitlements. The Acas research also found that many workers felt effectively tied to their job by the emotional attachment they felt for their work where it provided a sense of purpose and meaning for them. This was particularly the case for those working in caring professions who felt considerable loyalty to their clients.

Underpinning a lot of the concerns raised regarding zero-hours contracts was a lack of transparency in the terms of the contractual arrangement. Many callers seemed unaware that they were on a zero-hours contract including some, such as the woman in the scenario overleaf, who had worked for their employer for so long they saw themselves as ‘permanent’.

Although many callers rang the Helpline to ask about specific contractual issues, such as holiday rights, just as many rang as a result of what they perceived as a sudden, and often inexplicable, change in behaviour on the part of their manager or employer. For example, many callers expressed dismay when their manager started to offer them less hours – this was frequently accompanied by an equally sudden drop in communication – or a new manager arrived and working patterns were changed out of the blue. Although some callers were aware that this change in their working pattern – sometimes involving a ‘zeroing down’ in the hours of work available to them – was permitted as part of their contract, most expressed a huge sense of injustice and disappointment that they had been treated in this way.

One caller to the Helpline said that he was being asked to work extra shifts without warning and was told that if he refused to work he would have all his hours taken away. He told the Acas advisor that one of his colleagues had been given a verbal warning for refusing a shift. A woman who called the Helpline had been offered work in a shop on a zero-hours contract through an agency. She had been promised fifteen hours a week but said that she had missed a shift because she didn’t get the message to go in and because she had child care responsibilities. She was then offered a further four hour shift but her agency advised her to turn it down.

Although many callers clearly associate security with a permanent job, the way they and their employers behave towards each other, often becomes their measure, conscious or not, of how good their job is. A sense of insecurity may lurk in the background but, if they are getting regular work, many workers seem to assume that their relationship with their employer is no different to that of a permanent employee. As the government’s consultation document makes clear, many people on zero-hours contracts may be classed as ‘employees’ and be entitled to the associated rights. But the Acas research showed that establishing employment status and asserting employment rights while working on a zero-
hours contract is far from straightforward and can cause a great deal of anxiety and concern.

This question of employment status clearly affects the way individuals perceive their job security. Although employment tribunals will look at the way that a relationship works in practice, rather than what the contract says, determining employment status can only be done if an individual takes out a grievance with their employer and is prepared for the emotional and financial cost of making a claim. Helpline advisers reported that although this was a course of action some callers were considering, it is clearly a difficult step to take.

**Typical Scenario 2: custom and practice**

A caller had been working for the same employer for thirteen years and although she is on ‘some kind of casual contract’, she says that “it’s always been a full-time job to me”. Suddenly the hours start to reduce, to the point where she is hardly getting any work at all. She is aware of cuts at work, but she decides to put in a grievance to her employer because she feels other permanent staff are being treated much better: “I’ve been pushed back for work over other staff and I don’t know why”.

She rings the helpline to ask about the issue of custom and practice and whether, because she has been working like a permanent member of staff for so long, her status will automatically change.

**Concluding thoughts**

According to a report by the Work Foundation\(^2\) one of the key attributes of a ‘good job’, along with a sense of purpose and meaning, are things like job security, pay, autonomy and employee voice. Although zero-hours contracts are clearly good for some people, particularly in terms of meeting their need for flexibility, and provide meaningful work for many others, they are not likely to score as highly when it comes to pay and job security. As the government has pointed out in their press notice, the feeling of insecurity on a zero-hours contract often stems from an uncertainty about levels and frequency of earnings.

As this paper has argued, many of the problems relating to zero-hours contracts stem from explicit issues – particularly in terms of the transparency of written contracts (where they exist) – and implicit issues – that is, the day to day experiences of work and, critically, how these are often imbued with a different level of meaning by workers compared to their employers. This difference of perception may be subjective – ie not grounded in any contractual rights – or it may be completely objective, and refer to a corresponding legal obligation. And, of course, the perception is likely to be influenced by the way the issue of zero-hours is reported in the media and how it is being more widely discussed.

What seems uncontroversial is that both parties in a zero-hours contract could benefit from more transparency (and better understanding) in relation to the levels of pay, possible working hours, and the other terms and conditions that might apply in particular circumstances. Equally, any employment rights could be clearly spelt out in any contract – the Acas research showed that the issue of entitlement to holiday pay and how it is calculated, for example, is a very common problem encountered in relation to zero-hours contracts – and this is one issue that could be easily remedied.

The Acas research also revealed that relationship issues can be as big an influencing factor as contractual issues on how an individual views their job. The implicit part of an employment relationship often builds over time and can become associated with an emotional, if not always a contractual, mutuality of obligation. Even
when a lack of employment rights threatens to erode this trust – for example, with the non-payment of travelling time to carers – there is, particularly amongst these workers, often a very strong sense of conviction that their job is meaningful and contributes to society in a wider sense.

It is clear from the Acas Helpline research that there is a great deal of confusion, on the part of workers and employers, about the nature of zero-hours contracts and the rights associated with them. The government consultation is welcome and provides an opportunity to clarify some of the grey areas – particularly around employment status and transparency.

There is the need for more research to take a closer look at the relationship between non-standard forms of employment and economic cycles and the impact that outsourcing is having on the use of zero-hours contracts in specific sectors – for example, the contracting out by the NHS and social services.

We also need to have a wider debate about what constitutes a good employment relationship in these non-standard forms of employment – not just in terms of contractual issues such as pay and conditions, but also in terms of how relationships at work are formed and sustained and how the values attached to these relationships can be protected.

References

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19. Acas Council response to the Government’s consultation on zero-hours contracts

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