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

1. Acas welcomes the opportunity to respond to the Government’s consultation on zero-hours contracts.

2. Acas has considerable experience of the wide range of contractual arrangements used in the labour market. This response draws on this experience and also reports evidence collected from recent analysis of calls to the Acas helpline regarding zero-hours contracts.

3. Almost one million calls are made to the Acas helpline each year. On average, around 70 calls to the helpline are received per week on the issue of zero-hours contracts, representing just under 0.5% of all calls. Calls focus on concerns relating to zero-hours contracts, and matters requiring clarification. Calls were analysed for a four month period in the summer of 2013. During this period, two thirds of zero-hours related calls were from workers and the remainder from employers.

4. Some of the issues highlighted in the analysis of helpline calls relate directly to questions asked in the Government’s consultation. Other evidence is more nuanced and picks up on broader issues that apply to the use of zero-hours contracts more generally. Both sets of data are integrated below, grouped under the following headings:

   - Exclusivity clauses (questions 1-3)
   - Transparency (questions 10-12)
   - Codes and guidance (questions 4-5, 9-12)

‘Exclusivity clause’ questions 1-3

5. Acas believes that exclusivity clauses where there is no guarantee of work are likely to have a negative impact on employment relations. Other than in very limited situations, such clauses are likely to be unhelpful for both employers and employees. The main concerns are that exclusivity clauses with no guarantee of work: create insecurity for employees both in terms of their pay and their choices in looking for other work; and are likely to undermine trust in the employment relationship.

6. The government consultation focuses on the contractual exclusivity used in some zero-hours contracts. Acas research reveals, however, that these contracts can involve a more complex sense of exclusivity which is not limited to cases where there is a contractual exclusivity clause. Many workers on zero-hours contracts feel fearful of seeking work elsewhere, of turning down hours, of questioning their contractual or statutory employment entitlements, or of raising other types of grievance in case offers of work are withdrawn from them or their hours reduced (‘zeroed down’) by their employer in response to their doing so. This amounts to a form of ‘effective exclusivity’ which creates deep rooted challenges likely to mirror those in situations of ‘contractual exclusivity’.
7. Acas’ analysis of helpline calls showed that this ‘effective exclusivity’ can be damaging to employment relations. It reflects a considerable imbalance of power in the relationship which, our evidence suggests, characterises the experience of many workers on zero-hours contracts. It also contributes to feelings of unfairness on the part of workers about the way they were being treated. In some circumstances this is exacerbated by the fact that individuals have been working for their employer for many years and see themselves, in all other respects, as a permanent member of staff. However, they feel unable to question or assert their employment rights or to raise other types of grievances.

8. According to the Acas analysis, this ‘effective exclusivity’ is not confined to any particular sector. However, it does appear to create particular stresses in jobs which are generally associated with high degrees of professional and emotional commitment. For instance, the Acas helpline received calls from people in the caring and teaching professions who reported that they had felt considerably committed to the people they cared for or taught and thus felt frustrated and angered that this level of attachment was not reflected in their contractual status.

Improving the transparency of zero-hours contracts (Questions 10-12)

9. *Lack of awareness and understanding about contracts*: A significant proportion of all calls to the Acas helpline reflect low understanding and awareness of terms and conditions of employment, among both individual workers and employers, especially regarding employment rights. In this respect, the calls relating to zero-hours contracts are no different from many other calls to the helpline which raise queries regarding the nature and implications of contracts – from both a rights and responsibilities perspective.

10. *Employment Status*: A specific concern regarding zero-hours contracts is lack of clarity about employment status: whether individuals are an ‘employee’ or a ‘worker’ and therefore what their associated rights are or, from the employer perspective, their associated obligations. The distinction between the two forms of employment status, and the uncertainty involved in trying to determine which might apply in a particular situation, can create considerable frustration and anxiety. This was found to be especially the case for individuals who have been working regular patterns of work (some for a few hours, some for what amounts to full time) for the same employer, and over a prolonged period of time.

11. *Awareness of Statutory Rights and Responsibilities*: Calls to the Acas helpline reflect uncertainty about entitlements under zero-hours contracts. In summary, the analysis of helpline calls raised queries on:

- Holiday entitlement, maternity rights and sick pay: individuals and employers demonstrated low awareness of whether workers on zero-contracts are entitled to these
statutory rights, and if so how to calculate the relevant details on pay, or time off.

- **Working time**: there was uncertainty over aspects such as ‘travelling time’ and entitlement to pay while ‘on call’.
  Working time and the interaction with pay were particular concerns raised by callers from the care sector with individuals unclear about their entitlement to pay during breaks and travel between assignments. This is an area which may merit further in depth research.

12. **Questioning and Asserting Statutory Rights**

As well as queries regarding clarification of rights and responsibilities, the trigger for zero-hours calls also stem from individuals questioning or asserting their rights. These calls are prompted by factors such as a change in employer behaviour (e.g. where an employer has varied or proposed to vary a contract, or where a new manager has introduced changes to shifts or working hours); or, where a change in the worker's circumstances has occurred (e.g. where a worker becomes ill, or wishes to request a change in their working pattern.). It is at this stage that individuals become more aware of the nature of their contractual terms and conditions. A further trigger is where an individual has attempted to assert a perceived employment right and, as a result, found that they are no longer being offered work, or their employer/manager has threatened to reduce their hours.

**Codes of practice and guidance** (questions 4-5, 9-12)

13. Acas believes that good practice guidance could help tackle problems relating to lack of awareness and clarity regarding zero-hours contracts. Guidance might also incorporate material relating to best practice in relation to achieving and sustaining good one-to-one relations between managers and individuals and how this contributes to good employment relations. It is clear that new guidance on zero-hours contracts would be of benefit to both employers and individuals:

- **Employers**: improved guidance could help provide a better basis for drafting contracts, improve awareness of applicable rights and obligations, and encourage early conversations with individuals about their terms and conditions before starting work;

- **Individuals**: more guidance on zero-hours contracts would allow them to enter into working arrangements in full knowledge of their position. This would include an awareness of the inherent uncertainty of their contractual position.

14. The provision of model clauses for contracts mentioned in the government consultation may be helpful to both parties, particularly in relation to clarification of their employment status. Acas has recently created a web page with template contracts and template letters on a wide range of issues, and there has been significant take up of these resources.
15. Acas has already made some changes to its web pages and its ‘helpline online’ support regarding zero-hours contracts and would be willing to work with government and relevant stakeholders to produce in-depth practical advice and guidance for employers and individuals. This might be achieved through stand alone guidance on zero-hours contracts. However, given the general challenges of individual and employer understanding of contracts, it may be that there is more to be gained by provision of wider information on different types of contracts: the rights and responsibilities associated with them; the importance of clarity of terms and conditions; and how best to manage contracts from the perspectives of both parties to ensure good employment relations.

16. In terms of the questions raised in the consultation about codes of practice, it is not clear that sector level ‘employer-led’ code/s of practice would lead to clarity in understanding in this area. Multiple codes may result in lack of consistency across industries, and confusion, for instance for individuals working across different sectors. Acas’ statutory codes carry a particular strength in that they are impartial, and carry the endorsement of Acas’ tripartite Council which helps address questions of imbalance in the employment relationship. The consultation does not address whether a statutory or non statutory code is proposed; nor is it clear which aspects of the law (existing or new) would be covered in any claim to an Employment Tribunal, and thus form the basis of a statutory Code.

17. Acas is keen to engage with the Government on how best to provide additional support in this area.