

# Business and Trade Committee

## Oral evidence: Make Work Pay: Employment Rights Bill, HC 370

Tuesday 14 January 2025

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Watch the meeting

Members present: Liam Byrne (Chair); Antonia Bance; John Cooper; Alison Griffiths; Sonia Kumar; Gregor Poynton; Mr Joshua Reynolds; Matt Western.

Questions 332 - 430

### Witnesses

I: Andy Brown, Chief People Officer, Frasers Group; Neil Carberry, Chief Executive, Recruitment and Employment Confederation (REC); and Mr Paddy Lillis, General Secretary, Union of Shop, Distributive and Allied Workers (USDAW).



## Examination of witnesses

Witnesses: Andy Brown, Neil Carberry and Mr Paddy Lillis.

Q332 **Chair:** Welcome to today's sitting of the Business and Trade Committee, our third session investigating the Government's Employment Rights Bill and the state of industrial relations in the United Kingdom. Thank you so much to our witnesses for joining us. We know that this is a very busy time for you. We are very grateful to you for joining us.

Paddy Lillis, if you do not mind, I will kick off the questioning with your good self. Could you set out for the Committee what you especially welcome in this Bill, and then tell us the things that are not on the face of the Bill that you are a bit worried about?

**Mr Lillis:** The first part is dead easy. We welcome the Bill in its entirety. I think that it is going to be transformational for millions of workers across the UK. We are really very pleased to see it. Of course, the hard work starts now, trying to put it into legislation. The main issue for us today will probably be low-hours contracts and zero-hours contracts, but it is not just confined to that. Day-one rights around sickness—sickness absence, for instance—are really important to us.

As for the gaps in the Bill, for us, it talks about low-hours contracts and we do not think that that should be there. I think it is a loophole; it is certainly a loophole.

There is also regularity. Again, that can be used as a loophole by unscrupulous employers. We have an exemplary record with the vast majority of employers that we deal with, by the way—the big high street chains work really well with us—but this is about ensuring that there are no loopholes. Regularity is another issue for us. We just need to make sure everything is tight and that the legislation is written in such a way that we do not have loopholes that are going to see people exploited.

Q333 **Chair:** The Government have obviously given themselves an awful lot of order-making powers and are proposing to push many quite significant questions into consultations. Are there any particular issues that you would prefer to be on the face of the Bill—written into primary legislation? If so, why?

**Mr Lillis:** The key one for us would be the 12-week reference period. I know that there is a pushback from employers around this, but 12 weeks is already recognised within the industry in relation to redundancy. It was also within holiday pay arrangements, although the Conservative Government changed that to a year, but it works.

The 12-week reference period gives time to air out any bumps along the way. We are absolutely clear that the 12-week reference period should be on the face of the Bill.

Q334 **Chair:** Are there any other loopholes that you think might be quite risky to leave to a consultation, or indeed to secondary legislation?



**Mr Lillis:** I think that when we have anything in secondary legislation, it is open to an incoming Government who may not be as empathetic or sympathetic, to change it. That is why I think that it is important that we tie this down as much, and as quickly, as we can to ensure that future Governments do not undermine it again. For us, it is the zero and lowhours in the Bill that we think should be excluded. The 12-week reference period should be on the face of the Bill. That is absolutely clear from our perspective.

**Chair:** Perfect. Thank you.

Q335 **Sonia Kumar:** For businesses, how easily implemented do you think the Bill's proposed forms of zero-hour contract and low-hour contracts are? Do you think it will be difficult? Do you think it will be quite an easy implementation process for businesses?

**Mr Lillis:** I think it will be quite smooth. We have one of the biggest retailers—can you mention the companies here?

**Chair:** Yes.

**Mr Lillis:** We have Tesco, which has a minimum of 16-hour contracts, working alongside us. That works really well. I think you can overcomplicate it, and overcomplicating it leaves loopholes. You need to keep it as simple as possible, ensuring that the legislation is tight.

Q336 **Sonia Kumar:** Do you think that SMEs in particular may struggle with the implementation of the Bill?

**Mr Lillis:** Our primary interest is to ensure that people are fairly treated and fairly rewarded at work, that people can go to work and know what their hours are going to be, and that they are not going to have them changed at an employer's whim, which puts them out.

Take low-hour contracts. Our biggest issue is with low-hour contracts. If people are on a contract of, say, 10, 12 or 15 hours, and continually—week on week—are being asked to work 20, 25 and 30 hours and are not able to work for another employer, that is unfair.

Of course, if people make a complaint and are not at a trade union-organised site, they have their hours removed and there is no legislative recourse. This is about fairness: making sure that people know when they go to work that they have an income and what their hours are. That is why the contract over the reference period is so important.

It works for agency staff. I know that you will probably hear evidence today that the 12-week reference period will work for agencies. After the first 12 weeks, the onus should then go on to the hirers.

Q337 **Sonia Kumar:** The same question to you, Neil Carberry. How do you feel that businesses can implement these zero-hours and low-hour contracts?

**Neil Carberry:** It is important. The balance of what is on the face of the Bill and what is dealt with in regulation is a challenging one, by definition.



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I think trade unions and businesses like to see things on the face of the Bill, but there is a lot of detail to work through here.

The Bill arrived very, very quickly. There are some aspects of it where there will need to be some time for businesses, Government and trade unions to work through details. For me, the primary challenge with zero-hours contracts is the provision to apply them to agency workers. I think we are dealing with a very different world when we are talking about agency workers rather than direct employees. Paddy Lillis has just articulated a lot of the concerns about zero-hours contracts used by direct employers. Are you then effectively in a monopsony where the employer has the ability to switch up and switch down?

Zero-hours contracts are used by agencies. Agency workers will typically be signed up to multiple agencies. Within those agencies, there are multiple clients where a worker could be placed. One of the things that we know, because agency workers feed it back to us, is that the value of being able to say, "I do not like it there, I do not want to go there, can you put me somewhere else?" is quite important.

We can think about the power extending to agency workers. A million people went to work as agency temps this morning. The articulation that I have heard from the Government about why agency temps might be covered by these powers is that we want to avoid bad direct employers using agencies as a loophole. I am not sure that those million temps should be taken for granted like that. I think we need to think about the fact that agency workers are protected by their own Act, two sets of regulations, an independent regulator—by the way, it needs more resource—and defined statements of terms or key information documents. We need to deal with agencies differently.

We have two suggestions. We might suggest looking at strengthening some elements of the agency workers regulations and we might suggest doing more on hours in the key information document that agencies get. It feels to us as if there is a real risk here of, in an attempt to avoid some evasion by direct employers, bringing a million temps into this regime and driving some of the behaviour that we have seen reported in the last month where some direct employers are using platform sites that engage people who are patently workers as self-employed. I think that the real enemy here is false self-employment. That would be our primary concern about the practicality of the Bill.

**Q338 Chair:** I want to understand your view on whether the minimum period should be written into the face of the Bill or not. You point to the complications, but where do you come down on this question if I put you on the spot?

**Neil Carberry:** We favour a longer reference period to allow for seasonal demand. To be completely honest, on this one we start from the business. We want the law to be right when it hits the business. Whether it is in primary or secondary is not what our members are talking to us about.



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Q339 **Chair:** Interesting. So you could be reasonably comfortable with it being on the face of the Bill, but you would like to see us do that.

**Neil Carberry:** Yes.

Q340 **Antonia Bance:** It is interesting that we spoke, Mr Carberry, about the use of agency workers as a loophole. We will come on to the business model of Sports Direct in a moment on that point.

I have written down here a note that the average length of assignment for agency workers in 2023, according to your own statistics, was 22 weeks. Now that is not what most people think of when they think of a short or a temporary assignment, and it will be well over the types of reference periods that we are talking about. Given that that is the nature of agency employment on average in the industry you represent, I do not understand why you are so resistant to the extension of a minimal set of new additional rights for these workers who are working on long-term assignments.

**Neil Carberry:** The Government have a goal of 80% employment. I have to tell you right now that that is not going that well in the labour market. You can look at the statistics. I am in the *Daily Mirror* this morning saying that the country needs a dose more of optimism about these things. I am an optimist about what we can achieve. However, I am genuinely worried about what we end up doing if we extend these powers to agency workers because—this is the logic the Government have set out—it avoids evasion by direct employers, and not because there is any failure in agency regulation, although we might agree that proper enforcement of the current law is necessary. I think you just end up driving more self-employment—more false self-employment—and that is my primary driver for being concerned about the inclusion of agency workers.

You asked Paddy earlier about exclusions in the Bill. This Bill has nothing to say about the primary thing that my members think that the Government should regulate, which is the use of umbrella companies.

**Chair:** Interesting.

**Neil Carberry:** That is a major lacuna. Again, apply it to agency workers but not to umbrellas. I think that if you look at the definition of the employer in the Bill, it probably reads as maybe including umbrella companies but we will find out as we always find out, which is in seven or eight years when Paddy or one of his colleagues supports a worker to bring a claim and the claim gets to the Supreme Court. That is not where we want to be. We are genuinely concerned that it may feel as if applying or extending these terms to agency workers is an easy step. Actually, in those long assignments, as long as the relationship remains with the agency and does not transfer to the hiring company, probably we could make it work. It is the impact on the service buyer that we are worried about and some of that levelling down that we started to see evidence of.

Q341 **Chair:** We are going to come back to agencies in a second but again, just on the reference period, if you say that you could live with it being on the



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face of the Bill—it did not sound to me as if you were wholeheartedly embracing 12 weeks—what would be the number? Given everything that you know and have heard, if you had to take a number now, what would it be? Ballpark. Give us a range if you will.

**Neil Carberry:** Most business organisations have defaulted to 52 weeks. Let me finish the clause. I think what you need to do is account for seasonality, so I would be more in the territory of 26 weeks.

**Chair:** Okay. I want to make sure that we have got the range.

Q342 **Alison Griffiths:** I want to go back to the earlier question to Mr Lillis about SMEs. You gave an example of Tesco, which you have worked with and which is obviously one of the largest, most successful businesses in the UK. I do not feel that you answered the question about SMEs. Could you please, in shorter sentences perhaps, tell us how easy it is going to be for SMEs to implement this and what the consequences will be for them?

**Mr Lillis:** There should not be consequences. All we are asking is that when people go to work, they know what their hours are and what their remuneration is going to be, whether you are a small employer or a large employer. We do not see there being much of a complication there. Keeping it simple is more important to us. A number of things have been done. The last Government had the Taylor review—Matthew Taylor’s review—which said that one-sided flexibility is one of the biggest causes of concern in industry. The Government never implemented the review. In 2018, the Low Pay Commission recommended that workers be given the right to arrange the number of working hours, with compensation for shifts cancelled without reasonable notice, and that workers should be given the right to switch to a contract reflecting actual hours worked. That was the Low Pay Commission making a recommendation to the Government. The BRC report on how to build, retain and empower the retail workforce stated that creating a mutually understood definition of flexibility where it would be suggested in favour of employees is key if improvement of retention, engagement and productivity are desired. The BRC believed that hours that are regularly worked in addition to contracted hours should become the individual’s contract. These are all big businesses.

Q343 **Alison Griffiths:** Sorry to interrupt, but if you are so confident, why have you not worked with any SMEs to develop this? Why only work with Tesco?

**Mr Lillis:** It is not just Tesco. I used Tesco as a reference.

Q344 **Alison Griffiths:** Give me some examples of SMEs.

**Mr Lillis:** I mainly work across the main retailers: Tesco, Morrisons, Sainsbury’s, Co-op, Home Bargains—you name it. We will work with most of the big retailers. We have a union recognition agreement. When you have a union recognition agreement, you can get to a position where you can have these issues resolved very easily, working with them.



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Most of the SMEs are not recognised by trade unions, which makes it much more difficult. Access and trade union recognition are different aspects of the Bill. I presume that it is not going to be raised today but that is another aspect and we have applied to have a consultation on it.

I have a record as general secretary of working with employers. I have a close relationship with the BRC. I have a close relationship with the Associated Convenience Stores and James Loman, the Chief Executive and the Retail Trust and we work in a collaborative way with them. We want to see growth in the economy, we want to see retailers do well but we also want to make sure that when employees go to work they know what they are going to get and that flexibility is not one-sided.

If you are a retail worker on a low-hours contract, not knowing from one week to the next what your hours are going to be and you go to the bank, you cannot get a mortgage; you cannot rent, you cannot get a loan. That is insecurity and it causes mental health issues as well. We should be a modern economy. We should be looking to improve.

Retail has always been synonymous with low pay and low-skills training. It is not true. The vast majority of retailers want to see their businesses flourish. We have just done a deal with Sainsbury's this week, with pay going to £12.60 an hour from £12, even with the budget restrictions that they have on them, and I think there is about £120 million extra with the budget restrictions. Sainsbury's is a big company. Smaller companies have their own challenges, but that should not take away from people having the right to know what their hours are and to know what hours they are working from week to week. That is why the 12 weeks is really important and agency workers should not be excluded from it. Agency workers should have the same protection, otherwise you leave loopholes in the legislation.

**Chair:** Let's get into this question in a bit more detail.

Q345 **John Cooper:** One of the areas where there is clear divergence in the Bill is the provision to exempt the duty to offer guaranteed hours in certain specified circumstances. I think that Mr Carberry and Mr Lillis might be on opposite sides of that argument. So can I ask you first, Mr Carberry, and then I will come to Mr Lillis, who, if anyone, should be exempt from that duty and why do you think that exemption is important?

**Neil Carberry:** Our view is that agency workers operate in a very different regulatory regime; that they are protected by their own Act, two sets of regulations, their own inspectorate and rules around key information documents; and that the extension of the regime to offer guaranteed hours both confuses the relationship between the agency and their client and extends it, basically. We are dealing with a million people who are deemed to be an evasion route for direct employers. That feels to me to be a weak basis to include agency work in this. I have already said that there are some alternatives that we could use.

Paddy talked a minute ago about some of the risks and, let me be clear, there are clearly examples of bad practice in every form of work,





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including agency work, but look for instance at the Fabian Society, which is not well known for its radical right-wing opinions—well, that might be a bit editorial.

Taking a sample of 2,000 zero-hours contract, gig, self-employed workers—I might start with the fact that I might treat agency workers there differently from those other groups—72% of workers are satisfied with their independence at work. In a survey of 500 temps that we ran last year, 80% said that their work delivered an important need for flexibility.

Q346 **Chair:** Mr Carberry, we could quote similar statistics for McDonald's, but the kind of scale of abuse we have uncovered at McDonald's has been fairly horrifying.

**Neil Carberry:** This comes to one of the critical points, which is—let's be blunt about it—that Governments pass law but do not enforce. The bit of this Bill that I like most is the stuff about the Fair Work Agency. I think that there is a real challenge here. The most common feedback from businesses to the Government at the moment is if they comply and take on the cost of compliance but others do not, what happens to them? That piece about enforcement really matters. The point I am making—coming back to my million people who went to work today as agency workers—is that within a square mile of this building, we have allowed an assumption to build that these people who work in ways that are not nine to five, Monday to Friday, and are open-ended, want to work in this way—that that is what these people want. I am going to tell you that it is not what a lot of these people want. Two-sided flexibility matters. One-sided flexibility needs to be tackled. Agency work is largely two-sided flexibility and that is why we want it. Agency workers have choice.

Q347 **Chair:** Mr Lillis, what is your perspective on this question? Do you think that there should be exemptions for particular groups of workers?

**Mr Lillis:** No, I do not. I do not think workers should be treated any differently; there shouldn't be exemptions or trying to take the agency workers out of it. Agency workers, by definition, are there for peaks and troughs in the business, but we know that a lot of companies are there for a year, probably more. I understand peaks and troughs. I have worked in the meat industry. The business has peaks and troughs and needs to bring extra resource in, but that is a short-term thing. The workers should have the same safeguards as anyone else. Why should agency workers be treated any differently from anybody else? They shouldn't be.

Somebody mentioned a national fast-food chain. That business knows the hours it is open and the hours it is closed and knows its own peaks and troughs, and so should know how to plan its hours. This is about putting the onus back on back on to the business to manage its business more effectively. There is a place for agencies, but they should not be used as a way of getting cheaper labour or stopping the hirer from bearing the employment costs.





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**Chair:** Mr Cooper, anything further?

**John Cooper:** No, that is fine, thank you very much, Chair.

Q348 **Antonia Bance:** I want to ask both Mr Carberry and Mr Lillis about the definition of low hours. One of the points that is being left out from the primary legislation on the face of the Bill is around groups of workers and the number of hours they need to work to qualify for the new protections against zero-hours contracts. What do you think the definition of low hours should be? How many hours is low hours? How do we ensure for all people, whatever hours they work, that there isn't a loophole that their employers can drive through?

**Mr Lillis:** I think we made it pretty clear. Anything below full-time is part-time hours. I am an employer. Our staff work 34 hours a week, which is full-time. Taking Tesco as a reference, 36.5 hours is full-time. In some industries it is 38; in others it is 40. For each industry, there will be a standard for what a full-time contract is but we have already seen an amendment pout into the Bill about making low hours two hours. That is nonsense, isn't it? It is a real nonsense to have that. Anything below full-time is part-time, and the reference period over the 12 weeks would iron anything out. Again, it is not all that complicated.

**Neil Carberry:** It is difficult to stick a finger in the air, but I think two hours would be significantly on the low side. We have talked about 10 or 16 hours in the past. I come back to something that occupies our mind at the REC and my earlier point about umbrella companies. Umbrella companies tend to use annualised hours contracts. If you run the numbers, that works out to about seven hours per week. I think you probably want those contracts inside the scope of any protection so that any kind of annualised-hour contract loophole is effectively avoided. That is to a slightly higher number than the twos, threes or sixes that we have heard about.

**Chair:** Continuing on the same point.

Q349 **Mr Reynolds:** Thank you, Chair. Mr Lillis, you said that anything below full-time hours is part-time, which I do not think anyone could disagree with, but you didn't answer what is low hours. Are you really saying that somebody who works four days a week is on a low-hours contract?

**Mr Lillis:** In the retail sector, which we are talking about, the vast majority of employees are female. The vast majority are on part-time contracts—on average 12 to 15-hour contracts across the piece. You will only see full-time staff in management and other senior grades. So, I am not going to put a number on what part-time is. Part-time, to me, is anything less than full-time.

Q350 **Mr Reynolds:** No, we are not talking about part-time versus full-time. We are talking specifically about low hours, and that is the specifics that I mentioned. We are not talking about part-time.

When I was a manager in retail, significant numbers of our team were on



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part-time hours, but we reserved what we would have called low hours to contracts of 16 or fewer hours when employees wanted it. What would you specifically define as low hours—not part-time, but low-hours contracts?

**Mr Lillis:** Any contracts below 10 hours would be low-hours contracts.

Q351 **Mr Reynolds:** So that is where you would draw the boundary, you think, as an organisation?

**Mr Lillis:** That would be low hours to me. Remember that there will be people in retail, for instance, who work Sunday only, because it suits their family needs. I am not talking about taking away people's right to work fewer hours. We are talking about putting in safeguards for those who are working on contracts and having to work extra hours, and having that levelled out over that 12-week reference period.

Q352 **Antonia Bance:** Paddy, perhaps you can help me to understand. What we are talking about here with low hours is the boundary at which protections against zero-hours contracts kick in. Is that right? So, do you think there will be an impact if, say, the low hours were set at seven? Do you think that there would be an increase in the number of people on eight-hour contracts because at eight hours, they are not protected against the zero-hours contracts behaviour—the withdrawal of the hours? Do you think that might happen?

**Mr Lillis:** Absolutely, and we already have evidence of that from over the years. When the 16-hour contract kicked in, most retailers kept people at 15 hours. People will adjust. That is why I am absolutely clear about loopholes and unintentional consequences. That is why we also welcome the longer consultations in some of these areas to get this right. I want to make sure that it is done in a fair way, not only for the employees that we represent but also for the businesses, to make sure that they are not undercut or exploited by other employers. That is where I would be. Yes, I would say that if there are shorter-hours contracts, whether it be seven or eight, some employers will work around it.

Q353 **Antonia Bance:** That was why you said in your opening remarks that you would take the word "low" off the face of the Bill, to make it clear that it was all part-time hours and that everyone under full-time enjoyed protection against the behaviour that we have seen through zero-hours contracts.

**Mr Lillis:** Absolutely correct.

**Antonia Bance:** It is helpful to understand that.

Q354 **Matt Western:** Mr Lillis, this is a nebulous kind of thing that we are trying to understand and numbers are almost a very abstract thing, but do you think there is any merit in the Government looking at linking hours, particularly on national minimum wage versus cost of living as a metric so that low hours becomes a relevant number when you pin it against people's ability to actually pay their bills. Do you see where I am going with that?



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**Mr Lillis:** Is that a question for me?

**Matt Western:** Yes.

**Mr Lillis:** Sorry. I thought you were going to pass it to someone else. Can you repeat that?

**Matt Western:** Do you think that there might be some merit in the Government looking, rather than at the abstract of whether it be 10 hours, or seven or whatever—it is kind of an odd way to approach it—but at a link between the number of hours at national minimum wage and, say, the cost of living, or what we used to call the breadline back in the day?

**Mr Lillis:** That is a difficult one. It is different for different individuals. We have people at the minute working three jobs because they cannot get the hours from one employer and they are having to go to other employers. They are curtailed by some employers they are working for and not allowed to work elsewhere. There are all sorts of restrictions in there. As far as we are concerned, it is not difficult. In retail, there will always be part-time contracts. We are thinking about the low-hours contracts where people are taken on on a 10 or 12-hour contract, but consistently working 15, 20, 25 or 30 hours a week and where, if they complain about that, hours are taken off them. There is no redress for that. This is about fairness. It is about fairness in the market.

Most employers—by the way, the vast majority—comply and work collaboratively. This is to ensure that the employers who are not doing so are dealt with.

Colleagues here have mentioned the Fair Work Agency. We have issues about enforcement, and that will be a challenge for the Government because even the employment tribunals are two years behind. Major resources will have to be put into the Fair Work Agency to help and support it. I am not saying that all this is simple. I understand the complexities and that it is going to take time to work through but this is about fairness and justice and about making sure that we have growth in the economy and that people are treated fairly and properly.

Q355 **Chair:** We want to close off on agencies before we move on to some questions about the reference period. Mr Carberry, have you said what you need to say about the risks in your eyes of this legislation biting agency workers?

**Neil Carberry:** There is probably one other thing that I would add as a potential loophole. I entirely take Paddy's point about treating agency workers differently. We do treat agency workers differently and that is why they have a different legal regime. Something that is perhaps a bit of niche and only interesting to me is transfer fees and the proposal to potentially abolish them when an agency temp becomes the direct employee of a hirer. I am going to caution the Committee on that being a potential loophole to forcing direct hiring and into doing it via my members. My members might make some money out of that, but I do



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not think it is good for the labour market. We are really clear that a lot of effort went into how transfer fees were controlled by the 2003 conduct regulations. We are really strongly of the view that you keep transfer fees no matter what to avoid unscrupulous employers wanting to just hire a load of temps and then moving them across without recruitment costs and ending up in a situation where people who would have been hired directly are spending six months as temps with a different status. I think that that is probably not the labour market we are trying to build.

**Q356 Chair:** You lamented the omission of anything on umbrella companies in the Bill. If you were writing the Bill, what would you have liked to have seen on umbrella companies in it?

**Neil Carberry:** Umbrella companies are largely acting as the employer for a percentage of temps. Once they exist in a sector, they are quite difficult for agencies who payroll their own temps to compete with. There are good standards around the FCSA and others that audit umbrella companies, but there are also examples of pretty poor payroll practices in the sector. We would like to see the kind of regulation the Employment Agencies Act and the conduct regulations bring to agencies and employment businesses brought to umbrella companies as well.

**Chair:** Okay, thank you. Let's move on to reference periods. Antonia Bance, do you want to kick off on that?

**Antonia Bance:** No.

**Q357 Chair:** Well, let me put the question then, perhaps to Mr Lillis. We are having a debate about how long somebody should be employed before they can request a permanent contract. Do you have particular views on that question?

**Mr Lillis:** We have said the reference period should be 12 weeks, so the first 12 weeks will be a reference period. The 13th week is when you start to look back at what hours have been worked. That is where it comes back to what I said earlier about managing your business, managing your shop, your retail store. You have to manage it properly. You will know the hours you need in the business. Of course, there will be peaks and troughs that you have to work through, but in the main, this gives stability to employees. They are going to know what they will earn, and what hours they are going to be working. It is important to have that security of employment and the security of knowing you can pay your bills.

**Q358 Chair:** Mr Carberry, you are at the 22-week end?

**Neil Carberry:** Yes. Paddy mentioned the Low Pay Commission report and the Taylor report. For full disclosure, I should say that I was one of the employer members of the Low Pay Commission at that time. I think the concept that the Government are trying for here is one that I think I and lots of businesses have sympathy with. It comes right back to something I said earlier, which is that we judge it on the practicality when it reaches our businesses in the context of everything else that the



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Government are asking businesses to do just now. But yes, broadly, I favour a longer reference period.

Q359 **Antonia Bance:** Can I check something? Paddy, I think you said in your opening remarks that the 12-week reference period was used for holiday pay and that it was very recently got rid of for holiday pay, I think in the last two or three years. Many employers will have systems that enable them to operate a 12-week reference period for those types of rights and there are other rights that require a 12-week reference period. Therefore, aligning around the 12-week reference period would make sense in terms for payroll and hours-tracking systems that employers would need to have in place, wouldn't it?

**Mr Lillis:** It is easily understood in the industry—12 weeks as a reference period, particularly for redundancy, but also for maternity and paternity leave. You are correct about holidays. It was changed recently by the last Government, who made it 12 months. However, 12 weeks is recognised and we have never had an issue with it.

**Chair:** Thank you. We wanted to nail that down.

Q360 **Mr Reynolds:** The Bill says that workers on zero-hours or low-hours contracts need to be given reasonable notice of shifts that they are asked to work, but does not define reasonable notice, putting the onus on the Secretary of State, who says that they could specify what reasonable notice means in future regulation. What is reasonable notice, would you say?

**Neil Carberry:** This a really difficult question.

**Chair:** That is why you are here, Mr Carberry.

**Neil Carberry:** Well, thank you. I do not say that to throw rocks in the path because I think it legitimately will differ from sector to sector. This is one of those areas where I think secondary legislation is quite a good approach. For us, clearly, large businesses with capacity—as Paddy was talking about earlier—to schedule properly are already getting better at making sure people have more predictability. Certainly, in the contracts that our members are signing with large businesses, we are seeing, for instance, shift cancellation payments becoming commercially more common. Nobody wants a position where someone has arranged childcare, paid for the bus, got to work and is standing in a queue when they get a text. If someone is there, they should be getting a payment. Our only point would be that that payment should be paid by the people who made the decision.

Q361 **Chair:** For all its complexity, what is the virtue of keeping it in secondary legislation rather than providing some clarity on the face of a Bill—

**Neil Carberry:** Fundamentally, this Bill—

**Chair:** Make up their mind?



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**Neil Carberry:** This is a bit like when we were talking about 12 weeks a minute ago. There is an employment relations aspect to this of working through, with unions and businesses in sectors, what is reasonable. By definition, in food production, where demand changes very rapidly in the summer depending on the weather forecast, we might be more sympathetic to shorter periods than in a plant where demand is pretty stable.

Q362 **Mr Reynolds:** You said earlier, though, that you think it should be done sector by sector. Equally, you also said earlier that sometimes you only actually know things when Mr Lillis or one of his colleagues ends up in court and it is assigned through the courts. Sector by sector doesn't mean anything, though. Take grocery as a sector. You have large businesses and small businesses. Could the discounters say, "Actually, we are not part of the normal grocery sector. We are part of something different"? How far can you go down before you cannot go sector by sector because the sector does not mean anything?

**Neil Carberry:** I go back to where we started. This is really hard. By definition, I do not think that you want to end up with hundreds of sub-sectors, but there must be an allowance in wherever we end up to say that there are legitimate and rapid changes of demand and that then it is reasonable for employers to offer shifts or remove potential shifts based on the fact that they just will not have the money in the business to pay for those shifts.

Q363 **Chair:** So you are saying that there should be different reasonable periods for different sectors of the economy.

**Neil Carberry:** I think that there should be different reasonable periods based on different circumstances. I do not have a good answer right now as to whether, when we get into secondary legislation, that proves to be different sectors or circumstances. That is one of the reasons why I think we need to spend some time on it in secondary.

Q364 **Chair:** How long would it take to figure this out? We have been debating this kind of issue for some years now.

**Neil Carberry:** I think it just needs a period of focused work by the Department working with unions and businesses.

Q365 **Chair:** Is that a week, a month, five years? How long do these things take in your book?

**Neil Carberry:** The LPC report that we discussed earlier took a year to put together. If we are talking about a 2026 application, if we get going as the Bill is going through its passage here, we could come to a reasonable outcome on this during this year.

Q366 **Mr Reynolds:** Mr Lillis, on very much the same question, in your specific sector, what would you say is a reasonable notice period for someone to have a shift cancelled or be given a new shift?

**Mr Lillis:** Most of our collective agreements have a minimum of four weeks for changes of shift. Of course, if we bring in compensation too,





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the closer you get to a cancellation, then the more money should be paid. But, yes, four weeks should be the minimum.

Q367 **Mr Reynolds:** Do you think that the Bill differentiates between set hours in that four-week notice versus short-term sickness cover or short-term cover? Are we then going to run into a problem where a worker is asked to very quickly come in, with two or three hours' notice, and then they ask to be compensated?

**Mr Lillis:** That is why the consultation is so important, and why there should be a longer consultation around this with ourselves and the employers to get this right. We recognise that there will be occasions of absence due to sickness which will put pressure on small or smaller businesses but would not put the same pressure on a large store. However, we can find ways around that. We do it already with the collective agreements we have. We work through it.

I will go back to this. It is more for the individuals who are not playing ball, basically, and are taking advantage of their employees.

Q368 **Mr Reynolds:** What level of compensation is appropriate for shifts, if shifts are moved or cancelled at short notice?

**Mr Lillis:** It depends on the length of time. If people are given short notice, they should be compensated for the hours.

Q369 **Mr Reynolds:** The level of compensation isn't defined and short notice also isn't defined. Moved isn't defined either—

**Mr Lillis:** It is hard.

**Mr Reynolds:** So how would you do it? If you had a scale of levels of compensation, where would you say that scale should start and finish?

**Mr Lillis:** If I am asked to come into work, and I have scheduled myself to come into work for a four-hour shift, and it is cancelled, I would expect to be paid for it. I have closed off the rest of my day. I have made myself available. Why should I suffer because the employer has not managed the business properly? There will be exceptions, I know, from time to time, but in the main, it is down to managers managing. It is an easy one, not to manage, because you can just hire and fire people. I don't mean that in a light touch—"Don't bother coming in today"—because there is no repercussion. If you are having to pay for it, you will manage your business a bit better.

Q370 **Mr Reynolds:** Where would you start that? Would you say at four weeks? You would say four weeks' notice? Would four weeks' cancellation be appropriate for a compensation payment to apply?

**Mr Lillis:** I think so. At the minute, within our agreements, we have a minimum of four weeks for a change of a shift—a change of any pattern. Of course, if you want to change it, if it is a temporary measure and you want to change it back, then you have to give four weeks' notice again to change it back. That is important, so that employers are not just using and abusing the system. If they are going to give notice to change





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employees' hours, they have to give notice to change them back. That makes the manager manage more appropriately.

**Q371 Matt Western:** I am interested in drilling into this because it is an area I am not at all familiar with. Maybe, Mr Carberry, you can help me to understand what sort of notice periods are typical in some of this. You talk about being sector-specific. Could you give some examples of a more extreme sector at each end and what sort of notice they might give?

**Neil Carberry:** The most extreme sector is food production in the summer. Paddy Lillis might know better than I do, but lead times for ordering some foods are three or four days. If the weather forecast suddenly changes, we do not need all that ice cream anymore, because it is going to be a typical British summer. So we pull stumps on the order and we are not producing as much. That is at one end.

At the other end, you have the likes of a traditional heavy manufacturing plant, where you know the demand for new cars a few months ahead and you should be able to schedule people into working in very much the way Paddy sets out. Again, it is about that circumstantial situation.

One thing I would put on the table as we pass by this is to be aware, certainly in our sector, but I think increasingly elsewhere, about how people choose shifts. I use an example of this and forgive me if any of you have heard me use it before. I use it rather too much. One of our members fills all of the Christmas shifts for one of the major retailers at Magna Park in Milton Keynes. It is 3,000 jobs, 3,000 seats, every day, for 14 weeks from August to Christmas. Ten years ago, you needed about 3,500 people to do that. Some people took a week off. Some people unfortunately got sick. That did the job. Now you need about 11,000 candidates to do it because the march of technology means that many agency temps in particular have apps from their agencies on their phone. They can see the shifts that are available. They go, "I will do that one and that one. I will take mum to the hospital and then I will do that one with the other company." There is a level of choice going on here. The reason for mentioning this now is not just to emphasise how what some workers want is changing, but also to point out that what it is to offer a shift is a really challenging question.

If I as an agency put a shift on to an app that a worker has access to, have I offered them that shift, because I have also offered it to the other workers who might take it? There is some work in the consultation just to get that right as well.

**Q372 Matt Western:** To come back, though, to the extreme example you gave, the weather forecasts are pretty good two weeks out. In the example of the ice-cream manufacturer, it is not like the 1980s or the 1970s where the forecasts were much more immediate. Surely they gauge up for the sale of barbecues or ice-cream or whatever. They know what is happening. Good retailers know exactly what is going to be happening in a few weeks' time. Surely a much longer notice period could be given. Secondly, I was staggered to see that 66% of workers are not getting any compensation for less than 24 hours' notice. That is a



disgrace, isn't it?

**Neil Carberry:** I was a co-author of the Low Pay Commission report that suggested doing this, and the REC does not oppose this. I have said to you already that many of our commercial contracts in the sector are now allowing for payments, particularly very short notice payments. I think the Met Office would be delighted with your feedback. The challenge here is, exactly, "Let's have the discussion," as Paddy has pointed out, about what the appropriate time is, but that is a discussion to work through rather than just picking a timespan from out there.

Q373 **Matt Western:** It is a disgrace, though, isn't it: less than 24 hours and not getting any compensation?

**Neil Carberry:** I have said what I have said. I believe that if you are arranging childcare and paying for transport to work and then your shift gets cancelled, you should be paid.

Q374 **Alison Griffiths:** I want to come back to the seasonality point and ask Paddy in particular, but Neil, too, for those seasonal businesses that are affected by the wonderful British weather, like amusement parks in my constituency, what do you recommend? If they do have day after day of bad weather when there are no tourists to be seen and no one walking through the door, what is your prescription as to how they should handle that? Because I can tell you that businesses are extremely concerned about having to pay for days where they will not be receiving income themselves.

**Mr Lillis:** Not half as concerned, of course, as the worker who wants to turn up to have a—

Q375 **Alison Griffiths:** I am not the one pushing this. I am asking you to give your prescription for those businesses and what they should be doing. How do they keep their businesses viable, even in the event of not being able to manage their costs when they do not have income coming in?

**Mr Lillis:** When you are talking about excluding one industry, you are talking about the agricultural industry, you are talking about the food sector industry, the hospitality industry.

Q376 **Alison Griffiths:** I am just asking a straightforward question. What do you want me to say to the employers in my constituency who have asked me this specific question?

**Mr Lillis:** I don't control the weather. That is the first thing. They are employers in an industry. They know the risks that come with that. For too long the employees have had to take the burden of these things and the employers have not taken the burden of it. They are going to have to deal with it in some way, but again that is why we need a longer consultation period to deal with the issues around the complexities of people who can deal with seasonality, whether you are working in the fields as an agricultural worker or you are working in the meat industry where it is seasonal, and something goes wrong.



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I said at the start that consultation is important. In most of the areas we work in and which are trade-union recognised, we work through issues and concerns. We resolve problems together. Most of the areas we are talking about here are areas where there is no trade union recognition, so it is left to the whim of the employer most times and the employees are the ones who suffer with it.

**Chair:** I am keen to move on to Mr Brown because he has been very patient listening to this debate.

Q377 **Sonia Kumar:** Coming to Frasers Group, it committed to end zero-hours contracts in 2016. Why did you break the promise?

**Andy Brown:** I expected that this question would be asked. I was not around in the business at that time. I am not in any way abdicating the position. What I can talk to is the reason why we do continue to use them today. I have been firmly in role since 2020. It talks to some of the examples of the things that have been discussed so far in this forum. We employ 11,500 people on zero-hours contracts in the business and we do not see a benefit if those zero-hours contract workers are dissatisfied with the way in which they receive their shifts. The churn is higher than it should be. We have implemented a number of safeguards and ways of working that ensure that there is as much certainty around hours as possible. To the debate we were just having—

Q378 **Sonia Kumar:** What are the safeguards?

**Andy Brown:** We have requirements for shifts to be issued within certain timeframes ahead. We give managers access to hours to be able to issue them four weeks in advance and we ask that they are delivered within two. Then they are enforced within one. The worst-case scenario for any worker is they would know at least a week out when their shifts would be worked. We have a principle of not cancelling shifts, outside of exceptional circumstances, where it is within a week of them being issued, to try to give that certainty. Our commitment to the people who come and work under those contract conditions with us is to try to give them at least access to 12 hours of work a week if that is what they want. We averaged in the last 12 months 16 hours of work per zero-hours worker.

Q379 **Sonia Kumar:** In what circumstances would you give someone just one week's notice?

**Andy Brown:** In a circumstance where there has been sickness in a manager who is responsible for setting the shifts—exceptional circumstances. It is certainly not the norm and certainly not an acceptable practice. We have a suite of central reports that are issued by our central retail operations team, which go out to the field managers and area managers of stores to make sure that these rules and standards are being met. We genuinely believe that the importance of our zero-hours workers is fundamental to our business; we don't operate without them.



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**Q380 Sonia Kumar:** With this now low level of guaranteed hours, would you say it would be 16 hours, then, that you would be offering to your employees?

**Andy Brown:** Currently, that is the average that has been given over the last 12 months. I think it is an interesting challenge. I can only really talk to Frasers Group's examples of what that looks like. As I say, we aim to offer 12 hours for people. That is our minimum standard. The reality is that it is dependent on individuals. Ultimately, as a business, we are trying to balance the need for flexibility of the individuals who work as well as obviously our own needs to balance how we deliver resources against the peaks and troughs that we have.

Seasonality is an interesting point for us. To Paddy's point on a 12-week reference period being a standard and something that should be simple to employ, if you take 12 weeks in our business between November, December and January, it is a very different position from 12 weeks between February, March and April, which are some of the quietest times of the year for our business. I think there is a real point around the reference period that needs to be considered. Clearly, different businesses and different industries will have different seasonality. I can only give you that example from our side.

We agree with the principle of putting in protections for people who are on low or zero hours. We have put our own in. A lot of them talk to some of the proposals in the legislation. The importance for us is trying to balance that with the flexibility that businesses need to deal with things like seasonality and changes in circumstances.

**Q381 Sonia Kumar:** You are talking about seasonality, but you would already know this. You have the data, so year on year you know when there are going to be busy periods in your industry—

**Andy Brown:** Absolutely.

**Sonia Kumar:** —and when there will be peaks and troughs. That would be built in. Is this Bill something that you would be happy to fully adopt?

**Andy Brown:** The principles of it, certainly. Anything that gives employees better protections is something we genuinely do agree with. In the case of zero hours, that is a group of people who are extremely important to our organisation, as I have said. We have some fantastic metrics that underpin the promotion rates of people who are working on those. They are not limited from opportunities and the ability to move into different positions. We invest in them from an incentives perspective. We invest in them from a creative element and training point of view. These people ultimately feed the hierarchy of our business and the succession plans for the next steps within that.

For us, the principles of most of what is being proposed, certainly around zero hours, makes sense. It is important in the balance to make sure that—a lot of the examples that Paddy has talked to are principally the right thing, but when you talk about four weeks' notice to change things,



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and there will be a cost to that, there will be impacts on businesses from that in terms of their ability to flex around what that looks like.

Yes, to answer that in short, I would say that in principle we agree with the things that are being proposed. I think the devil will be in the detail.

**Q382 Gregor Poynton:** Mr Brown, just to go back a little bit on one of your answers there, you skated a little bit over the notice periods. You talked about four weeks, two weeks and one week. I want to nail it down. Four weeks you would start doing your shift roster.

**Andy Brown:** Yes.

**Gregor Poynton:** Two weeks you then give staff notice and then one week sometimes as well?

**Andy Brown:** The best practice is two weeks. We actively follow it up at one week to make sure that that has been completed.

**Q383 Gregor Poynton:** Okay. What happens when you break that best practice? Do you compensate your workers if you change the notice of the shifts?

**Andy Brown:** As in if a shift is changed within one week? No, we don't compensate, no.

**Gregor Poynton:** They never get any compensation when you make changes to their shift pattern?

**Andy Brown:** The practice generally is if something has shifted and changed and we have needed to move something around within that one—well, frankly, this is not relevant to the one week—then we would look to try to reallocate that work at another day, at another time.

**Q384 Gregor Poynton:** It is a new shift then?

**Andy Brown:** Yes.

**Q385 Gregor Poynton:** But you do not compensate at all, ever?

**Andy Brown:** We don't, no, not at this time.

**Q386 Gregor Poynton:** How often, then, would you say that happens within your business?

**Andy Brown:** I could not give you an actual number. I would say it is minimal. As I say, we have the standards in place to enforce or manage to make sure that that is the minimum standard that is maintained. However, I could not give you a number, I am afraid.

**Q387 Gregor Poynton:** You have 11,500 people in your workforce who week to week, month to month, might be seeing their shifts changed at 24 hours' notice, and less than that perhaps. They have childcare in place but then they are not receiving a single penny from you on that.

**Andy Brown:** The vast majority of those people would not be experiencing that regularly at all.

**Gregor Poynton:** Right, but some are?



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**Andy Brown:** It is possible. Could I sit here and say, “100% no, it never happens, ever—there is no set of circumstances”? I could not say that. It would not be the right thing to say.

Q388 **Gregor Poynton:** Could you manage your family finances on that basis, then?

**Andy Brown:** Well, I understand the challenge. I understand the challenge that is being presented and we agree with the principles of putting in some of these protections. We have built many of our own. I accept that this is one that is not live in our business at this moment in time, but we are not sitting here saying that these things should not exist and that would be the wrong thing to have. I am not sitting here resisting the view that that might be the right answer. The fact that we do not do it today does not mean that we are opposed to the principle.

Q389 **Gregor Poynton:** You could, though, couldn’t you? Because people do.

**Andy Brown:** How do you mean, sorry?

**Gregor Poynton:** People do compensate. Mr Lillis has talked about some of the work that big businesses—large businesses like yourselves—do that come to an agreement with their employees. You have said that the zero-hours contracts employees are important to you.

**Andy Brown:** I agree.

**Gregor Poynton:** You could do that. You choose not to.

**Andy Brown:** I am not sitting here saying that we are perfect and that we do everything perfectly and that we have covered every single scenario. I am not saying that. We have done a lot of work to minimise some of the issues that people working in these contracts can be exposed to, but that is an example of something that we are not doing at the minute. We could, because others do, so yes, we are not saying that that is something we cannot do.

Q390 **Sonia Kumar:** Andy, you served as a group HR director. How many complaints have you had—or have you had any complaints—about zero-hours contracts and cancellation of shifts, or shifts being given at late notice?

**Andy Brown:** Yes. We have a number of mechanisms for people to report issues. We have our formal grievance procedures. That would be an extreme route for the examples you have raised. The most effective route that we have in place is a direct contact, a programme called Ask Cally. Cally Price, for those of you who don’t know, is our workers’ representative who sits on the board. Cally came from a zero-hours contract background and has worked with the business for a number of years. She directly manages a communication line from employees within the business.

In the last 12 months we have had, I think, 785 inquiries to that hotline. Let me just quote the right numbers. So, 485 of those queries have come from zero-hours contracts workers within the business. Eighty of those





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fell under what we would call the category of complaint or concern, nine of which were related to availability of hours. Cally's approach to dealing with those is then, subject to the circumstances, to either deal directly with the teams that are leading that and/or address the concerns of the individual, so they will hear directly.

Q391 **Sonia Kumar:** Is this in a 12-month period?

**Andy Brown:** Yes.

Q392 **Sonia Kumar:** You have had 80 complaints about this and—

**Andy Brown:** Sorry, 80 issues that would fall under the category of complaint, nine of them relating to issues around hours.

Q393 **Sonia Kumar:** What has been the resolution for this? When someone has complained saying, "I have childcare. I have now paid X for a child minder, I have paid travel, and everything has now been cancelled or I have been told last minute, and now the train fees are expensive so I have to pay an extortionate amount," what has been the resolution?

**Andy Brown:** I could not give you specifics to that scenario you have just given as to what would happen.

**Sonia Kumar:** Just generally?

**Andy Brown:** In a scenario like that where somebody is raising that concern, Cally would raise it with the store management to ensure that we are meeting the minimum standards that we set out. Are these people being offered the number of hours that we aspire to—the 12? In the example you have given, what are the circumstances surrounding the reason for the cancellation? To Mr Poynton's point, it is not a normal scenario where we are cancelling shifts at short notice in our business. Cally would look to see that resolution in the form of reallocation of hours. As I said to Mr Poynton, we have not reached the point of compensation for changes.

Q394 **Sonia Kumar:** Do you think there should be compensation?

**Andy Brown:** I agree with the points raised by other members of the Committee. There are certain scenarios where if I have paid for the childcare and I am in that situation and that comes about, I think that there is an appropriateness around that that affords some of the protections that sit under other employment contracts. It is in the detail. What does that look like? What is the conditionality around it? What are the circumstances where it is okay for that to happen? Balancing the impact I guess would be the ask that I would make.

Q395 **Antonia Bance:** Turning now to the workers at your Shirebrook warehouse in Derbyshire, I think there are around 4,500 workers there. I may not quite be right. How many of those are on agency contracts?

**Andy Brown:** There are roughly around 4,000 people in Shirebrook on agency contracts. It is 1,200 who are directly employed on the site. We have around about 5,200 people.





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Q396 **Antonia Bance:** Of the 4,000, how many of them have worked there for longer than the 22-week average that we heard REC talk of?

**Andy Brown:** Apologies, I do not know that number.

Q397 **Antonia Bance:** Do you have any statistics around the length of time that those workers have worked on an agency contract at the Shirebrook facility?

**Andy Brown:** Apologies, I don't. I would be happy to send it after.

Q398 **Antonia Bance:** My understanding is that there are numerous employees who have worked a decade-plus on agency contracts at the Shirebrook facility. Why do you continue to use agency contracts? Is it a way of ensuring that you minimise your liabilities to those workers?

**Andy Brown:** No. The reason we continue to use agencies up in Shirebrook is that it is a highly competitive area from a warehouse point of view. There are many businesses and new businesses that have opened up there recently, so the competition for talent and the ability to—it is a huge number of people, 4,000, who are required to service the operation there. We outsource that work to the agencies and work with them to make sure that the standards that we expect them to have and the legality that they have around how they employ those people is in place. It is our responsibility to make sure that that is delivered from a service perspective. It is not about undercutting our responsibilities. It is about making sure that we go to the best people who can help us to deliver the right resources to deliver our outcomes.

Q399 **Antonia Bance:** Yet, of course, the implication of having someone on an agency contract is that you can terminate them immediately with no notice.

**Andy Brown:** That is the potential that exists, but there are people—

Q400 **Antonia Bance:** Okay. You say there are 1,700 who are directly employed?

**Andy Brown:** Twelve hundred.

**Antonia Bance:** Twelve hundred, my apologies. Speaking to a predecessor Committee in 2016, the group chief executive of your company committed to moving people on to directly employed contracts. How are you doing at moving people on to directly employed contracts? Is it still the policy of your company to move people on to directly employed contracts as quickly as you can?

**Andy Brown:** It is our policy to continue to do that. I don't think there was ever a commitment to say as quickly as we could. I am not sure that I have seen that in any of the commitments. However, we do still action that policy. Over the last three years we have moved 593 people to permanent contracts from the agencies, so roughly 200 a year on average.

Q401 **Antonia Bance:** Okay. Are you comfortable with that pace of change and do you think that pace of change will enable you to meet your obligations



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under the new Employment Rights Bill when it enters into law in the next couple of years?

**Andy Brown:** Sorry, can you be a bit more specific to the obligations you mean?

**Antonia Bance:** Are you comfortable with the pace of change of movement of people on to directly employed contracts?

**Andy Brown:** To answer that question: at this time, yes. We are currently working through a process of making sure that the people who work within agencies understand the process we have in place and the criteria for that. We are currently recommunicating that. Yes, at this point in time we are comfortable with the pace of change. It was the second part of the question that I was not clear about.

Q402 **Antonia Bance:** Don't worry about it. You are on track to report profits of between £550 million and £600 million this year. You have spoken about the respect that you have for the workers and the extent to which they are responsible for your organisation to continue to be profit making. Why don't you share the proceeds of the profits you are making with your loyal workforce in the form of fixed hours on directly employed contracts rather than keeping them on agency contracts, which you have yourself admitted allows them to be terminated with no notice?

**Andy Brown:** There is quite a lot to respond to in that statement. Ultimately, as a business we have always been—in fact, lifelong is the terminology we use—believers in allowing the people who work for our business to share in our success and the success that they help to create. That takes different forms. In our retail stores we enable people to earn bonuses and commissions related to the performance that they deliver. In our warehouses we have a number of bonus schemes around delivery and productivity that enable them to enhance their earnings throughout the period. We have just run one recently during our latest peak. We do believe in the principle that you have talked to. Obviously, you have a particular view of how we best demonstrate that.

Q403 **Chair:** I think the point is that only about a quarter of workers at this particular facility are on permanent contracts, and this is a long time after a commitment was made to move people on to permanent contracts.

**Andy Brown:** Yes. As I say, I am not sure that there was a cap to that. I cannot talk to the details of that. I apologise, I was not around at that time. However, we have maintained that commitment. It is an important part of our operation. The warehouse fundamentally underpins all parts of our—

Q404 **Chair:** Would you accept then it is quite a slow transition to permanent contracts? It does not sound fast.

**Andy Brown:** Well, I certainly would not say it was fast. As I say, I do not believe a pace commitment was made and our ambition is to make sure that people can see a transition and a movement. We are committed



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to communicating that to those individuals. Yes, I would not say it was fast.

Q405 **Antonia Bance:** To be clear, in 2013, 90% of the employees of Sports Direct—I understand you are now a larger group—were on zero-hours contracts. What is the proportion now?

**Andy Brown:** About 66%—there or thereabouts—from a retail perspective. That is our retail workforce.

Q406 **Antonia Bance:** Are you confident that you are now meeting your obligations under the national minimum wage legislation? The group CEO said to this Committee—he disclosed for the first time—that he was not meeting his national minimum wage obligations in 2016 as a result of the operation of security searches in non-paid time and people being unable to leave the facility for their break time, which needs to be their own time. Are you confident you are meeting national minimum wage regulations?

**Andy Brown:** Yes. I can talk to you about the changes that were made, in fact, very soon after our founder made that statement to a Committee similar to this one. We have invested heavily in dealing with the bag search facilities and the bottleneck, effectively, that was causing that issue that resulted in a NMW breach—that has been in place since 2016 onwards. We monitor and measure that at all times, so we are confident that that is not causing any issues for us in terms of the national minimum wage.

Q407 **Antonia Bance:** The location where people can take their breaks: as a reminder, it can be a breach of national minimum wage legislation if people are not able to use their breaks as they wish. It then becomes paid time. Can people leave the Shirebrook facility for their breaks?

**Andy Brown:** My understanding is that they can, yes.

Q408 **Antonia Bance:** I am very glad to hear it. Thank you.

In the two years to 2015, ambulances were called to the Shirebrook facility 76 times. How many times have ambulances been called to the Shirebrook facility in the last two years, please?

**Andy Brown:** In the last three years, four ambulances have been called to the Shirebrook site. In the last 12 months, zero. I expected the question and it is something we are mindful of because of the situation as it existed back then. We have put a lot of time and effort into how we make sure the health and safety of our colleagues across the whole business, but certainly in Shirebrook, is prioritised. We have a dedicated team. We have seen the results. I have shared with you the reality that it is a significantly reduced number at this point in time. It is important to say it is an extremely busy site: thousands of people moving around it daily. Zero has been a very positive year, the best that it has been, but the reality is that where there are that many people, inevitably there will be moments in time where ambulances are required. Hopefully you will



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agree that the levels that we have seen in the last few years are much more acceptable and a massive improvement.

**Q409 Antonia Bance:** I am very glad to hear about the improvement in health and safety. That has been reported to me by union reps on the health and safety committee as well.

Can you characterise for me whether you now have a productive working relationship with Unite the Union, which has representation rights for workers at the Shirebrook site, and whether you feel as though that is delivering for your workers?

**Andy Brown:** I think we are starting to get to a more productive place. Up until about 18 months ago from my time starting in the role, we had not had much interaction with Unite as a union for the people it represents on site. Over the last 18 months we have met quarterly and have had regular meetings to look to improve the facilities available and the time available for Unite as a union to carry out its representative duties. Yes, my personal view would be that it is improving.

**Q410 Antonia Bance:** One of the ways in which your workers were at times penalised by the agencies with which you had employment contracts for the staff at Shirebrook was by the use of prepaid debit cards, with fees attached that were paid to the agencies, to pay those workers. Do your agencies still use prepaid debit cards for those workers without bank accounts or have they ceased that practice?

**Andy Brown:** I am not aware that that still continues, but I would need to check to be absolutely sure. I cannot believe that that would still be the case.

**Chair:** Thank you. We will write to you on that.

**Q411 Antonia Bance:** This is the final question from me—it may not be my final question, to be fair—in this section. My understanding is that you are currently in negotiations around changes to terms and contracts with a set of maintenance engineers at the Shirebrook facility. In fact, management at that facility have said to those maintenance engineers that unless they accept new, less advantageous terms and conditions they will be fired and reengaged. As you will know, fire and rehire is about to be outlawed under the Employment Rights Bill. Are you engaging in fire and rehire at the Shirebrook facility?

**Andy Brown:** My knowledge of this case is that the individuals who are going through consultation, with a look to changing shift patterns fundamentally and some of the roles and responsibilities, have been offered roles that are more advantageous than their current Ts and Cs as an alternative to the current situation.

**Antonia Bance:** Okay. That is not my understanding. Can you write to the Committee to reassure us that you are not using fire and rehire? We will keep an eye on that group of workers.

**Chair:** Thank you very much. The clock is slightly against us.



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Q412 **Mr Reynolds:** You spoke earlier, Mr Brown, about your four weeks and said that workers should be given notice within two weeks of their shifts.

**Andy Brown:** Yes.

Q413 **Mr Reynolds:** You said that exceptionally you do it with one week's notice if the manager was off sick.

**Andy Brown:** That was an example.

Q414 **Mr Reynolds:** Is there nobody else that could do a shift on the rota?

**Andy Brown:** To be honest, I am not sure it was a great example. It was on the spur of the moment. I could not give you a specific example as to why it was. That is just the standard procedure that we have in place to make sure that we do not have people only finding out the day before or on the morning of shifts that they have been allocated.

Q415 **Mr Reynolds:** You have a process internally that if it is a week or less notice, that gets flagged up on your internal systems?

**Andy Brown:** Yes. We have a dashboard that flags through across all our zero-hours worker arrangements what are the number of hours that have been allocated and then the maximum and minimum number of people they need to employ to make sure we are not offering fewer hours than we should be versus our commitments. Yes, we have a decent process.

Q416 **Mr Reynolds:** In the last 12 months then, what percentage of rotas were published with a week's notice or less, or less than your two-week standard?

**Andy Brown:** I think I said this to Mr Poynton earlier. I don't have that number to be able to share, but I am sure we can get that.

Q417 **Mr Reynolds:** Thank you. You said that your best practice, then, is two weeks. That is what you said is your best practice.

**Andy Brown:** Yes.

Q418 **Mr Reynolds:** Earlier we were told that four weeks is what they are expecting. Why is your best practice half of USDAW's recommendation?

**Andy Brown:** I think it is probably a difference in view between the two groups of what is appropriate. Ultimately, to Mr Carberry's point earlier, we aspire to be able to do these things more effectively and further in advance. That is our ambition—to continue to work towards that. At some point I am sure Mr Lillis's view and my own will, I hope, come to a nice meeting point, but at this point in time that is the standard that we have in place.

Q419 **Mr Reynolds:** If your aspiration is to move towards that place and that is what you—

**Andy Brown:** Trying to be more effective, yes, across all our workforce planning.

**Mr Reynolds:** —are working towards to make it better—

**Andy Brown:** It is our ambition.



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**Mr Reynolds:** —in, say, the last 10 years, how has your shift planning come on, then? If it is two weeks now, would you say five years ago it was only one week that was best practice? Are you moving in the right direction or not?

**Andy Brown:** Technology has been discussed as a massive enabler of how we do this. We have invested a lot in how we allocate shifts. Shifts can only be allocated to individuals at availability they have given us. You cannot be given a shift—the system will not allow you to be given a shift—if you have not said you can work at that time. It is another one of the protections we have in place. People can swap shifts and reject shifts via the app and then sign that back up, so it all becomes much more effective and much more real time for individuals. To the point made by Mr Carberry earlier, the nature of how people want to work in these situations has evolved and is changing in real time and that flexibility is super valuable.

Q420 **Mr Reynolds:** To me, if we have all this technology, as you have said, it begs the question as to why you are only doing it with two weeks' notice rather than four, five or six. You know the peaks and troughs, as we have said already, and you know what your budgets will be. You have to budget throughout your year—your stores and your area managers will. Do your area managers only know what the stores' targets and budgets are four weeks before?

**Andy Brown:** We confirm them that far out and that is us ensuring that the natural peaks and troughs that come through our business have been planned for.

Q421 **Mr Reynolds:** Is that standard in retail, would you say? It is not standard where I have worked before in retail to have targets four weeks beforehand.

**Andy Brown:** Okay.

Q422 **Mr Reynolds:** Your career was Evans Cycles and now Frasers. Would you say that is—

**Andy Brown:** Yes, rota planning a month in advance is not exceptional, I don't think.

Q423 **Mr Reynolds:** No, not rota planning, but knowing your budgets and your targets. In my retail background, I knew my targets and I knew what my staffing budget was for the calendar year.

**Andy Brown:** I understand, and my point is that they are confirmed. We do not start to schedule things and then change them. It comes back to the essence of what we have been talking about in this room. They are confirmed four weeks out and that is the point at which a manager can start to do it.

Q424 **Mr Reynolds:** It is poor business planning, isn't it?





**Andy Brown:** I am not sure that I would agree with that point. I get where you are coming from, given your previous experience, but I am not sure that that is unique to our organisation as a retailer.

Q425 **John Cooper:** I was very much struck by an ONS report that looked at people working on zero-hours contracts. It found that around 60% did not want more hours. We have heard the word "flexibility" used quite a lot by most people here. For a certain demographic, it might suit people to have zero-hours contracts, and people on zero-hours contracts are likely to be young, female or in full-time education. If I can start with you, Mr Brown, and then perhaps come to the rest afterwards, what do you think the likely impact of these changes that the Government are proposing will be on those people who are on zero-hours contracts? Do you think that it will change your hiring practices? Would there perhaps be fewer people offered these jobs?

**Andy Brown:** As I mentioned earlier, the principle of the legislation as it is set out is that zero-hours contracts can be maintained. It gives the right to individuals to request to be given guaranteed hours. I think the principle of that strikes the right balance. I suppose the slight risk would come around the details. What is the cap on that? In certain circumstances, at low points in the year, there is a number of hours that are required to operate a retail store. Assuming low levels of trade, there is a base that you just need to safely open the shop and operate. How does the legislation account for if the number of requests takes hours above that cap? There are complexities that would have potentially unintended consequences for individuals in that situation.

There is a potential for greater levels of redundancy within organisations that currently operate on a slightly more flexible model if the chips are stacked in a way that means that commercially that is the only way to balance the books. They would be the two obvious ones that I would call out.

Q426 **John Cooper:** Mr Carberry, there was concern there about a potential rise in redundancies. Is that something that you are concerned about?

**Neil Carberry:** I said earlier that one of the things here is meeting workers where they are. There is clearly a group of workers for whom this is what they want. I have been told off by the Chair for using our survey before, but our survey of temps says that roughly half say, "This is right for me right now."

To give you an example, I went to see the magnificent Paul Heaton recently in Hammersmith and got a message from a prominent *FT* journalist the next day saying, "My daughter served you a beer last night because she was working on a zero-hours contract." Clearly concert attendances do flex. I have nothing to say about how they do their scheduling, but there is a piece about groups of workers who are looking for this.

As we think about the Bill, just remember that the workforce is not an amorphous blob who all want the same thing. They should all be treated





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fairly. That is important because it helps us to understand where we start. My most wonkish point for today is: we are slightly making policy in a desert here. The workforce employment relations survey has not been run since 2011. That is the tool that typically tells us the state of employment relations in the United Kingdom. I think it would be wise for Government to do one.

Q427 **John Cooper:** Very useful. Mr Lillis, very quickly now, you must again also be concerned about a reduction in the opportunities for your members to find work. It is surely something that is setting alarm bells ringing.

**Mr Lillis:** We have surveyed agency workers. Agency workers should be in the peaks and troughs. They should be dealing with the peaks and troughs. We want to see directly employed employees. Up around the midlands area is a big industrial hub. In the vast majority of the industrial sites that we have most people are employed on direct contracts and very few agencies are used. That is where we would always try to be. I am not saying there is not a place for agency workers. We come back to the issue of agency workers having that reference period and not being excluded from it.

Q428 **Alison Griffiths:** Mr Carberry, many aspects of the Employment Rights Bill will be decided after the Bill reaches Royal Assent. What do you see as the risks of this approach?

**Neil Carberry:** Clearly, an approach that leans heavily on secondary legislation puts a significant amount of power in the hands of the Department and the Secretary of State. I have to say that is kind of traditional in employment law. We have done a lot via regulation in the past. I think the primary risk is the levels of engagement of the Department with the frontline, unions and businesses, so that we can practically work through some of these challenges.

I will pay credit to the Department. I think that it has done a lot of outreach to businesses and trade unions since the election. There have been a number of good discussions. I think most businesses at the moment feel there is a difference between being heard and being listened to. As we get into maybe some of the more nuggety issues that it is fair to say the Bill has slightly punted into secondary, that will be the big test and the big risk.

Q429 **Alison Griffiths:** Could you give a couple of examples of those?

**Neil Carberry:** The best single example: day one unfair dismissal rights. I think we got a bit lost talking about how long the statutory probation period should be. I am really interested in how you sack someone on competence during the statutory period. What is the process? We have history here and I am afraid to say both my former employers at the CBI and Antonia's former employers at TUC were guilty parties on this. We created something about 20 years ago called the statutory dispute resolution mechanism, which was a lawyerly nightmare because we did not properly test it. If we think about something like what the test is for



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dismissal on performance during the statutory period, that is an example where something could go badly wrong and we end up feeding that incredibly long wait time for ETs, or it could go well. One of the roles for this Committee and for scrutiny of the secondary is just to make sure that those conversations have taken place as the secondary comes forward.

**Q430 Alison Griffiths:** Thank you. Mr Lillis, the same question to you. Many aspects will be decided after the Bill reaches Royal Assent. What risks do you see in that?

**Mr Lillis:** I have spent my life trying to improve workers' rights and improve legislation that helps workers. As I said at the very beginning, I am very pleased to see the Employment Rights Bill come in. Yes, it will be challenging, but if the vast majority of employers are working with BRC, CBI and the Institute of Directors, and if we work collaboratively together—We are doing that at the moment. We are having meetings regularly with the Department of Trade and Industry. We are having regular meetings with the Treasury. We will find ways to do it. We are all there to come up with solutions.

Ultimately, it is about making sure that workers are treated fairly and it is not just one-sided flexibility. I am of the opinion very clearly over the last 15 years that it has been one-sided flexibility, and I say that for this reason. I am not trying to score points, but I have been with my organisation for 20 years as a senior official. In the last 14 years I have had two meetings with two Conservative Ministers: a Secretary of State for half an hour; and another Secretary of State just before the election for about 45 minutes. That is in 14 years, and you are dealing with employment issues all the time. If we use the reference of the first 100 days, we have had probably 25 meetings with Secretaries of State, Under-Secretaries of State, civil servants and so on. That is the difference: being able to have that engagement, being able to talk through what the issues and concerns are, and working with the employers. I do not want to be causing any more problems for employers, but it has to be balanced on both sides. I think that we are starting to get there.

I welcome where we are. I am not saying that there will not be concerns and issues, but we will work our way through them. With the way that the Government have structured it through the consultation, I think it is working well. We are starting to find our way through the areas of concern that employers have. I have areas of concern, as I said to you, with the low hours within the Bill. I think they should be taken out. The irregularity should be taken out. There are things that should be taken out of the Bill and we should have the 12-week reference period front facing in the Bill. They will all become a matter for these Committees and discussion with MPs and civil servants and hopefully we get the right outcome.

**Chair:** Okay. This has been an extremely illuminating session. Thank you so much for sparing us the time this afternoon. That has been incredibly



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helpful in helping us frame our recommendations. That concludes this panel.