



Scottish Affairs Committee

Oral evidence: Zero-Hours Contracts, HC 654-IV Monday 10 March 2014

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Members present: Mr Ian Davidson (Chair); Jim McGovern; Graeme Morrice; Pamela Nash

Questions 238 - 336

Witnesses: **Dave Watson**, Scottish Organiser, UNISON Scotland, **Jake Molloy**, Regional Organiser, National Union of Rail, Maritime and Transport Workers, and **Rob Gowans**, Policy Officer, Citizens Advice Scotland, gave evidence.

Q238 Chair: Welcome to this meeting of the Scottish Affairs Select Committee. As you are aware, we are undertaking an investigation into the impact of zero hours and the prevalence in Scotland and other issues related to that. This arises from various investigations we have had into health and safety markers and also into blacklisting. I wonder if we could start off by asking you to introduce yourselves and your position in the organisation you are representing.

Jake Molloy: Jake Molloy. I am a Regional Organiser with RMT, with specific responsibilities for the offshore and gas sectors and all shipping activities in and around Aberdeen.

Dave Watson: I am Dave Watson. I am the Head of Bargaining and Campaigns at UNISON Scotland.

Rob Gowans: I am Rob Gowans. I am a Policy Officer at Citizens Advice Scotland.

Q239 Pamela Nash: The figures that we have in front of us from the July 2013 labour force survey show that nearly a third of zero hour contracts in the UK are in the public sector. Mr Watson, why do you think they are so common in the public sector and do you think this is a relatively new phenomenon or is this something that has been going on for a long time?

Dave Watson: We need to start by recognising the problem of the statistics here. First of all, there is not a very clear definition of what a zero hours contract is, certainly not a legal one. For example, people talk about zero hours contracts. We would also talk about nominal hour contracts. Some people call them short hours as well. They have exactly the same policy impact and employment right impact as well.

Certainly the numbers are in dispute. The best estimates are maybe something 1 million in the UK; so probably around 90,000 in Scotland. We think that feels about right to us. We know that 20,000 care workers in Scotland are in non-permanent contracts. We know there are almost 20,000 in atypical workers in Scottish universities, for example, to our larger

groups in the public sector. Then we know not exact numbers but fairly significant numbers in more traditional zero hours contract areas like leisure. There are some pretty big public sector elements in there.

In terms of the growing use of it, in our experience the biggest growing area is in the social care area. A recent survey we did showed that zero hours contract in the strict sense of having no hours in your contract is pretty rare in the council sector, but that is only a third of the social care sector these days. The rest is made up in the private and the voluntary sector. If we take that particular group, the growing area is in the voluntary and the private sector and there is probably more if we take into account nominal hours contracts, which are more common in the council sector. The reason for that is largely due to the contractorisation of care; the need to squeeze ever more care due to the demographic change out of essentially the same financial pot.

We have a piece of legislation going through the Scottish Parliament at the moment on integration of care, for which the financial memorandum makes no mention of any money to pay for growing demographic change. By any standards, the Christie Commission, to which I was an expert adviser, did do some numbers and it indicated a very big increased amount. The demands are coming there. They are coming because the voluntary and the private sector, in particular, are having to squeeze the contract price down to meet the budget and they are using zero hours contracts and exploiting the workforce in those areas as a means of achieving that aim.

Q240 Pamela Nash: That is very good information for us. Are the numbers of contracts increasing and how quickly are they increasing, if they are?

Dave Watson: How quickly they are increasing is difficult to say. They have always existed and we are not arguing that zero hours contracts should be banned because there are examples of where they are appropriate, but that is not the norm for most people. What we are seeing, particularly in areas like social care, is a growing use of them. It is very difficult, because of the lack of definitions or the lack of accurate statistics, to put any numbers on those for you.

The only numbers that are available are the ones that you have probably seen through the SSSC's statistics on workforce and the CIPD survey and other data. The ONS, as you probably know, are doing a consultation to try to improve the data that they hold on these contracts, but even that is going to be difficult. We rely very much on the Ash surveys, as everyone does, but that is only based on 1% of tax records. All this data is pretty dodgy, to be honest.

Q241 Pamela Nash: You did identify areas where zero hours contracts and short hours contracts are being used. You mentioned social carers are a particular concern. Is there any good reason why an employer would be using zero hour contracts in that sector and are there any other areas that are of particular concern of the misuse of zero hours contracts?

Dave Watson: I don't think there are many good reasons. Some employers in the sector would point to the increased use of personalisation, for example, as a means of paying for or directing care and that can mean less certainty about the demands for care, but in the main the better organised employers know that this is about workforce planning. You calculate what you need to provide, even in the personalisation context, and you plan that out and use it.

The reason for zero hours contracts are primarily financial. It enables you to have lower wages, certainly lower conditions of service, less certainty over those areas of employment and the ability to abuse staff by not paying for travelling time, for example, which is a very typical problem we find in the care sector. People are being paid for their contact hours with the clients, but not for the time it takes them to get between clients or even to clients. That is a very good example of some of the abuses that we find with zero hours contracts.

Q242 Pamela Nash: Just to be clear, that is the norm in other contracts?

Dave Watson: That is not unique to the care sector by any means, but that would not apply generally in other contracts. In the past, if you were a home care worker for example, you would have a contract for 20 or 30 hours a week and travelling time would be part of those working hours. With zero hours contracts we are seeing the opposite.

Pamela Nash: Thank you very much.

Q243 Chair: Can I just clarify one point? You mentioned there about zero hours leading to lower wages. Can you clarify how that mechanism works with things like the national minimum wage or whether someone is right for job? Can you just clarify the point you made?

Dave Watson: Yes, you are absolutely right. There is a national minimum wage, although the living wage is not specified in many care contracts. We are talking about national minimum wage. However, we are taking a number of legal cases at the moment where we have circumstances where members have identified they are not being paid for travel time. If you add their actual working time, it means they are getting paid less than the national minimum wage. We think that is illegal and in fact we won a case fairly recently in that area. It is also related to issues like sleepover time and other contact time with clients; about whether that is classified in legal terms as working time.

In the main I think the rules are fairly clear but the difficulty is a lot of these workers do not understand their rights, are not as well organised as they might be and a number of employers are taking advantage of zero hours contracts. For example, if you challenged your wage rate and challenged the issue around those issues with your employer you probably would not get asked back to work. There is a very strong deterrent effect on people raising employment issues, as there is with safety and other issues.

Q244 Chair: Can I just seek clarification on this question of travelling time? Somebody working in a shop or a factory would not expect to be paid to travel to the shop or the factory. Surely travelling to your place of work should not be paid.

Dave Watson: That is true in terms of you take a job and you know what your starting time is and our members would not expect to be paid to go to the base, for example. For argument's sake, if your base is in Airdrie you should go to your base. You would then head off and you would not expect to get from home to Airdrie, but, once you got to your base, you picked up your list of jobs for the day and you would expect to be paid from there. What we are now finding is people are being told, "Go to X or Y", and they do not take account of the time in between. In some cases that is relatively short. It might just be the neighbouring street, but we have had a lot of cases recently, for example in the Highlands, where you could be driving many miles between clients. If you are not getting paid travel time there, then you are at work for a far longer period than you are getting paid.

Chair: That would seem to be a gross abuse then, would it not?

Dave Watson: It is a gross abuse, but it is happening.

Q245 Chair: Who is doing it?

Dave Watson: It is happening mostly, I have to say, in the private and voluntary sector. That is where most of the legal cases are coming from and they are the ones that we are challenging.

Chair: Rather than just saying “the private and voluntary sector”, which private employers and which voluntary organisations?

Dave Watson: They will come out in any legal action that we need to take against those employers.

Chair: You are our witnesses now, so we are asking you now.

Dave Watson: I am not in a position to name particular companies.

Chair: Why are you not in a position?

Dave Watson: Because we are in the process of building cases and our legal strategy is based on building those cases.

Q246 Chair: That is a slightly different point. These people can be named, can they? They can be identified? We have the difficulty in the past sometimes with issues like that where people say that certain things are happening and when you come to try and press to identify where they are happening then we have difficulty locating evidence. On something like this where the suggestion is that people are not being paid travelling time between clients, I think you can understand why we quite obviously want to have the perpetrators identified. Is it the case that UNISON will ever be in a position to tell us about this or how can you assist us?

Dave Watson: Obviously it will be a matter of public record. If we have to go to court against these people, they will be named as defendants in the case that the individual member will be pursuing. That will be the action taken, probably in the Employment Court, on that matter. Yes, then it will be a matter of public record, but in the meantime obviously our primary concern is to protect the individuals who are currently employed by those companies.

Q247 Chair: Are there examples where you are not taking cases for them on issues of travelling time in the voluntary or the private sector where you are in a position to identify these companies to us; if not now, then later?

Dave Watson: Not at the moment, I have not. No.

Q248 Pamela Nash: Just a supplementary to that. Have you had complaints from your members in NHS about zero hour contracts and short contracts?

Dave Watson: It is less so. You could argue, for example, that bank contracts are zero hours contracts on that basis. The difference is that the NHS’s structure of bank contracts has changed over the years from people who went on the bank because they could not get a normal nursing job to those where banks are almost an alternative form to traditional

overtime on that basis. We get very few cases, certainly across my desk, in relation to the NHS. It is mostly in the social care sector.

Q249 Jim McGovern: You might be aware of this, Dave. There was a dispute in Dundee City Council just last year where the home carers had their mileage allowance cut from something like 45 pence to 25 pence and the joint trade unions got together and said, “There is nothing in your contract to say you have to use a car”. So they just walked and the council gave in after about three weeks and put it back up again. That is not exactly about zero hours contracts, but as an example of abuse of travelling time.

Dave Watson: Yes, it is. I am union’s Head of Legal Services and I am a lawyer, but I would not argue the law is the best way to resolve these. As always, the best position is if we can organise and respond collectively through collective bargaining on these matters. In areas like the local authority, most local authorities, even where they have zero hours contracts, are looking to move away from them; not just because of fairness to the workers but because they can see some of the undesirable spin-off effects of zero hours contracts in relation to continuity of care, for example, with the client. So they can see those benefits.

In fairness to the voluntary or the private sector, they would say to you they are being dragged down this road as a result of the prices that they are being given to deliver this area of work in terms of the contracts. That is the sort of approach we would normally adopt, but it is not always possible to do that. Some of these are quite small employers. Sometimes the workforce is very geographically disparate. It is not easy for us to organise to achieve the sort of result that you have described there in Dundee.

Q250 Chair: Can I just follow up a point that occurred to me just now? You are not willing to name particular employers at the moment, but who is the ultimate paymaster then for these contracts? From whom by how many steps does the worker get paid? Is this money coming from the UK Treasury via the Scottish Government via local authorities or private providers or the voluntary sector or is there a different route?

Dave Watson: No. In the main this is essentially Treasury money that comes to the Scottish Government through the block grant and that is why, in fact, this week the relevant committee in the Scottish Parliament is looking at the Procurement Bill. We have been arguing in similar evidence sessions to this and in written submissions that the Scottish Government has a responsibility in this area to ensure that the Procurement Bill lays down appropriate standards for contracts, particularly contracts when you are purchasing services for people.

We, along with the voluntary sector, the SCBO and others, all argue that the rules for contracting for people services should be different from the rules for purchasing things like pens and paper and so on. Our view is the Scottish Government has responsibility by setting the legal procurement framework through the Procurement Bill and, not just through the Procurement Bill, but they also apply the European rules in this area. As you probably know, there is a new European directive on procurement. Interestingly, that one will also change the rules about the purchase of health and social care contracts. There will be a threshold of £750,000, from memory, which will operate in this area. Again, there is discretion on the Scottish Government as to how much they are going to apply that.

The next stage down from that is, of course, predominantly local authorities, of course. Sometimes health boards as well, but it is predominantly local authorities who are the purchasers of care services from the private and voluntary sector. The other route is that it

is local authorities providing money from personal budgets; so it is the individual carer who purchases. In reality they do not always purchase from an individual. They generally purchase from voluntary or private sector agency or an organisation that then provides the care in a more group sense. That is the route of finance.

Q251 Chair: If we are making recommendations, because in the context of other things we have looked at supply chains and so on, at what point in the purchasing chain would we want the people controlling the budget to say that there will be no situation where travelling time, for example, is not paid for? Is that at Scottish Government level?

Dave Watson: First of all, it would be at Scottish Government level in terms of what is called the Social Care Procurement Guidance. The primary legislation is the Procurement Bill and, of course, all Scottish legislation has to be compatible with the European Communities Act as well. Therefore, the directives are implemented directly in Scotland not via Westminster. It is the Scottish Government that has to do that through the procurement. Now, most of this detail is covered in procurement guidance and there is specific guidance in Scotland for social care procurement. That is written and sent out from the Scottish Government and that is followed. In some cases they have to follow it because there is secondary legislation. In that case it is guidance but then it is always followed by local authorities. I think that framework is very important.

The second level is the actual contract is usually issued by the local authority, so obviously it is down to the local authority. Now, again, they would say to you, “Our budgets have been cut very significantly as a result of the austerity cuts from the UK Government but also the Scottish Government has obviously put most of the cuts. In fact local government is the only budget to have had a slash cut to its budget since the crash. Other ones have had real term ones, but local government has taken the brunt of the financial cuts. Local authorities would say to you, “Look, this is difficult for us because we have to meet this increasing demand for home care”. Care homes are pretty stable at the moment. Home care is the increasing demand and that is the service that they are struggling to find the money to meet.

Q252 Chair: So they are essentially meeting that financial difficulty by cutting the terms and conditions of workers who are at the very bottom of the pile?

Dave Watson: Yes. The voluntary sector will tell you, and they are absolutely right, that essentially the local authority will now say, “Okay, we used to give you £18 an hour. It is now £16 an hour”, or something else or, “We need you to do more for that same sum of money”. So they are either cutting the amount of money or saying to the voluntary or private sector, “If you want to win the contract this time around you are going to have to essentially do more for the same”.

Q253 Chair: Either the local authority or the Scottish Government has it within their powers to specify that that abuse, for example, on travelling time between clients has ended. Is that correct?

Dave Watson: Yes. They can lay down what we could call decent employment standards as part of that arrangement and we are supporting amendments to the Procurement Bill to include that provision.

Q254 Jim McGovern: A question for you, Jake. In written evidence to us you state that daily agreements are common in the offshore industry. Could you explain, just for the

record, what daily agreement, why they are used and what it means in practice for the worker?

Jake Molloy: Well, what we have is a daily arrangement where a lot of workers are on what we would term, at least, bogus self-employment provisions here where they contract for the provision of services to client and a daily is determined to which you will be paid for each day effectively worked. If you work that day you get paid that day. If you are then demobilised from an installation and go home you sit by the phone and wait for the call. As we say, we do not have a definition for zero hours but we have certainly a situation with certain workers who have contracts of employment that provide no hours, similar to the daily ones. There are no hours written into the contract. It is simply a case of you agree to provide services as and when required and you will be paid for your services as and when they are provided. That is the degree of the relationship.

Q255 Jim McGovern: How commonplace are they?

Jake Molloy: In the catering sector there is a lot. We are seeing it increasingly with engineering.

Jim McGovern: When you say “catering”, do you mean catering offshore?

Jake Molloy: Catering workers offshore, catering workers on supply and diving vessels. We are seeing it increasingly with engineering contractors now, the bogus self-employment provision. We have had it for a lot of years with the divers, but I suppose the point is obviously that diving companies are now bringing the divers into employment. That is historical. Divers were self-employed back in the 1980s and there was a daily agreement arranged there, but the vast majority are now on contract and more and more are moving into that.

Q256 Jim McGovern: The last part of the question was what is the impact for the worker? I know you say that you can end up you are there but would anybody be offshore or on a vessel for as little as a day?

Jake Molloy: Sometimes you can turn for your ticket and be turned away. You can actually turn up at the airport and the decision has been taken that you are no longer required because the job has been delayed or there has been a delay, so they just terminate the job completely. Sometimes they do not even get offshore. For the worker that means you can be sitting at home for weeks, in some cases months, with no form of income and no ability to claim benefit because you have a contract that says you are employed, but no form of income.

As Dave has alluded to, it acts as a great deterrent to challenge it where workers find themselves in that situation. They are reluctant to question or challenge and we think there is a health and safety element there because if they are so concerned that they are desperate for the work and will work at any cost then that is not a great safety cultural position to be in.

Q257 Jim McGovern: If I could double back a little bit to the questions the Chair was putting to Dave with travel time. In the situation you have outlined, if someone has travelled from, say, Birmingham to Dice and then is told, “No, the job has been delayed; we do not need you”, do they get paid for that travel?

Jake Molloy: They will get paid for the travel inasmuch as it is about expenses for the train fare but they do not get paid for their time, no. Absolutely not.

Chair: People could end up coming along, having been phoned in. I mean there would have been phone contact. They will turn up and then they will be told, “No, we do not need you at all”, and they will be sent home again and they will not be paid for any of that. All they would be paid for is simply their travel reimbursed?

Jake Molloy: Exactly that, yes.

Q258 Chair: Okay, thank you. Again, we are coming back to the question of who uses these contracts. What companies use these contracts?

Jake Molloy: In the catering sector you have all the main catering contractors: Sodexo, Aramark, ESS, Entier, Trinity, Force Catering and—

Q259 Chair: Rather than just trying to do it off the top of your head, it would be helpful if maybe you could give us a list of the catering firms that were doing this. Can I just clarify, though, who many people will maybe end up being turned away? If you have 99% of people who are working offshore in catering never being refused the opportunity to go offshore, that is slightly different from saying, “Well, it could be the other way around and 99% of them might end up being refused”. What is the ratio?

Jake Molloy: Fortunately the ratio is very small. The majority have permanent employment and in fact what they are currently trying to—

Chair: Sorry. When you say “permanent employment”, that is different from losing on this zero days. What I am trying to clarify is, of those who are on the zero days and the day rates, how many of them might end up being refused employment on any given day?

Jake Molloy: That is what we are trying to find out. We have entered into a dialogue with all these employers and Oil & Gas UK to try and address these issues and, on the positive side, the employers have agreed to sit down with us and look at the numbers, check the amount of hours these what they call ad hoc employees are doing and, if there are cases—they claim there are not, but the anecdotal evidence we get is there are—who are suffering as a consequence of this then they will address it. They have addressed it to some extent with the introduction of what is called permanent relief contracts where individuals get a basic salary and then get enhancement for days worked. They are working towards it, but there is still some way to go. I would say we are looking in the 100s as opposed to the 1,000s currently on the catering side on its own, but out with the caterers it is difficult to gauge.

Chair: In the 100s is a fairly substantial number of people, isn't it?

Jake Molloy: Yes.

Q260 Chair: Can I just clarify then, in terms of whom, that was catering. You mentioned this about engineers. Now, engineers that are being taken on these day contracts, have they been employed direct by the oil majors or have they been employed by subcontractors or subcontractors of subcontractors? What is the mechanism there?

Jake Molloy: It is subcontractors of subcontractors to oil companies. They are not just engineers. They could be any trade from scaffolders through painters to railroad platers to riggers. They are told that the only means of employing them is through self-employment. So they have to set up their own contract. They then provide a service to an agency contractor who provides their services to another contractor who provides a service to the

oil company. Again, it is a mishmash and it causes us concern because a lot of the permanent workers look pretty dimly on a lot of these guys. In fact the term “mercenary” has been used for some of them because they are moving from contractor to contractor and providing their services for excess of other workers. That is a worry as well.

Q261 Chair: We have heard something similar in the construction industry. Is that a reasonable parallel for us to make?

Jake Molloy: Yes. Construction industry and network rail, it is quite predominant there as well, yes.

Q262 Chair: Again, the engineers and the various trades, are most of them likely to get work on any given day or are most of them likely to be refused or does it vary very much?

Jake Molloy: It varies to a degree but, again, if you do not respond the minute you get the call you can be sitting for weeks or months with no form of income. It is viewed by most of the contractors as a refusal to accept engagement and, therefore, you suffer. That is why a lot of them take up the work irrespective of how much time they have had off on leave or how much rest they have had.

Q263 Chair: Coming back to the same sort of points that I asked Dave there, about the question of who is determining this and subcontractors to subcontractors. Presumably the people running the rigs, if they own the rigs, could specify to the contractors and the contractor’s subcontractors that they should not be doing these things except in emergency positions. Is that correct?

Jake Molloy: Absolutely. Yes, I could not agree more. If the oil companies wanted to engender and instil this safety culture, which they claim they do, then they would be dictating a policy of engagement and employment of their contractors, absolutely.

Q264 Graeme Morrice: Could you explain your understanding of the difference between zero contract hours and, say, agency work?

Dave Watson: In practical terms, I do not think there is a huge difference. A number of people who would be classed as agency workers would also be classed as zero hours contract staff. Obviously there are interplays in legal terms. The agency workers regulations have definitions in them that do not apply in the zero hours contract area, but they all have the same impact, essentially. It has that ability to call off work, which creates for the worker the problem that they have that level of uncertainty about the income. It makes it very difficult for them to get mortgages, for example, in terms of being able to demonstrate the level of income required and, therefore, essentially, in the longer term, it makes them more dependent on benefits and other support. That tends to be the issue.

I do not see a huge difference, frankly. I think agency work is part of the same problem. It is all this level of casualisation of the workforce.

Jake Molloy: We are seeing agencies that have previously retained staff and used them on a regular basis pushing them into self-employment to get round the agency workers direct because if they are providing those guys to service certain contractors beyond a 12-week period then we can try and push for the same protection, same payments and so on. They are pushing agency workers into self-employment, but agency workers, where they do exist, tend to have a more regular utilisation than what I would call the true zero hour contract and tend to be more akin to the team approach than the zero hour people as well.

Rob Gowans: I think one of the things we are finding is that zero hour contracts fall into different categories. Not so much that it is the zero hours contracts in themselves that are the problem; it is the way in which they are used. For instance, if an employer was using zero hours contracts rather than more standard part-time or full-time contracts or using them because they knew it has guaranteed the workers less rights or they have a bit of a hold over them in terms of the amount of hours that they can give. We have seen a number of cases where people's hours have been cut almost as punishment or as a way to get rid of them in many cases. There is one instance in the west of Scotland where someone was employed on zero hours contract. His best friend was the assistant manager. The assistant manager left on bad terms with the organisation and, immediately after that, the client's hours were cut from 30 to six a week. This is recently, and they were trying to get rid of him.

Another example where a client worked in a hotel for four years, on an as-and-when-required basis. Over the last six months had worked up to 50 hours a week until, all of a sudden, his hours were cut away to nothing. The hotel said, "We have no work for you. You can go if you want. We are not dismissing you. We are not making you redundant", but when he went online to look for alternative work his job was being advertised by the hotel. We draw the distinction that it is not necessarily about the contract; it is the way in which they are being used either to cut away a worker's rights or to cause problems, which might be a more flexible arrangement for the employer but it is not particularly flexible for the employee.

Q265 Graeme Morrice: You are right that it is an abuse of the situation but, in terms of the difference between agency work and the zero hour contracts, do you accept that there are differences or is it more or less the same thing?

Rob Gowans: Yes. In terms of the cases we see coming in, there are certainly more who are on a zero hours contract. With the people who come into our bureau it will be because they have a particular problem with their employment, whether it is terms of pay or working hours, but they are not necessarily thinking it is because of their (inaudible 2:59:18) but certainly over the last six months we have seen a lot more zero hours contracts than agency cases or the bogus self-employment that Jake Molloy referred to.

Q266 Graeme Morrice: Obviously some time ago the law was changed to regulate more effectively the whole issue of agency working that clearly you will be aware of. I think there is scope for that to apply to a zero hour contract as well.

Dave Watson: Very much so. I think the solution is for us to have employment legislation covering this particular area. There have been a number of attempts to start to draft some regulations in this field. The UK Government is consulting at present. Sadly, you will see a number of responses. I think this week is the closing date for the response to that consultation. What most of the trade union responses to that consultation will say is that the UK Government is only talking about—the rhetoric that we heard from the business secretary sounded as if there are going to be strong action taken, but when you read the consultation paper it very much points you in the direction of possibly an employer code of practice or something like that. Frankly, that is going to be next to useless in terms of defending and protecting people in this area.

We would like to see some regulation akin to the agency workers where you define zero hours contracts on that basis and where you provide some legal redress where there is

detriment in those areas, but where you specifically ban things. You will you ask questions later about the impact on services, but if we focus, as we have been, for the moment on the effect on workers, the most outrageous for me are the exclusivity provisions. The way I always put it is that in feudal days there was at least mutuality of obligation. Here, there is no mutuality of obligation and it is simply outrageous that you are in a situation where you are not being offered work but you cannot go and work for somebody else because of your exclusivity.

I think the CIPD survey rather understates the amount of that. There are some where there is absolute exclusivity clauses that I have seen. There are some where there is partial exclusivity, but in reality it is pretty much the full range. If you add those two together even in the CIPD survey, that adds up to about a quarter of the people on zero hours contracts who are in an exclusive relationship and, in those circumstances, you cannot do any work at all in that area.

I think there is a range of things we would like to see in that legislation, but I think the UK Government could help by essentially doing something akin to the agency workers, which has helped. It is not good enough but it has at least helped deal with some of the abuses. I think the risk is we are seeing some employers zero hours contracts instead of using agency staff because they see zero hours as a way of getting around the very limited protection that agency workers gives you.

Q267 Pamela Nash: Mr Gowans, the Citizens Advice Bureau have provided quite a comprehensive list of the main concerns about zero hours contracts and the issues that those on them face. Could you give us a brief summary of that and also explain to us what rights workers on zero hours contracts and nominal hours contracts do have? In your experience—and I would like to ask the others—do people know what their rights are and what rights they do not have on these contracts and are they aware of that before they sign up?

Rob Gowans: I will take those points in turn. Some of the key problems that clients have reported to us: as I mentioned, their ability to have their hours cut as punishment. Difficulty in knowing exactly what their rights are. Under a zero hours contract, if it is done in the casual labour way of doing it where somebody would have the ability to turn down work, then they would be classed as a worker. They would have more limited rights in terms of they would not have their right to unfair dismissal limited.

The problem is the way in which they are being used is that people will not necessarily have the right to turn down hours without fear of themselves being penalised. You might be working nearly full-time for a long period of time. One of the big problems is in terms of the fluctuation. Someone might work, for instance, a full-time shift; 10 hours the next week; four and a half hours; back up to 20 hours. That causes a range of problems in terms of them being able to budget.

If they are to claim benefits then it can be quite difficult for them to do because, for income-based GSA, you need five weekly payslips and then it would be averaged if your hours were not the same each week. There is also a bit of a hole between working tax credits where you need to be working upwards of 30 hours a week on income-based GSA, where you are working 16 hours or below—

Q268 Pamela Nash: The problem in that sense is because the person's financial situation is changing so rapidly?

Rob Gowans: Yes, it is changing so rapidly. We have seen clients who have been forced into multiple debt, getting into arrears with council tax and loans building up. They have also had to go to food banks because there is no work available and they have no money. There is a range of different problems, some of which are caused by the misuse of zero hours contracts and some of which are caused by them not having enough work or the fluctuating hours.

Q269 Pamela Nash: In your experience, are people aware of what this is, what might happen to them when they enter into a contract?

Rob Gowans: We have seen a couple of cases where people have not found out until they are working that they are on a zero hours contract. There is one client that was told at interview that he was guaranteed 30 hours a week but when his contract came for him to sign it was a zero hours contract, which did not come until three weeks after he had started. Another one where someone was working for a security firm for two years and had never seen a written contract; all of a sudden he was given no work and at that point he was informed that he had a zero hours contract. It was a situation where he basically had no option other than to leave and even leaving the job can cause problems.

The UK Government, in October last year, in quite a welcome move, publicly said that no one should be sanctioned for turning down a zero hours contract or for leaving one if there was no work, but we have seen cases where that message may not have gone through and there are mixed messages coming from the job centre of, “Well, you might be sanctioned if you do not have a good enough reason”, and people being—

Pamela Nash: I imagine that would be difficult if the paperwork or the contract is not very clear in the first place that it was a zero hours contract.

Rob Gowans: Yes.

Q270 Pamela Nash: I take it that if someone is not sure about how many hours they are going to be doing they will not know if they have fewer rights to annual leave and holiday pay?

Rob Gowans: Yes, and it can be difficult to calculate if they are working very different hours each week in terms of how much they would be entitled to over the course of the year and in terms of whether they would be entitled to sick pay.

Q271 Chair: Can I just clarify with Jake? The same thing, presumably, for all of that applies to people who are on daily contracts as well, does it not? There is not a different element to it because it is zero hours as distinct from day rates?

Jake Molloy: There is in that people who are on what we call zero hours contracts the employers argue they have protection because they have a contract of employment, albeit there are no hours in it, whereas the daily workers are employed for that day and the next day they are out of employment.

Chair: Right, but you still have exactly the same issues, don't you: the entitlement to benefits and holiday pay and so on?

Jake Molloy: The Benefit Office calculates the hours worked offshore and averages that out, which denies any worker who does hours offshore benefit to many weeks, maybe three or four months at a time.

Q272 Pamela Nash: I was just going to ask for some clarity on that. How are companies and employers getting away with basically bending the rules on what is, to us, statutory rights of employment in terms of holiday pay and terms of dismissal? How are they getting away with this on zero hours contracts?

Dave Watson: I think there are a number of reasons. The first thing is that there may be an assumption there that implies that employers understand the provisions. If you read the CIPD survey at page 29, as I was on the train on the way up, the interesting point was that their survey said that employers said they were not doing this and they were not doing that in certain numbers, but when they then went and asked them which employment rights applied to the groups the percentages were enormously different. What that says to me is that employers were very confused about issues like redundancy pay or maternity pay. They were very confused about statutory sick pay and even things like basic unfair dismissal rights and so on. There was a huge disconnect and, in fairness, the CIPD say in their summary that the confusion is not just with the workers.

Now, if the employers do not understand these provisions, the average, fairly isolated worker, and certainly in our sector where the supply is—as I said earlier, these are very isolated workers. This is not people working in hospital or in the council offices. These are people working largely on their own with that sort of one-to-one relationship. Sometimes it can be almost one-to-one with the person they are working for or at least isolated workers. If the employer does not understand the rules then clearly the individual employee does not understand them.

On the benefits point, the other thing to remember is that universal credit is supposed to sort all this out through a wonderful computer system that is going to match up, in a real time sense, earnings. I smile on the basis that I have not yet seen any of these computer system work and neither, as we know, has the department because they are crashing around their ears. In fact, I was at a conference on Friday where a leading academic in this field had been doing some work with a pilot scheme on universal credit and he said they had given up on the computer system and have reverted to using Excel. We have some members working in some of the pilot schemes, not on the DWP side but in the council side where housing benefit comes under, which our members administer.

It is so bad that they have fallen back to using spreadsheets, basically. You can imagine with a zero hours contract situation where hours can fluctuate enormously and you are averaging them over a period of time that it is going to be enormously complicated to try and match those things in benefits. People are going to be pretty busy in this area. It is just going to be a nightmare of a calculation. I just do not see how it is going to be physically possible to do it.

Q273 Pamela Nash: Just moving on slight, the evidence that we had from RMT mentioned that one of the survivors of August's helicopter crash is now in a difficult situation because of this financially to do with sick pay. Could you tell us a bit more about that and can I just ask the others if you have any examples about people who have been discriminated against either in terms of sick pay or maternity and paternity leave?

Jake Molloy: Again, it is nature of the agency area itself, but as quick as they pick you up they can drop you just as quickly, in fact quicker, as was the case with one of the guys in the 23 August helicopter crash last year, the only agency we believe were on board that particular flight. He was recovered from the sea, taken to hospital and given the support

and counselling of the various companies on site at the time, but once he got back home no contact; nothing at all, despite repeated efforts to speak to the company that engaged them.

That happens on a regular basis with diving companies as well with daily rate divers. I am dealing with one right now who had a near death experience under a ship and almost got sucked into it and lost his breathing systems. He was a pretty traumatically affected by it, but, as I say, that is the nature of the beast in that the agencies and daily service providers simply will not support their staff. As far as they are concerned they are there to provide services and, once those services have been terminated, that is it.

Q274 Chair: Can I just clarify the position of the position of this particular individual? I am not sure whether or not this is confidential or whether or not you are able to discuss this with us and provide us with more information. Can you tell us that?

Jake Molloy: Well, he has been given legal advice and he is part of a group now that are being looked after by lawyers. I would expect that he will be taking some kind of civil action.

Q275 Chair: Okay, so a bit like UNISON. If court action is pending then, he wants to go down that route rather than speak to us. I can understand that. They have a far greater ability to award compensation than we do, which may be regrettable but it is a matter of fact.

Jake Molloy: But the compensation would be with the helicopter operator as opposed to the agency that was engaging him. I am pretty sure I could get you the name of the agency that was engaging him if that is what you are after.

Chair: I am not quite sure what we might want to pursue under that, but we will maybe come back to you about the detail on that because obviously that is an interesting issue not only in terms of the trauma for the individual but the idea that somebody to whom something happens then just suddenly gets dropped and there is no ongoing liability, how people are left and so on.

Jake Molloy: There is also the potential, which (inaudible 3:15:37) of liability in the event of an accident and blame being apportioned to one of these things. There are major hazard industries and the increasing focus on liability gives us some cause for concern under this contractor, subcontractor, agency, limited company type employment relationship, especially, as I say, if there was a big bang and a number of fatalities.

Dave Watson: I can think of two cases that I have dealt with in recent years. There was a zero hours contractor who was about to go on maternity leave where they were essentially not asked back and all sorts of half credible reasons were wheeled out on that case, but in fairness it is pretty rare and so I am not making a big issue of that. What is more common, of course, is the impact of sickness absence. In those circumstances there are two impacts. One is that people with poor sickness records, it would seem, are less likely to be asked back to do hours on that basis, but probably more worrying, particularly in the care sector, is that you ask workers in that area and they will say, "I have a cold. I will probably still go out because I am worried that they will not ask me back next week", and frankly you do not want your social care worker turning up at your house with your granny, blowing her nose and passing on the cold. That is not unique, I have to say in fairness, to home care.

Q276 Pamela Nash: We heard from Mr Molloy and we have heard that in other evidence the fact that people who are on these contracts do not want to jeopardise the job by refusing. Do you have any evidence of that? I know we have anecdotal, but has anything collated on that at all?

Dave Watson: It is anecdotal. This is structured focus group that we have done with a group of workers because you do not call them out of meetings and then start a group—

Pamela Nash: I understand that, but you have done focus groups?

Dave Watson: We have and we published, only two weeks ago, our Time for Care survey based on the stories of staff in this field in Scotland and they tell those stories. I commissioned that survey because I have done these focus groups with these group workers and I was pretty horrified by some of sickness absence and the safety issues, but that is the sort of feedback we got back. It is not a scientific number. I can't give you a hard number, but essentially we asked our members to tell stories and they tell the story as it is and that is a fairly typical story about sickness absence.

Pamela Nash: In terms of the focus group findings being published, I did not realise that when I started.

Rob Gowans: We have seen an incident with maternity pay in the west of Scotland, leaving her employment because her employer told her she was on a zero hours contract, "You won't get any maternity pay". Sick pay, there is quite an interesting case where an employer refused to pay sick pay to someone who was on a zero hours contract who had undergone an operation on her hand. She was quite keen to return on lighter duties. They did not want her back on lighter duties, so basically they were quite happy for her to continue to be signed off because they did not have to pay statutory sick pay. That situation continued. People have been told that they are not entitled to any paid holidays because they are on zero hours contracts. People coming in after two years and saying, "Hold on a minute, I haven't had any paid holidays at any point. Is this right, what I am being told?" We have had other issues.

Q277 Pamela Nash: Is it right? My understanding would be that everyone is entitled to a certain amount of annual leave.

Rob Gowans: In that case, the bureau would assist them to write a grievance letter. Maternity pay leave is quite complex because it can depend on how many hours you are working and, again, with the fluctuations in hours we are seeing, it can depend.

Q278 Chair: Before we move on, this question of you writing somebody a grievance letter. On the basis of what we have heard, writing a grievance letter is likely to result in you never being asked back. What sanction or what line can people see in those circumstances?

Rob Gowans: That can be a difficulty. While it may be that it is legally questionable, people are afraid to raise grievances with their employers in case they are told basically, "Right, we are not giving you any more hours after this".

Chair: Do you have any examples of that happening, where people have come to you with a grievance, sending a letter and then ended up being penalised?

Rob Gowans: Yes, we do. There is one from the east of Scotland where someone refused to do additional admin work for no pay and their hours were then cut back from 27 to six

per week. I think with the examples I alluded to earlier that you felt had been treated unfairly by—

Q279 Chair: That example where somebody who refused to do additional hours for no pay was cut back from 27 hours a week to six, if you can we would like to know which employer did that. That is not an example of good practice, so I think we would quite like to bring the employer in to discuss that with them. Is there any way in which you can help us with some of the detail on this?

Rob Gowans: Some cases we do not have the name of the employer either, because we have not been told by the client or by the bureau, and there is issues in terms of the anonymity, but I will—

Chair: I understand the issues of confidentiality but if we are going to pursue some of these issues then it is going to be by asking employers about their practices and we have to be able to identify who the guilty parties are. It is a bit like the question of blacklisting. We have to identify which building firms were involved before we can pull them up for it. Maybe you could have a look and clarify.

Rob Gowans: Yes.

Q280 Chair: Again, relating to that, Jake, I made a note earlier on about which rigs and which oil companies were involved in that. Just as you are going to give us information about catering, it would be helpful if you were able to identify some of the firms that are involved in other bad practices as well, for the engineers and the like, and we will then consider how best to pursue these matters.

Dave Watson: Sorry, could I just add one point? It is important to understand that not all people who are on zero hours contracts will necessarily be employees under the law. They may be workers and, therefore, they do not have the same rights. I think one of the interesting points in the CIPD survey is they asked the employers about statutory sick pay and only half of the employers said the people on zero hours contracts were entitled to statutory sick pay. Statutory sick pay is payable to workers and employees. Therefore, it just illustrates the point that here are the employers—often very big employers—half of which do not think that the law applies when clearly the law does apply.

Q281 Chair: That says something about the membership of the CIBD possibly, does it not, since they would be filling this in?

Dave Watson: No, this is then going to employers. They are not—

Chair: All right, sorry.

Dave Watson: I would have hoped the CIPD member would have qualified and understood these things, but they are asking employers in the survey on this point.

Q282 Jim McGovern: Jake, you will be thinking I have been picking on you but I am not. Very briefly, I will go on to the implications for health and safety of agency workers and zero hours contract workers. Seven or eight years ago I spent a year participating in the Industry and Parliament Trust, and because I am (inaudible 3:24:37) involved in offshore industries, I chose to participate in that scheme with ExxonMobile. One of the days—it took about three days actually—involved going to an offshore platform. I think it was in the Beryl

area. I knew that with the (inaudible 3:25:02) smelt of disinfectant and fresh paint. I am not saying they painted it for me coming or anything like that, but it was very, very strict and high profile on health and safety. Obviously I had to do a bit of training and (inaudible 3:25:17) water and so on. Then when I got there I got the overalls the hard hat, the goggles, the boots, the (inaudible 3:25:23) and so on. One thing I remember is that my hard hat was a different colour from the other guys because I was a visitor, so if something went wrong it is their job, not because I am an MP, presumably, but because I am a visitor I get special treatment or looked after differently.

Chair: I think it was because you were from Dundee.

Jim McGovern: I had a blackout(? 3:25:44) I can tell you. I was very, very impressed but even at the time I had doubts, “Is this the way it is every day, every working day? Is this because an MP is visiting the platform or something like that?” I know the point you are making was about agency workers and people who are not directly employed, possibly having an adverse effect on health and safety but is it fair to say that health and safety is a very high profile issue?

Jake Molloy: Absolutely.

Jim McGovern: I mean positively.

Jake Molloy: Yes, it is positively up to a point. That is why I talked about the culture, which is engendered and instilled by management. I can take you back three weeks and talk to you about an incident that had the potential to capsize a link west of Shetland with 150 people on it. It wasn't reported. The workforce wasn't (inaudible 3:26:42). The workforce tried to stop the job before it was started but management pushed on and pushed ahead, and they have all the provisions that you talked about there. It is management attitudes and where you have a culture of fear and concern, especially among a group of agency or zero hours people, they are more likely to go ahead and do the job under that instruction whereas permanent staff, well trained staff, well educated staff are more likely to try to stop a job. A lot of agency hands on that, they are all like a lot of short-term people a lot of whom have now left and gone to other jobs. That is the nature of the beast again but we came very, very close to a major, major incident west of Shetland in the last month. That is despite safety being a priority we are told by the industry.

Q283 Jim McGovern: I know I have made comparisons with the construction industry and that is my background, many years in the construction industry. If you adhere to the absolute letter of the health and safety law and regulations, the gaffers would say, you close the site, and so people did take big, big chances working over open joists, and so on, carrying panes of glass and stuff like that. A guy at Bignell(? 3:28:01) had a fall through the open floors with a pane and the glass nearly took his arm off. Those are the sorts of chances that people take in the construction industry, and again it is because if you are regarded as some sort of nuisance you are not going to be there for long.

Jake Molloy: Unfortunately the offshore industry has suffered for 30 years with the NRB “not required back”, and an agency hands more than any other and zero hours people know that that is a very real problem. Again, permanent staff now we have guidance in place with the industry to challenge it—I am working on one right now—but for the agency staff you have no ability to challenge. You cannot demonstrate that it was an NRB in the true sense and even if you are a trade union member you cannot challenge it. It makes life just that bit more difficult. It makes you a bit more vulnerable and, as I say, more likely regrettably to comply with an order even if that order is jeopardising your safety and everybody else's.

Q284 Jim McGovern: While we are on the subject of health and safety—and you mentioned the trade unions—certainly in the construction industry if you are a trade union rep you are automatically a health and safety rep. If that applied offshore would the health and safety rep be responsible for reporting a hazard of anybody, whether it was an agency worker, somebody that was directly employed? Would the health and safety rep take that responsibility, an individual who might lose his job?

Jake Molloy: We have a lot of safety reps now in place offshore. In fact I have the testimony of the elected safety rep on the day for that incident I talked about. He tried to the best of his ability to stop the job but management just went ahead and did it anyway and the rest of the crew complied and (inaudible 3:29:48) regrettably. The trade unions do not have a right of appointment and the trade unions do not influence the training as such on the ground of those safety reps, the vast majority of whom are doing it as a hobby more or less.

We are addressing that again. We have new training schemes in place for safety reps. In fact, tomorrow morning we are holding a major event in Aberdeen that the Workforce Engagement Support Team has launched and we are going to try to improve on that workforce engagement element. You see the inherent fear is there, the concerns are there and we have to educate workers to challenge and to say no in those circumstances.

Jim McGovern: Yes. I said it before that some of my own colleagues regarded me as a nuisance because I was a safety rep and I would say, “That is dangerous what you are doing”. “It will get it done quicker” and that sort of thing.

Jake Molloy: I did that myself for seven years and I was a nuisance according to some of them there.

Q285 Chair: You said that the trade unions do not have a right of appointment relating to health and safety reps. Can you clarify for me how health and safety reps offshore would actually be appointed then?

Jake Molloy: They are elected by their peers. It came from the statutory instrument 971 of the Offshore Installations (Safety Representatives and Safety Committees) Regulations, where constituencies with a maximum of 40 people elect from that number.

[Break in recording]

Q286 Chair: Let me just go back to the point where I had asked you about the right of appointment of health and safety reps and you were going to clarify for us how these came to pass, whether or not they were appointed by management or (inaudible 3:43:40).

Jake Molloy: No, the safety reps are elected by their peers. The Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, where a constituency of a maximum number of 40 elect from that number someone to fulfil that role, but they have no duties placed on them. They fulfil that role on a voluntary basis, almost a hobby basis I believe.

Q287 Chair: But they are given time off from their normal work and it is not on top of their normal work activities, is it?

Jake Molloy: They should be given time off but invariably they do not get the time off. That is one of the issues we have had to deal with.

Q288 Chair: That question of health and safety reps not getting the time off that they are entitled to, is that a widespread issue across the economy?

Dave Watson: The issue for us with health and safety is slightly different. Particularly in the homecare sector, which I have been talking about, obviously there are not a huge number of safety reps because they work in people's homes very often. In fact there is very poor safety, very poor risk assessments. It tends to be generic and not very specific. I did specifically ask this question because obviously we have been involved in the stuff around blacklisting. In the focus groups I asked them, "What if you saw health and safety abuses or health and safety risks, would you report them?" The general answer from people was, "We wouldn't be thanked for doing that so generally we don't do it", which I was obviously pretty appalled at.

It then occurred to me to ask a further question, which wasn't on my original focus group question list. What I asked them was, "What if you saw elder abuse, for example, if you saw abuse by a member of the family or by another care worker or anybody else involved with the family on that basis?" The answer from the same group, I asked several of them, they all nodded and they said, "We probably wouldn't raise that either, Dave, unless it was very, very serious. The reason is if we went back to the base and reported this we wouldn't be thanked by the company or the organisation involved. The reason for that is that it is partly related to personalisation. Essentially the individual budget being held in those circumstances raising difficult issues like elder abuse is something that staff would not be thanked for doing so".

To be honest that appalled me, which is why we then went and did a little bit more work on this one in terms of the surveys of members on that basis. I do not know if that is widespread but it is not just a case of the safety of workers, it is also a case of care standards. That is why zero hours contracts have an impact on the quality of service, not just on the safety and wellbeing of workers.

Q289 Chair: Can I just clarify, though? You are talking about this unwillingness to report elder abuse. That is solely applying to people who are on zero hours or limited hours contracts?

Dave Watson: Absolutely, yes.

Q290 Chair: This would not apply to mainline or permanent salaried staff?

Dave Watson: No. Staff in this area and obviously one of the impacts of zero hours contracts is much higher turnover than we are used to in the sector. Certainly long established staff, who are not on zero hours contracts, understand their professional and statutory responsibilities in this area and would have no compunction about raising those issues. If you are on a zero hours contract you would be much more reluctant to do so.

Q291 Graeme Morrice: A couple of questions to Rob. I know we touched on this a little bit earlier. As you are aware, the DWP have stated that job seekers will not be forced to apply for or accept zero hours contracts. Do you know if this policy has been adhered to at all?

Rob Gowans: We have a couple of cases where people have been given instructions that may contradict that. In the first instance, someone who moved up from the south of England to find work in Scotland had been on a zero hours contract before, which did not give him enough hours. In fact he was sanctioned for not having a good enough reason for leaving work. That was around the time that the announcement was made so I do not know

whether that factored into it. There was another case in the west of Scotland where someone was working on a zero hours contract and also claiming income-based Jobseeker's Allowance. They found they were getting so few hours they were only earning £30 for a shift. It was unsociable hours so he needed to take a taxi back and forth, which cost £20. Their view was, "It's not really worthwhile working because that will come off my JSA" but were told by a centre, "You can't leave that because that would be you leaving work without a reason. You might be sanctioned for this".

What we would like to see is certainly more information, both for claimants and for the job centre staff, to make it clear that in the circumstances where someone is either offered a contract but it is a zero hours contract they can refuse it without being sanctioned, whereas in these cases where if they are leaving a zero hours contract because they are not getting sufficient work then that is going to lead to a sanction for leaving work without a reason.

Q292 Graeme Morrice: That is a leaving work once they have accepted it but obviously I am talking about people being advised, it appears to be the policy of DWP that you do not need to apply for or accept a job in the first instance. You mention a couple of anecdotes there. How do you feel it is applying across the board?

Jake Molloy: Certainly I have not seen any specific cases of people who have been sanctioned for refusing a job that they knew to be zero hours. One that I alluded to earlier is that sometimes it is not always clear to people whether it is a zero hours contract or not, but I have not seen any examples of people being sanctioned for turning down a zero hours job.

Q293 Graeme Morrice: Yes. What about people on zero hours contracts, it kind of relates to the hours that they are working, but instances where people are on these contracts but still able to claim Job Seeker's Allowance.

Rob Gowans: Yes, in those cases certainly we have had difficulty calculating the entitlement for a base JSA. As I mentioned earlier on, it is calculated on the basis of five weekly payslips. A couple of points about that. One is that if that is done and over the next five weeks their work declines their benefit might not change for weeks. Similarly, if the reverse is true they might find themselves in a situation where they have had an overpayment and will have to pay that back.

Q294 Graeme Morrice: So then on the basis that this situation probably changes from week to week.

Rob Gowans: Yes, basically the hours have picked up again but—

Q295 Graeme Morrice: It must be a logistical nightmare, not just for the individual but for the DWP with the individual having to notify the DWP every five minutes of a change in circumstances and that takes time. You can understand in that situation from time to time of an under and overpayment. In terms of other benefits, like Working Tax Credit or Housing Benefit, presumably this whole thing is a logistic nightmare.

Rob Gowans: Yes, it is very difficult because of the constantly changing amount of hours in some cases, and people in some places getting—

Q296 Chair: This must be almost impossible, surely. If you are on a zero hours contract and you have varying hours and you presumably have to tell the Housing Benefit Office, the benefit agency, the JSA, a whole host of things. Very often, and I do not want to be unfair but some of those who are on zero hours will be among the most vulnerable of

workers and least able perhaps to work their way through the bureaucracies, then it must be absolute chaos.

Rob Gowans: Yes, we have seen cases where people who been on one particular benefit, have notified one and were under the impression that they would tell the people for the benefits that they were on but that has not been the case and they have incurred an overpayment, or it is just as simple as basically people struggling to keep up with the amount of hours that they have and working out how that affects their benefits. It can be very difficult. The benefit system basically was not designed for zero hours contracts where somebody's hours might change—

Chair: It was designed in the 1950s basically when people were stable. You knew very well that you did not have this fluidity and things like that.

Rob Gowans: Yes.

Q297 Chair: Can I ask one further point just arising? You said there, and I think I caught you correctly, that somebody had a £20 travel bill compared to a £30 shift. The employer was not reimbursing for that travel?

Rob Gowans: That was basically them coming into work but because of the hours that it was at they needed to get a taxi in and back, which cost them £20 and it was quite a short, low paid shift, so it really was not very beneficial in that case for them to be working.

Chair: Absolutely. Thanks. You have you finished that point.

Q298 Jim McGovern: I put this question to everybody but I realise, Dave, that you have a view on it. The Government have identified two areas of concern: exclusivity and transparency. I believe it is currently out for consultation and they are looking for an employer-led code of practice on both issues. What do you believe the Government could do to increase transparency over the terms and conditions of zero hours contracts and should there be a code of practice? If so, is an employer-led code of practice the best one we can get?

Dave Watson: I did touch on this before but I think the point I would make is that the consultation paper focuses very much on—if you look at the way the questions are worded—whether an employer-led code of practice would do X, Y and Z. In the main our view is that, first of all on the exclusivity point, there is no code of practice that can deal with that. You either ban it or you don't. Essentially, our view is and I suspect you will see all the trade union responses say exactly the same thing that the only solution to that is restraint of trade, that exclusivity contracts need to be banned end of story.

The transparency point. Transparency, per se, is a good thing, I mean if it is more transparent. Certainly more on education and understanding would be a good thing. The examples I have given you about employers not understanding the interplay with the current legislation is an indication of greater transparency on that basis. I think Rob makes a fair point that a lot of our people are in the same boat. They do not always understand they are on a zero hours contract.

This phrase “zero hours contracts” is fairly new but actually the practice has gone on for years in different forms. So I think a little bit more transparency is a good thing, but it just misses the main point. Unless you have laid down very clearly a definition of what zero hours contracts are, and you actually define the ill that you are trying to cure and then you set in place a series of regulations and give protection to people who use the rights that they have in those regulations, as you do in agency and part-time regulations and so on, then frankly it is just going to be chocolate coating in terms of tackling the issue.

So, transparency is good, code of practice a waste of time. What we need here are proper regulations.

Q299 Jim McGovern: Exclusivity you would say it should be banned?

Dave Watson: It should be banned.

Jim McGovern: Somebody cannot work for another employer with the zero hours that are offered to them.

Dave Watson: It is a fundamental point even going back to master and servant relationships earlier and back to feudal days is that there is mutuality obligations. One of the legal tests for whether you an employee or a worker is the mutuality of obligation. When I was at law school the law was X. It has gone backwards and forwards over the years as to what the tests are for being an employee and an employer and they keep changing. The bottom line is that if your employer says, “You can’t work for anybody else” then they cannot have their cake and then eat it. They have to say, “If you cannot work for anybody else I have to pay you so that you are not working for somebody else on that basis”. That does not seem to be unreasonable. I cannot see any halfway house there. It seems to me that that is all or nothing. It is either lawful or it is not.

Q300 Jim McGovern: That would satisfy—as you would call it—mutuality of obligations?

Dave Watson: Absolutely, yes, because essentially you are saying, “You cannot go and work for a competitor or for somebody else”. A lot of our members, particularly in cleaning and a lot of those areas, will often do two or three or more jobs. It is very common in the council sector where cleaning staff will work in a building like this and then they will go and clean the college. They will do two or three to make up a decent working week to pay their wages. That is fairly normal because people need the hours and different times to clean the building, but these are all proper contracts. So you have a contract there not a zero hours situation, where in the zero hours situation you are sitting there and you cannot go and look for another job because you have to be available to work for this particular employer.

We are probably talking about a quarter of all zero hours contracts, so it is an awful lot of people on that basis. It is probably something like 25,000 people in Scotland who are affected by that—and that is based on the rough statistics that we have—who are in the situation where exclusivity is a problem for them. They cannot earn a living to pay the bills and the mortgage and everything else because they cannot work for somebody else.

Q301 Jim McGovern: Yes. It does sound very, very draconian. Until we started conducting this inquiry I did not know that such a thing existed to be honest. Do you have a—

Jake Molloy: I would agree with everything that Dave said because exclusivity is what is affecting catering workers. On the true zero hours contracts they cannot go to work for anybody else, whereas the daily guys can go elsewhere. But for them they can go into excess in some cases. That is a worry as well. The average worker works 182 days a year, 2,184 hours a year, which is excessive by any stretch of the imagination. If you have workers on daily or agency doing an excess of that, and they are getting 230/240 days a year, 12 hour shifts, you have to begin to worry about the impact that could have on themselves and others.

But transparency is key. Transparency then would regulate hours. It would regulate what is being done. In fact there is even a system in the oil and gas sector for tracking and calculating hours, which could be utilised in those cases as well, the Vantage system. With industry an employer gains in that respect and with transparency in regulation then we could enhance it.

Q302 Chair: Do you have any observations on that?

Rob Gowans: I think that exclusivity has come up in a couple of our cases where someone who was on a zero hours contract was offered a job elsewhere, and certainly in one case their employer contacted the perspective employer to essentially put a stop—in their words—on them going to work for them. Certainly I agree with what—

Q303 Chair: Can I just clarify why that was? The point made about cleaning. I can understand if it was, say, commercial secrets. Was it the nature of the jobs why their employer said, “No, don’t” or was it just a question of they wanted a person—

Rob Gowans: It was not particularly clear from the case exactly the reason why. But certainly I broadly agree with what Dave Watson said that there is not really a good reason if you are on a zero hours contract why you should not be able to go and work for someone else. If employers have concerns about people working for rivals and things like that then perhaps they should consider the contracts they are putting people on give them a more substantial—

Q304 Chair: Presumably the argument for exclusivity is to guarantee that the person is always available when they are wanted and that they are not away working for somebody else, so there is a perfectly understandable argument for exclusivity from the employer’s point of view.

Jake Molloy: To maintain that exclusivity you should pay.

Dave Watson: There are ways of dealing with the example that Rob gave. They are called restrictive covenants. There are ways of writing into an employment contract in terms of secrets and other arrangements. That is why you will often see, for example, IT companies people leaving with gardening leave provisions where there will be covenants that restrict people working for competitors. Sales is very typical. We are not talking about this here. We are talking predominantly women, predominantly low paid workers. These are the groups we are talking about here. They do not have huge company secrets essentially. It is about them being available to work at the drop of a hat when that employer wants them. If they go off working for another employer on that basis then they are not available when they want them.

Q305 Chair: I think there is a case for an employer, if they have given a guarantee to somebody of work for 40 hours a week, for example, for them saying, “I don’t want you going away and doing 30 hours for somebody else at the same time”.

Dave Watson: Yes. In Jake’s case it is people sitting at home. In my case it is exactly the same. You are sitting there. You are a home care worker. You are working for one of these agencies. You are sitting at home on that basis and you are not being offered and you are not being promised. There might be a vague promise, “Something might come up on Thursday”. That does not pay the bills is the problem for our people. Essentially the situation is that if another agency comes along and says, “We really need somebody on Wednesday and Thursday” they should be able to go and work for them because they have been made that offer.

Q306 Pamela Nash: Looking at the CIPD survey they have stated that zero hours workers are just as satisfied with their job, happier with work/life balance and less likely to think that they are treated unfairly by their employer than other workers, while you might have said that these contracts are unfair and they create insecurity and exploitation for those who are on them. Who is right?

Dave Watson: The title of that report is *Zero-hours contracts: myth and reality*. If you read the report there is not that much difference, in fact so much so that—and you have heard me quote it a couple of times—I think it is quite a good report. You will find there is a lot of good, detailed work that was done in that report. When I read it I agreed with a lot of it.

I have to say I think the title is a tad misleading. When you look at it and you look at the numbers very often it is 50/50, where it is saying everybody on a zero hours contract. We have members, for example, if you ask them, who quite like being on a reasonable number of hours contract. The example in my case might be a normal hours contract. One of the women in one of the focus groups said to me, “Look, Dave, I do 20 hours a week, which is my contract but actually most weeks I do 30. But every so often my daughter is not well and so on, so I say to the boss, ‘I am not coming in this Friday to do the extra hours because the baern’s not well. I am looking after them’ and therefore that bit of flexibility is quite helpful”. She would say, “I am quite happy about that”.

The CIPD survey said that was about half in their case. This survey covers a whole range of things from the produce industry to manufacturing, so I cannot speak for many of those industries. I would say in our industries it is a lot less than half on that basis. In our surveys it is high. They are doing a very broad sample survey of the whole economy and, for reasons I have said also, I think there is a disconnect between what their employers are saying to them in terms of the early part of the report and their understanding of the position later on in the report, which in fairness the CIPD author does as well. So I do not think the “myth and reality”—there is a bit about their methodology which was about an email follow up survey. You can always challenge methodology in surveys but, generally speaking, I think it is a good report. It is helpful but it does not mean that there is nothing wrong. In fairness, they do not say that although sometimes it has been misquoted in that way.

I do think some of their conclusions rather overegg their point. In fairness, I can well imagine CIPD members thinking zero hours contracts are very useful because if you are an HR professional it is a lot easier than having to do a serious workforce planner. So I can well understand the CIPD member saying, “We like zero hours contracts, Dave. Doing what you want us to do, which is proper workforce planning is hard work”. To which I would say to them, “You are just being lazy. That is what management is about. That is what you are paid for, and zero hours contracts is just you being lazy and you need to do proper workforce planning”.

Frankly, I do not think there is a gulf there but I can see reasons why the numbers would come out in a different way.

Q307 Pamela Nash: Do you have anything to add to that?

Jake Molloy: I think that CIPD are clearly talking to the opposite end of the scale. You are in an accident hazard environment if they go offshore or shipping. You have a core team in the middle and you have those that want to come on, young guys, young families,

mortgages and the like, who want to put in as many hours as they can and see zero hours or agency as a good thing for them. It is delivering the maximum return. They can work as many hours as they can. The other end of the scale you have the guys who are looking to reduce hours. They are getting near retirement age and want to work either less or just work when they want. Again, that might turn out to be a benefit to them but that is where I would reflect back to the need for transparency and regulate the whole process. If you want to work less hours and work on a flexible contract but without exclusivity, great.

Q308 Pamela Nash: I think that serves as a warning because prior to us doing this inquiry there were a lot of people who were calling for a ban on zero hours contracts. Just all negative. But I think that everyone agrees here that sometimes the degree of flexibility that is given by it is appropriate. You were just talking about—

Jake Molloy: We would like to see a true sense of zero hours out there. If you can remove exclusivity, if you can have ability to move around and work as and when it pleases you, and some kind of permanent relief provision, so that you are not suffering financial hardship as some people on zero hours contracts are.

Q309 Chair: Yes. Can I just pick up your point, Dave, about this person that was working 20 hours and sometimes got an extra ten? In those circumstances there is no reason why they should not be on a permanent contract for 20 hours a week and then they are getting the opportunity to obtain more. They do not need to need to be on zero hours in order to have that sort of flexibility.

Dave Watson: The point I was making in answering Graeme's question was that in terms of the statutory framework is the one that specifies what is a zero hours contract, what is what I call a nominal hours contract or short hours type contract. You have the definitions there. Then you ban exclusivity all together on that basis. You then give essentially a right a bit like a fixed term contract, for example. You do it for such a period therefore you are entitled to get the full contract on that basis, so if you are regularly working 30 and you wanted—I will give you an example. I am the lead negotiator for the biggest pension scheme in Scotland, the Government pension scheme. It probably affects about one in eight Scots on that basis. As part of the new scheme that is coming in in the next year, we tackled this issue about council staff—and a third of the people in that scheme are not in councils, they are in the voluntary sector and the private sector and so on—where the current rules basically say if you have a 20-hour contract your pension contributions and your pension payment is based on 20 hours a week, even if you work 30 hours a week regularly. The new scheme we said, “No, forget that. For pension purposes you will pay contributions on the hours you actually work and you will get your pension based on the actual hours”. What we were finding was women in particular, part-time women were coming to retirement. They were working 30 hours a week. They retired and they were only getting a pension based on 20 hours a week. Therefore, again (inaudible 4:11:52) estate and all the rest of it.

Essentially we have changed that. It will take a long time for that to kick in because it will only apply to service after next year, but you can see that is one way that we and Cosla and the Scottish Government have signed off to a way that you can deal with these things in a fairer way. I think it is a regulatory framework is what we are looking for at a Westminster level on that. The practice will then vary industry to industry. The deal that Jake might want in the oil industry may not be exactly the arrangements that would work in my area, which is the social care sector, and perhaps not for some of the people that are coming through Rob's

door in the retail and other sectors. If you get the right regulatory framework the basic rights are there and then you can deal with the other sectors in terms of best practice through procurement and other things.

Q310 Pamela Nash: The other part of UNITE's evidence to us is they painted a picture of a typical zero hours contract being someone who is more likely to be younger, less likely to have a degree level education, less likely to be a UK national and also to be more in low paying sectors. Could I ask if that is your experience as well and also if you think there are any links between levels of satisfaction with being in a zero hours contract? So are people who are more highly qualified or older more happy in zero hours contracts or are they being used less with those ages?

Dave Watson: I think the data, such as it is, does show that there is a disproportionate concentration of young workers on zero hours contracts above other ages. I suspect that is simply because it is a newer thing and, therefore, it is the way it has been introduced into the workforce. I am not sure it is a deliberate strategy. Of course the other factor is that it tends to apply to low paid workers. I will quote the example that is always given in the CIPD of the experienced professional who likes his flexibility to work so many days. Sure, these people exist but let's not kid ourselves. This is not your typical zero hours contract person. We have members who are architects, engineers and lawyers who have retired early and do a bit of zero hours contract and they are quite happy with that, but that is not what we are talking about here. We are talking about predominantly women. We are talking predominantly low paid workers and predominantly young workers as well.

One of the points in the focus group that worried me I have to say is that there were quite a number of young workers in this focus group who have come into the care sector on that basis. Some of the older staff have been around for years on that basis. But some of the younger staff who answered questions, one of the things that worried me was that their answer was, "Look, Dave, we're only here until we can get a better job. This is zero hours. The pay is rubbish. The job is really tough. Why would we want to hang around?" Others have used the phrase, "The new retail" in that sector. For me I think the worry of that is that is you then get a very high turnover and if you talk to carers they will say that. I can remember back to the Barclay report where continuity of care was absolutely crucial. If you are an elderly person and you have people essentially providing very intimate care for you: bathing you, changing, all sorts of things, to have a different person traipsing through the door two or three times a week is absolutely appalling. What you want is the same person on that basis.

An example that one of the members of staff gave me was a lady in her eighties. She had had four or five different people in as many weeks and then the latest one to arrive was a 45-year-old strapping bloke who was going to bathe her. You might say, "Well, why not?" but she was absolutely horrified at that thought. Where was the dignity and respect for that particular person on that basis? My point would be that that is not to rule out 45-year-old blokes doing that type of work but the real issue was just the turnover and the fact that young staff, in particular, did not see this as a career. They did not see this as a job that they wanted to be in. They did not see it as a worthwhile job. It was, "It pays the bills for now until I can get a better job". I do not remember care being like that ten or 20 years ago. I have been a full-time official for more than 20 years. I have worked in this sector and I was a health board member. I cannot recall, in the many, many meetings that I have done, people describe social care in that way. They are always proud to do it and saw it as a vocation. I think zero hours contracts is creating a culture that is just wrong.

Q311 Pamela Nash: I think that is really important that you have managed to get that on the record. It is certainly something we will consider further.

I want to move on to under employment in general. I know that there is a particular issue with under employment here in Dundee. I was hoping that you could give us a better idea of what the level of under employment is across Scotland and if there is a particular problem in Scotland as far as you are aware, in terms of a comparison with the rest of the United Kingdom?

Jake Molloy: In the sector that I am responsible for there is not a problem of under employment. In fact they argue that there is a skills shortage but again I would throw this back to zero hours as well. There is an opportunity being missed there. As Dave said, an HR professional, if they were doing their job and earning their crust as they should be, could organise this to a far greater extent by utilising opportunities to reduce hours for older staff, looking to reduce those numbers, through job share schemes and the like, and bring new people in, giving them the opportunity to limit their hours initially and then moving them to full-time employment.

I think the saddest part for our sector is that there are literally thousands of young people and many, many hundreds in Dundee that are paying upwards of £1,000 to try to get a pass to go offshore in the form of survival training courses and the like and they are not getting a first interview, while the zero hours agency hands are being exploited no end out there. There is a means to an end here by regulating to some extent against zero hours and an opportunity to knock the past off I would say.

Dave Watson: I think what we are seeing in terms of the Scottish Parliament Economy Committee did produce a report on this particular issue, looking at what Scottish data there was. Again it is a problem. What we do know is that virtually all growth in self-employment in that area is not from a deliberate choice. What we are seeing is something like 75% of businesses now are one person self-employed businesses on that basis. That does not imply to me a certain burst of entrepreneurial zeal. Some of these will be zero hours contract people because the point I was making before is not all of these are employees. They are being classed as self-employed. I think that is an important point.

The other point is that 40% of self-employed people fall into the 20% lowest paid, so again there is a perception that somehow self-employment is something for at least middle earnings for trades people and so on, but increasingly these people are falling into the lowest one. The INO(? 4:19:58) produced a report a few years ago where they did an analysis world-wide and demonstrated that countries with high levels of this type of self-employment were the lowest per capita GDP economies as well. I would argue that the point about zero hours and bogus self-employment—as Jake rightly points out as a famous UCAP(? 4:20:20) phrase from years gone by—the point about these areas is it is bad for the worker. It is bad for the industry as I think we have all illustrated but it is bad for the economy as well. There are few winners in this one. There are a few employers making money perhaps on exploitation of these areas but, generally speaking, the economy loses out.

Q312 Pamela Nash: Thank you. Do you have anything?

Rob Gowans: There is not really a great deal to add to that. Certainly the figures that I have seen are from the Scottish Parliament Committee report, which said that the UK as a whole and Scotland in particular has a higher share of under employment compared to the rest of the world and there might be a number of reasons for that. Certainly, in terms of what we are seeing, then we would see cases of people who are really struggling with

bills, struggling with multiple debts, including sometimes from payday lenders and in some cases having to be referred to food banks because they are not getting enough work to keep the wolves from the door. Certainly, yes, I would say under employment is a—

Q313 Pamela Nash: So you are seeing the impact as well?

Rob Gowans: Yes. There is some cross-over between that and zero hours, not in every case but there are certainly some links.

Q314 Chair: I wonder if I could move on to look at the question of why employers would want to use zero hours contracts. We have covered a number of points but one of the arguments that has been advanced is that it is difficult to sack anybody that if you take somebody on on zero hours then that then gives you flexibility in terms of managing your workforce. Does that have any validity as far as you are concerned?

Dave Watson: My answer would be: show us the evidence. We have the worst employment rights in Europe. It is well established in that area. We are in breach of ILO conventions on more areas than I care to think of. Lots of these people of course will not have any employment rights at all in these areas because of the new two year rule on that basis. That rules people out on that arrangement. You were very rightly asking us, “Well, name people” and so on. You have the FSB or the CBI, the Chambers of Commerce who churn this stuff out. When you ask them to point to examples, in fact all the surveys of actual members show that this is not an issue for them at all. Employment rights are very weak in this country and there is no evidence that it is any brake on employment at all. The UK Government put in their consultation paper but did not produce any evidence to suggest that there was any risk that taking away or tightening up the law on zero hours contracts would have any impact on employment levels at all.

Jake Molloy: That is why we have human resource departments. That is what it is about. It is exploiting a human resource and zero hours contracts allow them to do that. It is a resource on tap. It eliminates any administration. It eliminates any liabilities. It eliminates any duty of care almost in some cases.

Q315 Chair: That is why they are in favour of it, presumably.

Jake Molloy: That is why the employers fully support the idea, absolutely.

Q316 Chair: In a sense there are reasons why they would want to have people on these zero hours contracts for perfectly sound business reasons, not necessarily creditable ones but there are perfectly sound and recognisable advantages.

Jake Molloy: There are to the employer, absolutely, yes. The advantages they have is a human resource on tap. They can draw on it any time they want and exploit these workers in any way which way they choose. But to suggest that they need it because it is too difficult to sack somebody is nonsense, frankly. Nonsense.

Q317 Chair: One of the issues is the question of good practice. We had Asda(? 4:24:51) seeing us a little while ago and they were saying that Tesco and a couple of other big firms—Sainsbury’s I think and Morrisons if I remember correctly—were not having people zero hours contracts. They were able to manage and so on. In a number of areas like, say, the North Sea where there seems to be quite a lot of this day(? 4:25:15) contract. Are there examples of good practice where firms have been able to avoid having people in this difficult position?

Jake Molloy: Yes. The ad hoc employees are in some 12,000 to 15,000 engineering contracts under the auspice of the Offshore Contractors Association has a provision of standby. It has a permanent relief-type contract where workers will sit at home for months if need be. At least they have some kind of income to maintain that. It eliminates the exclusivity. It reduces costs for them certainly and the worker does not earn a margin capacity, but there is sufficient there to sustain employment and avoid—

Q318 Chair: Some of the argument against that is that it is costing more than having people on zero hours.

Jake Molloy: It may be costing more but if you want to draw on a resource on a short period of notice and have those skills available to you then there has to be some kind of payment.

Q319 Chair: That is the point about exclusivity and so on that we covered earlier on, isn't it?

Jake Molloy: Yes.

Q320 Jim McGovern: Can you just give us any examples? You mentioned bad practice in catering. Are there examples of good practice because at some stage I think we are going to bring in some firms and say, "Look, we have been told that you are an exemplar of good practice? Can you just clarify for us how you can do it and how other people cannot"?

Jake Molloy: Those same companies have permanent relief contracts. They have people sitting on permanent relief who are paid a salary of 162 days I think it is a year, and they are used throughout the North Sea to work on any installations as and when required for any amount of days as and when required. It gives the individual a guaranteed income. It gives them—

Q321 Chair: Surely, if you are saying about the same firms having two different standards of contract, in a sense they have their current workforce that they use all the time. They then have some that they are paying a standard salary to that they are going to use before they come to people that they do not need at all. So, in a sense I do not quite see one as being an alternative to the other. It is just a selection. Are there examples, like the one that was quoted to us about Tesco's and Sainsbury's, where as a conscious decision they have not taken anybody on to zero hours and have done the difficult work about personnel planning that would be necessary?

Jake Molloy: All of the engineering contracts do that. They take them on and immediately put the workers on pay. They can be sat in the house, what they call standby payments or they can go straight offshore, so—

Q322 Chair: None of them would have zero hours people then?

Jake Molloy: No. Unless they are forced by the oil companies to engage them on limited company stats, voluntary self-employment stats.

Q323 Chair: So that would depend very much upon the ultimate employer's decision. We mentioned the voluntary sector and we mentioned local authorities and contractorisation. Are there any particular examples of good practice in exactly the same sort of circumstances where people have managed to avoid having people on zero hours?

Dave Watson: Yes, I think even if you look at the CIPD survey you will see in one of their tables that 20% of the people even the employers said these people were on regular hours so there was no management needed. So 20% of their sample had no fluctuations of work.

There was no need for zero hours contracts at all. Even with the 50% where there were fluctuations I would say that that is just lazy workforce planning. Who is dealing with that? Our most recent survey would demonstrate that local authorities in Scotland have moved significantly away and the numbers now on zero hours contracts are pretty small. There are some in some areas. It tends to be like leisure where it is more event management led and that has been fairly traditional before we even raised the question of zero hours contracts. Very often it used to be people who were working and it would be a second job for them in any case in those areas. So local authorities are working hard.

We have had discussion with Cosla around this one. They have not quite issued the final guidance or anything but they have been talking with the personnel directors group in Scotland. Councils are not quite there yet but they are a long way down the road. We are also in discussions at the moment with a number of the bigger voluntary sector providers, some of whom have made extensive use of zero hours contracts and they have been looking themselves. The result was raising the issue and saying, “Do we really need so many zero hours contracts? When we have so many people who are working regular hours why do we have them on zero hours contracts with all the downsides for them as well?” I think the better end of the voluntary sector are beginning to say to themselves, “This is not good for our clients”, the turnover and other issues that I have described today, “so we want to be at the cutting edge of this”.

Part of that is we had a conference with them all before Christmas. We have a draft of a new protocol with the voluntary sector about how we might deal with that. We are continuing those discussions and hopefully we will get agreement, but from their point of view what would help would be if the Scottish Government agreed this procurement framework and councils then played their part and councils had the money to do it. I think that one or two of the bigger ones—I cannot give you a name yet—we have been talking to might be in the situation to be able to hold themselves up as something close to an exemplar and show you how they, in a very difficult time for them in terms of budget cuts and so on, have moved, if not to entirely eliminate zero hours contracts to reduce them quite considerably.

I do not want to give those names now because we are not at that stage but, hopefully, we might be in time and they might be happy to come along and do that because there are people in the voluntary sector who do not use zero hour contracts. There is that principle. They would say to you, “As a matter of principle we don’t do it. We think it is bad for the care. It is the wrong culture for us. If we lose contracts we lost contracts”. That would be their view.

Q324 Chair: Apart from you tantalising us with possible future revelations, I want to clarify the extent to which bad practice would always drive out good. If somebody is not paying travelling time between the clients you can see where they are obviously then able to put in a lower bid. You would have thought—all other things being equal—that they will always win the contract if it is decided on sometimes across the road. How much scope is there for people in a competitive market to abide by best practice, unless it is applied universally?

Dave Watson: No, there is scope. There are a number of things—sorry to keep mentioning the European Union—in terms of the directive in terms of health care, the £750,000 threshold; it means that you could produce a number of contracts there that break down to below that threshold. In those circumstances, all the competitive rules that apply to a regulated procurement, as it is known, will not apply to some of these contracts, so that is one area you can do it.

The second thing is that you do not have to appoint these contracts solely on the basis of cost; your best value is not the same as cost. Local authorities are available to do it on the best-value basis. The other thing, the new European directive, which the case law had already developed, they are bringing in the most economically advantageous tender. Again, that gives you an opportunity to take a broader view of the community benefit and the quality aspects of the contract.

If you have someone making a bid and the only reason they are cheaper is because they are doing all of these things, not paying for travelling time and so on. If you are the contract evaluation officer there—and I was involved in evaluations, I have been—I would say, “The reality is Mrs Bloggs can’t get from A to B if she is not being given the travel time. So what is going to happen is she is going to short cut the contract”. Essentially, instead of Mrs Bloggs getting a 40-minute visit she is going to get a 30-minute visit because she can only move so fast. If you do not allow the travelling time we are not really getting a better deal by going with the cheapest tenderer because all they are going to do is short cut the contract. There was none of this in CCT in days gone by. It is about skills and contract evaluation, tender evaluation. It is about specifying, getting the framework and it is also about quality evaluation as well.

Q325 Chair: Coming back to the point you were making about cutting the 40 minutes to 30 minutes, surely that does not necessarily apply because if the contract is you are there for 40 minutes and somebody is paying the travelling time and another person is not you can still get the 40 minutes’ attendance time but you just have a much lower price because you are not paying the travelling between. It does not necessarily mean that the attendance time is chopped off.

Dave Watson: It does. It goes back to what we learned during the CCT days. Essentially, the poor end—shall we say, to put it politely—of the contractor market in this area what they do is they price it on a low-profit basis. They make their money by cutting corners on the contracts. We had that in CCT days with cleaning and so on. If someone was off sick the ward did not get cleaned, instead of bringing in another person. The way we dealt with those companies in those days back in CCT, certainly in Scotland, was to monitor them very, very tightly. Essentially, when someone did not arrive the nurses on the ward said, “Someone hasn’t arrived, go over to the client monitor officer” and we did.

The difficulty with home care is that this is not like a hospital or cleaning in the council. It is individual houses spread over huge areas. It is very difficult to monitor. You would have to have someone with a clipboard chasing behind every contract. It is difficult but by random checks and stronger monitoring by the client officers and so on, a whole range of things, people know who the firms are that are doing this. This is not a secret in the social care field. Therefore, smart tender evaluation—is probably the best word—means that you can pick a contractor, a voluntary or a private sector operator, who will deliver the goods fairly.

Q326 Chair: Unfortunately, none of this helps us with the private sector but that is perhaps another day for other people.

Dave Watson: Some of the private sectors ones can be good in this area as well. In fairness, it is not solely a wicked private against a good voluntary organisation. There are some of the private contractors, frankly, who are as good as some of the worst end in the voluntary sector area, which is rare for me to say that.

Q327 Jim McGovern: You will be glad to find that we are getting near the end. A couple of questions though—and Rob touched on this earlier on—about exclusivity that should be outlawed, mutuality of obligation should be maintained. I see UNITE have come forward with a couple of recommendations, how they could see zero hours contracts being improved. For example, there should be an opt in rather than it being the only game in town. You should decide whether you want a zero hours contract. Every worker regarded as an employee, with all the attendant rights and terms and conditions that come with that, and some sort of minimum hours per week contract. Do you think that would be the way forward to improve what we call zero hours contracts?

Jake Molloy: That is what we would advocate as a strength over the permanent relief ad hoc, stand-by provision with the ability to be utilised as and when required for as many days, hours as may be required. But there will be a retainer keeping employment, along with all the relevant protections that come with that continued employment.

Dave Watson: Yes. My bullet points for what I would like to see Westminster doing in this area is to define zero hours contracts. Very clearly, ones that fail specified guaranteed hours, that specified guaranteed hours but when workers regularly exceed that. You could have a threshold there of 10% or 20%, that deals with the short hours element by defining it.

I would then like to see written notice of hours and commencement of work, so that is not in dispute. Equal treatment with terms and conditions, compared with fixed-term workers in the same situation. The right to request fixed and regular hours every six months, in the same way as we do with maternity and other types of arrangements. The right to be offered a contract after 12 weeks of continuous employment. Again, that is a provision not dissimilar to what we get for fixed-term workers. The absolute prohibition of exclusivity clauses and some remedies as a detriment of dismissal because you are a zero hours worker, so there is some legal protection for our people.

That is from day one, protection as it would be for discrimination and other assertion of statutory right provisions. It is not like an unfair dismissal. It would be one that would kick in from day one. If that was part of a regulated arrangement, three of those were in Ed Miliband's statement on this issue a couple of months back. I have added a few to it but, nonetheless, in our view we will provide a good statutory framework in employment law, which, as I said earlier, we could build on in terms of procurement and sector-wide agreements to deal with our own particular industries.

Q328 Jim McGovern: Thanks. We have to throw you out of here very, very shortly. Do you want to add anything to that, Rob, anything different from what has already been said?

Rob Gowans: No, no, although I did agree with—

Q329 Jim McGovern: One last question from me and you might have caught the tail end of the previous session, which was about the bedroom tax. Everybody in the room was in favour of the abolition of the bedroom tax but we spent most of the time taking evidence and discussing how best we could mitigate the worst effects of the (inaudible 04:40:33). Putting that into the context of zero hours contracts, do you think they should be banned completely or just improved and audited?

Dave Watson: I am arguing for them to be regulated in employment law so there are basic protections with people who are on them and then allow us to do it from there. It is difficult to ban them completely because, frankly, it is too easy to dream up other ways of getting round them. My advice would be, in legal terms, I would rather see it regulated in a way that gives protections, rather than ban it. Because I know what will happen, my opposite numbers in the very plush new offices in parts of Edinburgh will just dream up a new version of that and we will be back round the table for the next new year telling you, “This is terrible. Can we have a new piece of legislation?” I am just being practical in terms of we could regulate the practice, we can reduce the abuses of the system and that will allow the handful of people who want it to continue.

Q330 Jim McGovern: Going over it again, the improvements we spoke about in the previous question would be start with progress or so.

Jake Molloy: We want zero hours—as they are constrained within the catering contracts that I mentioned earlier—outward. You cannot be exploited in that fashion in this day and age where you are sitting waiting on a phone call to go and work as and when an employer decides without any form of income. We want that blunt outward and regulating it, to all extents, outward.

Q331 Jim McGovern: Yes. You would be in favour of a complete ban.

Jake Molloy: On the model that I mentioned here is zero—

Dave Watson: I would agree with that, yes.

Jim McGovern: I see, yes. When you look at the worst excesses that should be—

Jake Molloy: Focus on what (inaudible 04:42:24) limited amount of hours then that is for those workers, absolutely, but zero—

Chair: Yes. The retention of any sort of zero hours contracts would be the exception. A case would have to be made, rather than an open—

Q332 Graeme Morrice: You will be pleased to hear this is the last question, you will be aware that obviously employment law is a reserved issue. But do you think there is anything that could be done by the Scottish Government in terms of curbing the excesses of zero hours contracts in Scotland?

Dave Watson: Essentially, yes. As I have mentioned, the procurement Bill is the main one. The other thing they could do is remember the Scottish Government is a big employer in its own right. The point I would use is it a bit like the Scottish living wage. The Scottish Government can lead the way. We have largely got there now in terms of public sector employment in Scotland in the living wage. The gap is procurement and if we get the procurement right we will do that. Zero hours is the same. Essentially, the Government should lead the way with all the public bodies in Scotland and then you do the rest through procurement. There is still a regional gap but it is a bit—

Jake Molloy: I would agree with procurement side for the provision of public services by private attached (inaudible 04:43:52). I agree with you on that, yes.

Chair: Rob, anything you want to add?

Rob Gowans: Not really, aside from they could produce information as could local authorities, which I think would be helpful.

Q333 Chair: That is us just about come to the end. What we always ask is whether or not you have any answers prepared for questions that we have not asked, any points that you feel we should have covered that we have not or points that you were ready to give us. I do not think that Dave said that you have any thoughts unexpressed. That is exactly what I thought but I just thought I would check. Any other?

Jake Molloy: I would just like to emphasise the unique nature of our sector, the major hazard element of it. If you get it wrong the outcomes are significant and can be significant for many, many people. On that basis alone special attention should be given to that, it means a hazard area.

Q334 Chair: Can I just be clear, you would take the view that the North Sea in general is to some extent a hotbed of zero hours, along with the rail industry and the care sector and so on?

Jake Molloy: I am not sure it is a hotbed but it has the potential to become a hotbed, given what is—

Chair: I may have used the wrong phrase there. I mean an area in which it is used, disproportionately more than a number of other areas.

Jake Molloy: Absolutely, yes.

Dave Watson: One point, which was zero hours contracts, staff and training. Our experience is that staff on zero hours contracts get less training than those in permanent employment, which is a point to make. The other abuse you find is often the use of premium rate phone calls, phone numbers, the people who ring in for work. It was something else that came back in one of our surveys that I had not thought of but people having to ring up and to get their next call and the rest of it on that basis, so they have to pay to get their work. That is another real abuse of the situation.

Q335 Chair: Again, I know that you like to tantalise us but surely you could tell us who is doing that.

Dave Watson: I do not know because it is a survey you see. It is a members' survey.

Q336 Chair: Why don't you go and check with your members if they are willing to tell us?

Dave Watson: It is a survey but I do not have the names on the forms because it is not in the—

Chair: If you can find out we would be very interested in asking them—

Dave Watson: If we can we will let you know.

Chair: Right. Thank you very much for coming along.