

Working Families response to the Business, Energy and Industrial Strategy Committee's inquiry into the future world of work and rights of workers

1. Introduction

- 1.1 Working Families is the UK's work life balance charity. We run a free legal advice line for parents and carers needing advice about employment rights and in-work benefits. We support a network of 2,000 parents of disabled children who work or want to work. We also work with employers to benchmark best practice and to help create family friendly workplaces.
- 1.2 We welcome the opportunity to submit evidence to this consultation. Our submission focuses on those questions of most relevance to our role supporting working families through our legal advice service. Working Families provides free legal employment advice and case work for parents and carers on employment rights and gives basic advice on the benefits and tax credits that working parents can claim. We reach between 2,500-3,000 families a year across the country through telephone and email support. The majority of our time is spent supporting disadvantaged families and those on a low income.
- 1.3 Record numbers of people in the UK are employed as an agency or casual worker or as self-employed. The number of people who work for themselves in Britain has increased 45 per cent since the turn of the millennium to 4.8m, or one-in-seven workers. Further, there is emerging evidence employers are opting for zero-hours contracts where they previously would have opted for full-time contracts. The Resolution Foundation has noted that:
- “There are indications that **the majority of the increase in (zero-hours contracts) over the past twelve months has come from full-time workers**. We shouldn't read too much into this shift in composition, not least because part-time workers still account for 63 per cent of (zero-hours contracts), down slightly from 66 per cent last year. But it could be an early sign that (zero-hours contracts) are becoming more mainstream, with employers using casual contracts in roles that we wouldn't traditionally expect them to.”¹
- 1.4 Advising parents on zero-hours contracts or contracts whereby their employer has classified them as 'self-employed' has been a strong feature of the work of our Legal Advice Service in recent years.

¹ www.resolutionfoundation.org/media/blog/zero-hours-contracts-casual-contracts-are-becoming-a-permanent-feature-of-the-uk-economy/

2. Parents and carers and insecure work

2.1 Agency work and casual work is intended to offer flexibility to employers and workers. Employers can quickly change their staffing levels at minimal additional cost and workers can work when they choose. For some parents and carers working for an agency or working casually does help them balance their responsibilities at work and at home.

2.2 For the parents and carers we speak to on these type of contracts, however, flexibility is a façade - and working hours are being imposed on them by their employer. The Resolution Foundation has found that nearly a third of employers expect staff on zero-hours contracts to always or sometimes be available for work.² A refusal to work shorter, longer or simply different hours can easily lead to there being no work at all. Only a quarter of those on zero hours contracts work a fixed pattern of hours each week.³ In November 2015 there were around 1.7 million contracts in the UK that did not guarantee a minimum number of hours.⁴

2.3 For parents and carers this type of insecure work, with varying and unpredictable weekly hours, can result in significant variations in income, making it hard to arrange (or retain) childcare and disrupting social security payments. They also make it very difficult if not impossible for workers to successfully request a change in their hours or working pattern to accommodate a change in their family circumstances, or to resist a problematic change in their hours or working pattern imposed – without consultation – by their employer.

Simon⁵ is a single parent working for a provider of services to the elderly. Although employed on a zero-hours contract, Simon has always worked five full days, including Saturday and Sunday, each week. After an unavoidable change in his childcare arrangements, Simon made a formal request to swap the weekends for two days in the week. However, this has been refused by his employer, and Simon fears he may have to give up his job.⁶

Karen, a young single mother of a disabled child, had been working on a zero-hours contract when her employer suddenly changed her shifts to include night work. When Karen indicated that she could not work night shifts as she could not find affordable childcare, her employer insisted she work the night shifts or “find another job”.⁷

2.4 Because of their employment status ‘workers’ are not entitled to the same family-friendly rights ‘employees’ are – parental leave and time off for emergencies, for example.⁸ Indeed some parents in insecure work believe they have no rights at all

² Zeroing In: Balancing protection and flexibility in the reform of zero-hours contract, Resolution Foundation, 2014

³ Ibid

⁴ November 2015 survey of businesses, ONS

⁵ Names have been changed

⁶ Rigid flexibility: the work of the Working Families Legal Advice Service in 2014, Working Families 2015

⁷ Ibid

⁸ **Workers** are entitled to be paid the National Minimum Wage; be protected against unlawful deductions from wages; have the statutory minimum levels of paid holiday and rest breaks; to not work more than 48 hours on average per week or to opt out of this right if they choose; to be protected against unlawful discrimination; to

because of their employment status. In many instances parents are often afraid of asserting the rights they do have. The fact that some have a legal right to request a working pattern that matches their caring responsibilities, for example, is of little, if any, value when there is such an imbalance of power.

Safina was expecting a baby who had a congenital condition and was only expected to live for a few weeks. Her husband was a self-employed minicab driver. He wanted to take time off to be with the baby. As he is self-employed there was no form of paternity pay - so he couldn't afford to stop working. Even if he took unpaid time off, he was worried he wouldn't be given work in the future.⁹

2.5 As Citizens Advice concluded in 2015:

"Work without security around terms, hours, duration or working pattern... presents unscrupulous employers with additional avenues to avoid employment rights or pressure employees into forgoing them. The ability of employers to reduce hours, change favourable shift patterns or end a temporary contract can create significant pressure on workers, which stops them defending their rights. For many, these pressures can render their rights useless."¹⁰

- 2.6 In short, parents and carers on these types of contracts are afforded little of the security, autonomy and control they need to combine work and family life that parents and carers with more secure contracts and fixed income streams enjoy. In our experience many are left exposed to unscrupulous employers who consciously and deliberately use these alternative forms of employment to exploit or discriminate against them.

Mandy had worked for a bank on a zero-hours contract for several months without any indication from her employer of dissatisfaction with her work. However, when Mandy informed her employer she was pregnant, her manager stated there had been complaints about her work. When Mandy challenged this, the manager changed the story to "you haven't been working hard enough". Mandy's hours were then reduced to zero. In effect, she was summarily dismissed.¹¹

- 2.7 Working Families is concerned these contracts are being used to erode employee rights in the long term rather than to manage short term fluctuations in demand - and are creating an inequality of bargaining between the people with work to offer and those that need the work.

- 2.8 This is bad news not just for the workers in question and their families, but also for the great majority of law-abiding employers, who face being unfairly undercut by less scrupulous competitors.

be protected for 'whistleblowing' (reporting wrongdoing in the workplace); and to not be treated less favourably if they work part-time. **Employees** receive all these rights plus Statutory Sick Pay and Redundancy Pay; maternity, paternity and adoption leave and pay; minimum notice periods if their employment will be ending; protection against unfair dismissal; the right to request flexible working; and time off for emergencies. Some of these may only apply after a period of continuous employment. Taken from *Zeroing In: Balancing protection and flexibility in the reform of zero-hours contract*, Resolution Foundation, 2014

⁹ Feedback from Working Families' Legal Advisor, December 2016

¹⁰ Second choice jobs: the real life impact of the changing world of work, Citizens Advice, March 2015

¹¹ Rigid flexibility: the work of the Working Families Legal Advice Service in 2014, Working Families 2015

3. What specific provision should there be for the protection and support of agency workers and those who are not employees?

3.1 We welcome the Prime Minister's commitment to focus on workers falling through the cracks of tax and employment law, leaving them with precarious incomes and few rights.

3.2 To support this ambition employment tribunal fees must be scrapped. Instead of preventing vexatious claims, the introduction of employment tribunal fees in July 2013 is limiting access to justice. As illustrated by our case studies, workers with legitimate grievances against their employers are being deterred from pursuing claims in employment tribunals. Research from Citizens Advice shows seven out of ten potentially successful cases that could have gone before tribunals did not go ahead.¹² The EHRC says that since the introduction in 2013 of tribunal fees of up to £1,200, the number of sex discrimination cases has dropped by 76% and pregnancy-related cases fell by 50%.¹³

Denise, employed on a zero-hours contract, had had her working hours substantially cut since she had taken time off for a pregnancy-related illness. When she had challenged her employer, pointing out that several new staff had been taken on, she was told "we need people we can rely on". The helpline team advised Denise that her treatment amounted to pregnancy discrimination, but Denise said there was no way she and her partner could afford to pay the fees of £1,200 to pursue a tribunal claim.¹⁴

Camilla was on a zero-hours contract but had regularly been working thirty hours per week on shifts in a hotel. She fell ill and discovered she was pregnant. When she returned to work after this maternity-related sickness, she was suddenly told there were no shifts available for her. When she called us, Camilla explained that she had struggled to save just over £3,000 to meet the expenses of a new baby. This meant that she would have to pay fees to go to a tribunal. As this would mean spending nearly half of her hard-won savings she decided not to lodge a claim despite having, in our opinion, a good chance of success.¹⁵

Anna was on a zero-hours contract in low-paid, manual work, consistently working 16 to 20 hours per week. When she returned from maternity leave she was only given four hours per week. We advised her to raise a grievance but she felt very nervous about this as she was sure the employer would at best ignore it and at worse, make things even more difficult for her at work. We explained that if she went to a tribunal, they would expect her to at least give her employer the chance to put things right. When we mentioned tribunal fees, she was clear that she could never afford these.¹⁶

¹² www.citizensadvice.org.uk/about-us/how-citizens-advice-works/media/press-releases/employment-tribunal-costs-putting-people-off-valid-claims/

¹³ Pregnancy and maternity discrimination findings, EHRC 2016

¹⁴ Rigid flexibility: the work of the Working Families Legal Advice Service in 2014, Working Families 2015

¹⁵ Striking a balance: the work of the Legal Advice Service in 2015, Working Families 2016

¹⁶ Feedback from Working Families' Legal Advisor, May 2016

- 3.3 Since up-front fees were introduced in 2013, we have seen a dramatic decline in the number of parents and carers who are able or willing to take their employer to a tribunal even though they were experiencing discrimination – illustrated by these stories. The number of callers pursuing claims has fallen close to zero. Figures published by the TUC show that the number of working people challenging discrimination or unfair treatment at work has fallen by 9,000 a month since fees came in.¹⁷ In the words of one senior employment judge, it is “difficult to resist the conclusion that access to justice has been curtailed”¹⁸.
- 3.4 Additionally, many workers who win their claims never receive a penny of compensation. The government’s own figures show that around half (49%) of claimants had been paid in full, and a further 16% had been paid in part. This leaves 35% not receiving any money at all.¹⁹ More needs to be done to ensure the full amount of money owed to workers is delivered to them.
- 3.5 We have seen a rising category of rogue employers who consider that they do not have to – and will not – obey the law unless forced to do so and who are well aware that the fees create a major barrier to people bringing claims against them. Restoring access to justice, scrapping employment tribunal fees and ensuring those with successful claim are compensated would protect and support all employees, not least those in insecure work, and help stem the tide of casualisation.
- 3.6 More broadly, tackling the inappropriate and exploitative use of employment status by rogue employers - employers that use the false employment model and agency and casual workers on a long-term and exploitative basis - should be a priority. The law on employment status should be updated to ensure that workers on zero-hours contracts, agency workers and others cannot be manipulated and unfairly treated by unscrupulous employers.
- 3.7 Working Families is calling for a levelling of the playing field on parental rights between those classified as ‘workers’ and those classified as ‘employees’. For example, all agency workers (not just those who have been there 12 weeks) should have a right to paid time off for antenatal appointments, all workers (not just employees with a year’s service) should be able to ask for unpaid parental leave, self-employed fathers should be able to access paternity pay. This would protect and support parents and carers in insecure work, removing the incentive on the part of the employer to exploit their staff and simplifying the complicated employment status landscape for employers and employees.
- 3.8 The government should consider legislating for businesses to publish the number of staff with these types of contracts and how long they have worked for them. This would make it less attractive for employers to use these types of contracts in the long term.

¹⁷ www.tuc.org.uk/equality-issues/industrial-issues/discrimination-work-allowed-%E2%80%9Cflourish-unchecked%E2%80%9D-employment

¹⁸ Shona Simon, President Employment Tribunals (Scotland), in Senior President of Tribunals’ Annual Report, HMCTS, February 2015

¹⁹ Payment of tribunal awards, Department for Business, Innovation & Skills 2013

3.9 Turning to the bigger picture, many parents and carers we speak to are forced into agency work, casual work or become self-employed²⁰ because their need for flexibility is so acute – and, crucially, they cannot find it elsewhere in the labour market. The proportion of flexible jobs remains low in comparison to very high demand - 8.7% of quality jobs are advertised flexibly and 54% of employees currently work flexibly²¹. Parents and carers that work for an agency, for example, might do so because they cannot work during the school holidays.

3.10 For employers, the lack of flexibility in how work is organised brings very real costs in terms of low productivity, lost skills and experience, and a reduced talent pool.

3.11 Working Families would like to see flexible working offered to all workers by making all jobs flexible by default from the outset unless there is a strong and demonstrable business case for them not to be. The government should lead by example here as an employer but also when contracting with others - social care, for example is a traditionally low paid sector but funded through public service contracts.

4. What help should be offered in preparing those people who become self-employed (with, for example, financial, educational and legal advice), and who should be offering such help?

4.1 The question suggests that people who become self-employed make a pro-active and planned choice to do so. As we hope has been illustrated, many people are 'false employees' – they are told by their 'employer' they are self-employed but have no control over their hours and place of work.

4.2 Further, there is a lack of knowledge and understanding among all parents we speak to – not just those that are self-employed - about their employment status and rights. They often don't know their employment status and do not understand the benefits or disbenefits of different contracts. They are unsure whether they are being treated unfairly or illegally by their employer. Whilst we are calling for an end to distinctions between employment statuses, better understanding among and support for parents is crucial²². Support for advice agencies like the Citizens Advice Bureau and Working Families' legal advice service – that support parents in the workplace – is vital.

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For more information contact

²⁰ Through our legal advice service we encounter employers creating 'false employees' – designating them as self-employed to avoid paying tax, the minimum wage and other benefits - while imposing work on them.

²¹ Timewise Flexible Jobs Index 2016

²² Three sides to every story: the impact of the Agency Worker Regulations, Acas 2015