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Research into the Use of Zero Hours Contracts in Devolved Welsh Public Services



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Views expressed in this report are those of the researcher and not necessarily those of the Welsh Government

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Table of contents

1. INTRODUCTION	1
2. METHOD AND LIMITATIONS OF THIS STUDY	4
3. THE PREVALENCE AND USAGE OF NO GUARANTEED HOURS CONTRACTS ACROSS WELSH PUBLIC SERVICES	10
CHARACTERISTICS OF THE ORGANISATIONS SURVEYED	10
THE EXTENT TO WHICH AND HOW NGHCS ARE USED BY DIFFERENT TYPES OF ORGANISATION	11
Local Government	13
Health Boards	17
Further Education Institutions.....	20
Higher Education Institutions.....	21
Other Public Sector Organisations (including the Welsh Government)	22
NGHCS' FIT WITH ORGANISATIONS' WIDER WORKFORCE STRATEGIES....	22
JOB ROLES PREDOMINANTLY ASSOCIATED WITH NGHCS.....	24
Home Care Workers.....	26
CONDITIONS APPLYING TO NO GUARANTEED HOURS CONTRACTS	29
Exclusivity Clauses.....	29
Obligation to Accept Work.....	30
Notice Given when Work is Offered or Cancelled	31
Rates of Pay.....	31
Other employment benefits	34
Training	38
4. IMPACT OF THE USE OF NGHCS ON EMPLOYERS, INDIVIDUALS AND SERVICES	39
IMPACT UPON INDIVIDUALS	39
IMPACT UPON EMPLOYERS	45
IMPACT UPON SERVICES.....	50
5. CONCLUSIONS AND POSSIBLE WAYS FORWARD	53

ANNEXES.....	57
Annex 1: Main Types of Employment Status	58
Worker.....	58
Employee	59
Self-employed (freelance)	59
Annex 2: Employment Rights Appertaining to the Main Types of Employment Status.....	60
BIBLIOGRAPHY	61

List of figures and tables

Table 1.1: Numbers and proportions of organisations responding to our survey	7
Table 3.1: Proportion of Respondents that use NHGCs Offering Wider Employment Benefits	35
Table 3.2: Proportion of Survey Respondents Using NHGCs that Offer Wider Employment Benefits	36

1. INTRODUCTION

BACKGROUND TO THE STUDY

- 1.1 Zero hours contracts have been the subject of much debate in recent times amid ‘a wider concern that the labour market is moving towards more contingent, less secure and more exploitative forms of employment’¹. At the same time, zero hours contracts are regarded by some as an important part of the UK’s flexible labour market and crucial in enabling employers to manage erratic or unforeseen swings in demand for products and services.
- 1.2 The Welsh Government commissioned Old Bell 3 and Dateb to explore the extent to which zero hours contracts are used in the delivery of Welsh public services and how their use impacts on employers, workers and services. Our study was undertaken between January and March 2015.
- 1.3 The debate surrounding the use of zero hours contracts across the UK has been hampered by confusion surrounding the definition of a zero hours contract, though the Department for Business Innovation and Skills’ Consultation on zero hours employment contracts noted that ‘in general terms a zero hours contract is an employment contract in which the employer does not guarantee the individual any work, and the individual is not obliged to accept any work offered’^{2 3}. The document goes on to say that ‘there are broadly three categories of employment status: (i) employee (and employee shareholder), (ii) worker and (iii) self-employed. It is likely that the majority of

¹ Brinkley, I. (2013) Flexibility or insecurity? Exploring the rise in zero hours contracts, London: The Work Foundation, Executive Summary

² Department for Business Innovation and Skills, (December 2013) Consultation on Zero hours employment contracts, p.7

³ The Small Business, Enterprise and Employment Act 2015, which received Royal Assent on 26 March 2015, now provides the following definition of a ‘zero hours contract: ‘a contract of employment or other worker’s contract under which—

(a) the undertaking to do or perform work or services is an undertaking to do so conditionally on the employer making work or services available to the worker, and

(b) there is no certainty that any such work or services will be made available to the worker’.

individuals on zero hours contracts are either employees or workers'⁴. Annex 1 provides further details of what constitutes each of these types of employment, whilst annex 2 summarises the employment rights attaching to each category. The Office for National Statistics (ONS) further identified a number of terms used when describing zero hours contract arrangements, viz: 'casual worker, on-call relationship, hours to be notified and occasional professional assistance'⁵. For its business survey, the ONS adopted the term 'No Guaranteed Hours Contracts' to capture the range of employment arrangements, the 'common element' to which 'is the lack of a guaranteed minimum number of hours'⁶.

- 1.4 Given this confusion surrounding terminology and the negative sense in which the term zero hours contracts is increasingly being used, in the interest of securing objective research, we adopted the more neutral term No Guaranteed Hours Contracts (NGHCs) for our study to describe an arrangement whereby the employer does not guarantee the individual any work, and the individual is not obliged to accept any work offered. We use this term throughout the report to embrace the various kinds of employment arrangements discussed above, though where referencing other documents, we do make use of the term zero hours contract.
- 1.5 Whilst it is clear from the definition of NGHCs that workers are not obliged to accept work offered to them, our study did explore whether there might be an implicit obligation on workers to accept work.
- 1.6 Our study also considered the use made of agency and self-employed or freelance workers in the delivery of public services in Wales. Whilst these types of employment arrangements are not directly comparable to NGHCs, they share many of the same characteristics in that individuals are not always

⁴ Department for Business Innovation and Skills, (December 2013) Consultation on Zero hours employment contracts, p.7

⁵ Office for National Statistics, (April 2014) Analysis of Employee Contracts that do not Guarantee a Minimum Number of Hours, p.4

⁶ Ibid

guaranteed work and do not necessarily qualify for wider employment benefits.

1.7 In this report we:

- describe the method used to undertake this study (section 2);
- present our findings in relation to the prevalence and usage of no guaranteed hours contracts across welsh public services (section 3);
- discuss the impact of the use of NGHCs on employers, individuals and services (section 4)
- present our conclusions and discuss issues that policy makers may wish to consider for the future (section 5).

2. METHOD AND LIMITATIONS OF THIS STUDY

2.1 The study involved five main elements of work:

- inception and scoping
- literature review
- survey of organisations involved in the delivery of public services
- qualitative fieldwork with stakeholders
- reporting

2.2 The inception and scoping stage involved:

- meeting with the client and agreeing upon a work programme;
- undertaking scoping interviews with key intermediary organisations to
 - a) secure their support;
 - b) gain access to contact details for key contacts (generally human resource staff) within public sector organisations able to contribute to the study; and
 - c) identify any opportunities to hold focus groups/discussions with employer groups;
- developing a database of organisations to be surveyed;
- contacting relevant trade unions to inform them about the research, invite their input and to identify any opportunities to hold focus groups/discussions with union representatives, members and/or employers;
- undertaking a series of telephone interviews with contacts provided by the Welsh Government and intermediary organisations to establish a) if they were the appropriate contact b) whether they or others were best placed to contribute to the study. This enabled us to build a database of prospective survey respondents capable of speaking from a position of knowledge about the areas we wished to explore;
- undertaking exploratory telephone interviews with representatives of wider public service provider network groups;
- developing a questionnaire for our survey of employers and topic guides to steer semi structured interviews with various groups of stakeholders.

- 2.3 It had been envisaged at the inception stage that we would draw upon Sell2Wales to identify information about contracts awarded for the delivery of particular kinds of services in Wales over the previous two years. Although this information is published and open to the public, Sell2Wales was set up for procurement purposes and had never before been used to provide information for research purposes. The approach envisaged represented a highly innovative and experimental use of Sel2Wales which it was recognised from the outset would most likely present some challenges.
- 2.4 In the event it proved even more difficult than anticipated to gain access to the information required (e.g. details of awarding organisation, service type, provider contact details, contract value, employee numbers etc.). This was due partly to the sheer volume of data involved and partly to the way in which they were stored.
- 2.5 Our literature review involved examining a range of relevant Welsh and UK level evidence: a bibliography is provided at annex 3. The findings of this review have been woven into relevant areas of sections three to five of this report. However, it is worth noting at this point that existing evidence is overwhelmingly concerned with a UK wide picture and provides little insight into the situation in Wales alone. Whilst published resources cast some light onto sectoral and occupational differences, it is not generally possible to pinpoint with accuracy patterns across different areas of public service delivery. For example, the Office for National Statistics (ONS) notes that within its business survey, 'many local authorities are classified to Education, while their employees will cover other areas such as social work, public administration and recreation'⁷.
- 2.6 The third stage of the study involved surveying organisations of various kinds involved in the provision of public services in Wales. In order to maximise the number of responses achieved, we:

⁷ Office for National Statistics, (25 February 2015) Analysis of Employee Contracts that do not Guarantee a Minimum Number of Hours, p.7

- drew up a form of words for Welsh Government officials and intermediary organisations to use in informing potential contributors about the study and in encouraging them to contribute;
- undertook 'scoping' telephone interviews with prospective contributors (as noted above) during which we sought to agree a time when it would be convenient for them to undertake the survey;
- accommodated requests to complete the survey on-line as well as over the telephone, where appropriate, providing contributors with relevant information about survey content beforehand, so that they could gather relevant information in readiness;
- telephoned and e-mailed those who had agreed to but had not completed our survey to remind them to do so on up to three occasions.

2.7 It had been accepted from the outset that it might be difficult to engage employers, given the timescale available for this work, general sensitivities surrounding the subject of zero hours contracts (notwithstanding that we avoided that term, referring to NGHCs instead) and the fact that financial pressures facing public sector organisations were likely to be impacting upon the workload within human resource departments.

2.8 Table 1.1 sets out the numbers and proportions of organisations which completed the survey.

Table 1.1: Numbers and proportions of organisations responding to our survey

	Completed	Maximum Possible	Response Rate
Welsh Government	1	1	100%
WGSB	7	10	70%
Local Authorities ⁸	20	28	71%
Health Boards	9	11	82%
Further Education Institutions	3	14	21%
Higher Education Institutions	3	9	33%
	43	73	59%
Private/third sector providers ⁹	17	N/A	N/A
Total	60		

- 2.9 At the time this study was being undertaken, FEIs were facing significant budget cuts which led to redundancies. Given sensitivities surrounding this situation, a number of institutions found it difficult or considered it inappropriate to respond to our survey.
- 2.10 HEIs made clear to us that they do not perceive themselves to be publicly funded providers of public services or part of the public sector per se and they were wary of implying that they are part of the public sector by contributing to this study.
- 2.11 In this context, it is notable that the University and College Union (UCU) also experienced some difficulty in ascertaining information about the use of zero hours contracts within HEIs and FEIs, despite sending Freedom of Information requests to every UK HEI and 275 FEIs across England, Wales and Northern Ireland. Whilst 89.5% of HEIs and 73% of FEIs provided information about the numbers of people on ZHCs, few provided more detailed information about

⁸ Including National Park Authorities and Fire Authorities

⁹ Including Housing Associations

staff who were not actually working, despite the fact that employers are now required to 'operate PAYE in real time'¹⁰.

2.12 Although information about contracts awarded via Sell2Wales is published and open to the public, it was provided for procurement as opposed to research purposes. However, taking into account legislation around the use of data, the Welsh Government deemed it appropriate to inform contract awardee organisations that their details would be passed on to the research team unless they objected to that being done. This involved e-mailing relevant organisations and allowing them ten days to reply, which inevitably narrowed the time available to conduct the survey.

2.13 Our qualitative fieldwork with stakeholders involved a combination of telephone, one to one and group discussions with stakeholders as follows:

- the HR Heads of Profession group which brings together human resource professionals across public service partners in Wales;
- sectoral HR professionals networks, notably the Welsh Local Government Association's HR Directors group, the health service network of Assistant Directors of Workforce and Organisational Development and the Universities HR Directors Group;
- key intermediary organisations e.g. NHS Employers Wales, the BMA Wales, two Local Medical Committees, the Welsh Local Government Association, Colleges Wales and the General Teaching Council for Wales;
- representatives of two employment agencies providing temporary staff to public service providers;
- the TUC Wales and individual trade unions, including UNISON, the GMB, Unite and UCU. A focus group was also held with representatives from a selection of trade unions at the Wales Trade Union Representatives March 2015 conference;

2.14 Primary care represents an important aspect of public service delivery. However, primary care is provided by a patchwork of independent general

¹⁰ UCU, (March 2014) Zero-hours contracts: A UCU briefing

practices contracted to deliver services and it was recognised from the outset that it would not be practicable to engage with individual practices. Instead, we consulted with BMA Wales and two (of five across Wales) Local Medical Committees. Representatives of the two Local Medical Committees engaged with a small number of general practices within their areas in order to provide us with an overview of the use made of NGHCs, agency and freelance employment arrangements (including locum doctors) within primary care.

- 2.15 Schools also represent important providers of public services. Individual schools have significant responsibility in terms of the appointment of staff and may autonomously make arrangements for the engagement of ancillary staff and supply teachers. However, employment contracts for teaching and support staff are generally managed and administered by local authorities on behalf of individual schools. Again, it was recognised that it would not be practicable for us to engage with individual schools, but rather that we should consult those departments within local authorities responsible for managing or administering the employment of school staff. We also consulted the General Teaching Council for Wales (GTCW) which, as the body responsible for overseeing the qualification, registration, and good conduct of teachers in Wales, was able to provide us with valuable statistical and qualitative information surrounding the use of supply teachers.
- 2.16 Given the limited time and resources available for this study, it was clear that direct engagement with workers affected by NGHCs would be difficult. However, both union representatives and employers were able to provide some useful anecdotal information which confirmed and added depth to evidence from other sources.

3. THE PREVALENCE AND USAGE OF NO GUARANTEED HOURS CONTRACTS ACROSS WELSH PUBLIC SERVICES

CHARACTERISTICS OF THE ORGANISATIONS SURVEYED

- 3.1 Between them, the 60 organisations which responded to our survey employed over 157,500 people on permanent contracts, almost 20,000 on fixed term contracts and 24,000 on term-time only contracts. In addition, respondent organisations engaged over 2,250 people as freelance/self-employed or agency workers. The overwhelming majority of these employees worked in public sector organisations.
- 3.2 Respondent organisations reported that they employed over 25,000 people on No Guaranteed Hours Contracts, though in many instances, these individuals were also employed on substantive permanent contracts alongside this (this is discussed in more detail later). Again, the overwhelming majority of these worked in public sector organisations. It is notable, however, that the figures provided by a number of local authorities differed somewhat from those that they provided to the BBC in response to a Freedom of Information request in 2014¹¹, possibly reflecting confusion (then and possibly now) about the definitions of casual and zero hours contracts.
- 3.3 Across all public sector organisations responding to our survey, 30% said that the overall number of people they employed had increased over the last three years, whereas 15% said that employee numbers had stayed about the same and 47% said that numbers had decreased. This pattern varied, with 67% of health boards saying that they now employed more people and 75% of local authorities and 57% of WGSBs saying that they employed fewer.
- 3.4 Where organisations had increased the size of their workforce, this was generally done following the introduction of new services or in the wake of an increase in demand for services. The main factors leading to organisations

¹¹ UNISON, Ethical Care Charter (including Zero Hours Contracts): A briefing summary of issues and current position in UNISON's campaign

employing fewer staff were financial pressures/reductions in the budgets available and the need to find savings.

- 3.5 The number of staff needed across any given year was said to be either fairly or very consistent across over three quarters (77%) of organisations responding to our survey. It is not surprising, perhaps, that the few exceptions to this were among further and higher education institutions and private or third sector organisations contracted to deliver public services. Even where respondents reported inconsistency in the numbers of staff needed across the year, they generally said that peaks and troughs in staffing requirements were fairly predictable.

THE EXTENT TO WHICH AND HOW NGHCS ARE USED BY DIFFERENT TYPES OF ORGANISATION

- 3.6 Drawing upon its Labour Force Survey, the ONS estimated some 697,000 people across the UK were employed on Zero Hours Contracts (ZHCs) in their main employment in 2014. This represented an increase of over 100,000 since 2013, to 2.3% of those in employment across the whole of the UK and 2.5% of those in employment in Wales. It was, however, acknowledged that this increase might have been attributable in part to LFS respondents becoming more aware of ZHCs¹². Indeed, previous research has suggested that limited awareness among those on ZHCs of their employment status has led to a high degree of under-reporting of such employment arrangements¹³.
- 3.7 At the same time, the ONS Business Survey estimated that across the UK, work was carried out under 1.8 million No Guaranteed Hours Contracts in August 2014 and that 11% of businesses (including public sector organisations) made some use of NGHCS¹⁴. The Business Survey also

¹² Office for National Statistics, (25 February 2015) Analysis of Employee Contracts that do not Guarantee a Minimum Number of Hours, p.3

¹³ Pennycook, M., Cory, G., and Alakeson, V. (2013) A matter of time: the rise of zero-hours contracts, London: Resolution Foundation, p.8

¹⁴ Office for National Statistics, (25 February 2015) Analysis of Employee Contracts that do not Guarantee a Minimum Number of Hours, p.4

suggested that larger businesses in terms of employee numbers were more likely to use NGHCs than smaller ones.

- 3.8 The CIPD (2013) found that across the UK, 'the use of zero-hours contracts' was most prevalent in the public (28%) and the non-profit sectors (42%)¹⁵.
- 3.9 44% of the Welsh public service organisations which responded to our survey said that they made some use of NGHCs (including people employed on a zero hours, hourly-paid, on-call, casual or bank basis). This proportion rose to 56% of public sector organisations, whilst only 5% of respondents from the private or third sectors said that they used NGHCs. Over a third (35%) of all respondent organisations used agency workers and 23% used self-employed or freelance workers. Again, public sector organisations made greater use of agency workers than private sector ones, at 41% compared to 6%. Both public and private sector organisations used self-employed or freelance workers to a similar degree. Some organisations used all three types of employment arrangement. It should be noted, however, that the very limited numbers of private and third sector organisations responding to our survey means that these findings may not be entirely representative of the wider population of such organisations involved in the delivery of public services.
- 3.10 Our survey would suggest that different types of organisations used these three kinds of arrangement to varying degrees, though the limited response to our survey means that these findings need to be treated with a degree of caution. We have sought to supplement survey data with information from other sources in order to paint as comprehensive a picture as possible of the use made of NGHCs in devolved public services in Wales. We discuss our findings in relation to each type of organisation in turn.

¹⁵ Chartered Institute of Personnel and Development, (2013) Zero-hours contracts: Myth and reality. London: CIPD, p.7

Local Government

- 3.11 Local authorities made extensive use of 'bank' type arrangements, which generally involved managers having access to databases of people to whom they offered work as and when it is available. These arrangements involved no mutuality of obligation i.e. employers were not obliged to offer work and workers were not obliged to accept work offered to them. Local authorities which contributed to this study emphasised that those on their banks generally were 'casual workers' rather than employees and thus did not qualify for the same employment rights as permanent members of staff¹⁶.
- 3.12 As already noted, many bank staff were also employed on substantive permanent contracts and it is likely that many had not undertaken bank work for some time. Indeed, one local authority representative estimated that only about 30% of casual/bank staff were active at any one time. Another contributor suggested that a bank headcount of some 2,800 within his local authority amounted to as few as 100 full time equivalent posts, with the majority of those registered with the bank only being offered work on an occasional basis.
- 3.13 Examples of the roles typically played by bank/casual staff included:
- providing sickness or holiday cover in areas such as cleaning and catering;
 - undertaking occasional work, some of which was predictable and some of which was not. Examples included catering work at wedding venues, stewarding special events and acting as election officers. Individuals undertaking this kind of work were often on the local authority's payroll in substantive jobs and some held several incidental contracts. Indeed, one contributor spoke of an individual who had no fewer than seven different contracts with his local authority and another gave the example of a local authority solicitor who drove a gritting lorry as necessary in the winter;

¹⁶ Though this could be open to challenge in individual cases, depending upon the terms of the contracts under which such workers are employed and how working arrangements operate in practice.

- undertaking work on a regular basis for short periods of time, for example yoga teachers and swimming-pool life-guards. In some cases, individuals undertaking this kind of work did so alongside substantive roles, for example as school teachers;
- ancillary staff in schools, with examples given of several individuals doubling up as ‘breakfast supervisors ... lunchtime supervisors ...and cleaners in the evening’;
- care workers who provide personal support services to frail individuals either in residential settings or in their homes (domiciliary care).

3.14 The use of NGHCs to employ domiciliary care workers in particular has been the subject of much media attention of late amid concerns that those providing care to some of the most vulnerable in society are themselves in poorly paid and insecure employment. Earlier research has suggested that ‘zero hours contracts are the dominant employment model’ in that part of the health and social care sector¹⁷.

3.15 Whilst local authorities which contributed to our study undoubtedly employed some care workers on a NGHC basis, (for example, to fill in for sickness absence), local authority employers generally maintained that this was exceptional and that abuses of the kind reported in the media, and were thought to be employed by some private and third sector care providers, were not found within their own directly employed workforce. Trade unions contacted in connection with the research were also not able to point to specific examples of care workers employed directly by local authorities where NGHCs were being used inappropriately or abusively. Of course, it is true that private and third sector providers are often contracted by local authorities to deliver services on their behalf. The situation as it appertains to the care sector merits separate consideration and is discussed further at paragraphs 3.50 to 3.55.

¹⁷ Alakeson, A., and D’arcy, C., (2014) Zeroing In: Balancing protection and flexibility in the reform of zero-hours contracts, London: Resolution Foundation, p.17

- 3.16 Some local authorities ran supply teacher ‘pools’, very much akin to ‘banks’. However, such arrangements have become increasingly rare since the devolution of budgets to schools and our fieldwork would suggest that, by now, the vast majority of supply teacher placements were managed either directly via schools’ own localised banks or via a small number of specialist agencies. On the whole, supply teachers were used to cover sickness absence and to cover permanent appointees’ duties whilst they undertake training/continuous professional development (CPD) activities. It was estimated that on average supply teachers cost schools about £170 a day, though this rate includes the premium charged by agencies. This compares to equivalent salary-only values of some £113 to £165 paid to teachers employed on substantive contracts¹⁸. In December 2014, there were almost 4,800 supply teachers registered with the General Teaching Council for Wales (GTCW), which represented some 13% of all teachers registered¹⁹.
- 3.17 Local authorities used agencies to source temporary staff of other kinds too, both unilaterally and via Welsh Purchasing Consortium framework contracts. Our fieldwork would suggest that this kind of arrangement was most commonly used to source administrative staff, refuse collectors, temporary social care workers, information technology workers and teaching staff. This very much accords with Comensura’s assertion that at a UK level, among local authorities and other public bodies, temporary labour usage was greatest across the three classes of ‘social care, light industrial and office/admin/clerical’²⁰.
- 3.18 It is perhaps worth noting at this point that an employment agency representative contributing to our fieldwork noted that local authorities were able to ‘give a bit more notice’ as to when they would need refuse collection staff, which possibly begs the question whether agencies represent the most

• ¹⁸ These figures are based on rates set out in the School teachers’ pay and conditions document 2014 and do not allow for other employment costs such as employers’ national insurance and pensions accrued

¹⁹ The General Teaching Council for Wales, (2014) An Analysis of registered supply teachers (accessed from the GTCW web-site on 13 /02/15)

²⁰ Comensura (2014) Government Index: Review of 2013/14 Financial Year, p.6

appropriate way of managing peaks and troughs in demand for this group of workers.

- 3.19 One contributor noted that there had been some growth in the use of agency social workers over the last two years or so, although this remained very much the exception rather than the rule. In this context, Comensura (2014), indicated that the average proportion of agency staff in local authority social work teams in Wales in 2013/14 was 8% compared to 11% in England²¹. The report went on to say that 56% of agency social workers in Wales were taken-on to provide 'cover' e.g. for vacant posts compared to an England and Wales figure of 41% and, on an allied point, the report noted that across the UK, local authorities were increasingly looking to engage qualified temporary social care workers 'capable of picking up and managing caseloads quickly, with minimal supervision and training'²². The report spoke of 'the challenges of filling vacant permanent posts' across the UK because of 'the higher pay rates offered to temporary qualified social care workers ... making it harder for local authorities to attract workers to convert from temporary to permanent roles'²³, thus suggesting that use of agency workers in this highly-skilled field was not leading to any undermining of workers' rights. Comensura also noted that increasingly, temporary social care workers traded on a freelance basis (self-employed or trading via limited companies) rather than being employed under PAYE type arrangements, with over two thirds (68%) of temporary social care workers in Wales working on this basis in 2013/14 compared to 62% across England and Wales²⁴.
- 3.20 Over half (55%) of the local authorities responding to our survey that used NGHCs said that their use of such contracts had not changed much over the last three years, whilst just over a fifth (22%) said that their use of NGHCs had increased and a similar proportion said that their use of them had declined. At

²¹ Comensura (2014) Socialcare Index: Review of 2013/14 Financial Year, p.5

²² Ibid, p.6

²³ Ibid, p.7

²⁴ Ibid, p.7

the same time, two fifths (40%) of local authorities said that their use of agency and self-employed workers had declined.

- 3.21 Our fieldwork pointed to a number of factors which were leading some local authorities to reduce their use of NGHC and agency workers, for example:
- the local government workforce shrinking overall in the face of reducing budgets;
 - the use of 'extra' labour coming under careful scrutiny, again in the face of financial pressures;
 - some local authority functions where casual contracts were common being spun-out, e.g. leisure centres being run by trusts outside the council;
 - an increased awareness of and opposition to NGHCs among elected members pressurising HR directors to keep under close review the use of such contracts;
 - concerns surrounding the legality of some types of NGHCs making HR departments more nervous of using such arrangements.
- 3.22 By the same token, it was recognised that NGHCs, fixed term contracts and using agency workers provided local authorities with a means of avoiding on-going employment commitments, which is critical during a period of declining budgets and a growing focus on core services. In this context, contributors at one focus group argued that many services 'are reaching tipping point', adding that 'you can't protect staff and protect services simultaneously'. The general view within that focus group was that services should take precedence over staff in such situations.

Health Boards

- 3.23 Like local authorities, health boards made widespread use of staff banks, which again involved no mutuality of obligation, but allowed managers to offer work to individuals as and when necessary. It has to be said, however, that banks in the health service were probably more formalised than those run by

local authorities in that they tended to have standardised terms and conditions.

3.24 Examples of the roles typically played by bank staff in the health service included:

- providing cover for unforeseen staff shortages in hospitals. This involved staff who hold substantive permanent contracts (typically nurses, health care support workers and portage staff) working additional hours as and when needed. Often also, student nurses worked in hospitals as occasional health care support workers alongside their studies;
- performing ancillary services such as portage staff driving duty doctors to specific events.

3.25 Several contributors said that banks and the substantive workforce within health boards 'are not sealed units' and it was argued that health boards would 'grind to a halt' without bank workers. Health board representatives emphasised that banks were used 'responsibly' and that NGHCs were not used to 'cover core business', but rather to provide sickness cover and deal with other unforeseeable spikes in staffing needs. One contributor added that 'it wouldn't be safe to cover core services from the bank, so we just don't do it'. Having said this, however, one trade union representative spoke of health board banks 'being more heavily relied on for the day to day running of the NHS' of late and another saying that the use of bank staff was a 'sticking plaster' which lets managers off the hook of addressing real problems with recruitment and retention of certain staff e.g. nurses.

3.26 Health boards also made extensive use of agency staff (again via framework contracts in some cases) as and when spikes in demand could not be satisfied from banks. However, contributors were anxious to point out that health boards generally sought to avoid using agencies because of the high cost of agency workers by comparison to staff employed via banks. In this context contributors pointed out that health boards were coming under

increasing pressure to retain qualified nursing staff in the face of attractive rates offered by agencies.

- 3.27 Health boards also used banks, but on a smaller scale, to employ allied health professionals of various kinds, for example physiotherapists, speech therapists and occupational therapists. Again, these tended to be substantive staff who worked additional hours through the bank. Health Boards also made limited use of NGHCs to engage general practitioners to provide cover for Accident and Emergency Units and to provide 'out of hours care services', an emerging field spanning primary and secondary care.
- 3.28 General practitioners also made some use of 'locum' doctors, most commonly on a freelance basis, but sometimes via agencies. On the whole, locums were used to cover short term absences among substantive post-holders e.g. to cover maternity leave. Beyond that, some practices employed known individuals, such as retired staff, to cover the unforeseen absences of medical and reception or administrative staff.
- 3.29 Half (50%) of the health boards responding to our survey that used NGHCs said that their use of such contracts had not changed much over the last three years, whilst two fifths (40%) said that their use of NGHCs had increased. Two thirds (66%) of the health boards that said they used agency or self-employed/ freelance workers said that their use of such arrangements had increased. In presenting these findings, however, we must once more, emphasise the limitations of our survey data.
- 3.30 Contributors also indicated that the use of both bank and agency nurses had increased over the last year or so, primarily because of staff shortages within LHBs. These shortages were attributed to a number of factors including:
- low levels of recruitment over the last decade;
 - growing demands upon the health service from an ageing population, with seasonal spikes in demand causing particular problems;
 - high rates of staff sickness and, associated with that, staff turnover;

- temporary absences on maternity leave across a predominantly female workforce
- intensifying competition for experienced staff across the UK in the wake of the Francis Inquiry into poor care standards at the Stafford Hospital.

3.31 One stakeholder explained that health boards had until fairly recently managed to ‘drive down agency usage’, but that the ground gained was now being lost in the face of on-going staffing shortages that could not be met using nurse banks alone. It is notable that trade unions had some disquiet about the use of agency staff within the health service, partly because of the cost implications of doing so, but also because the transient nature of agency work means that it is more difficult to manage the quality of care.

Further Education Institutions

3.32 The limited response from FEIs means that our survey did not provide much insight into the extent or nature of the use they made of NGHCs. However, in 2013, the UCU estimated that 18% of all staff within Welsh FEIs were employed on hourly-paid contracts, though this figure increased to 19% of ‘support staff’ and 26% of teaching staff. The use of hourly paid contracts was higher among ‘instructors, demonstrators and unqualified lecturers’ (40%) and more junior lecturers (35%)²⁵. Contributors to our fieldwork confirmed these figures, estimating that ‘about a third’ of teaching staff were employed on an hourly-paid basis.

3.33 Since November 2013, all Welsh FEIs have signed up to the use of a standard contract of employment for hourly-paid staff, which effectively put such employees on permanent part-time (or fractional) terms. FEIs were at various stages in implementing these arrangements, though some were finding it challenging to do so in the face of acute financial pressures. There was some evidence to suggest that FEIs were issuing contracts which guarantee only the minimum number of hours, though in practice, many

²⁵ UCU (2013) Staff in colleges in Wales by contract type and grade

individuals worked in excess of their contracted number of hours. Whilst possibly not entirely within the spirit of the change sought by teaching unions, the switch to permanent contracts did have the advantage for staff of providing them with employment benefits which they did not have under the terms of more casual hourly-paid contracts.

Higher Education Institutions

- 3.34 As was the case with FEIs, few HEIs responded to our survey and it was not possible to reach a considered judgement from survey data the extent to which they use NGHCs. Nevertheless a UCU study into the use of zero hours contracts found that, across the UK, 53% of HEIs employed ‘teaching, research and/or academic related staff’ on this basis, although the use of zero hours contracts was slightly higher among pre-92 institutions than it was across the post-92 sector. The study also found that 16% of ‘all teaching staff’ were employed on zero hours contracts, though this proportion increased to 47% among ‘teaching only staff’²⁶ i.e. individuals with no research responsibilities.
- 3.35 Our fieldwork would suggest that efforts have been made by HEIs over the last couple of years to convert staff (including teaching and library staff) from non-permanent hourly-paid contracts on to permanent fractional or fixed-term contracts. Where HEIs still used hourly-paid contracts, they tended to do so to employ student support staff (e.g. dyslexia tutors), Welsh for Adults or extra mural tutors (e.g. music tutors) as demand for their services tended to be more volatile. A number of those working on these kinds of hourly-paid contracts did so alongside other work, some under permanent fractional contracts at the same institution and others with different employers. Some HEIs used agency workers to deliver these kinds of services.
- 3.36 Whilst the majority of HEI ‘facilities’ staff are employed on permanent or fixed term contracts, institutions use NGHCs to employ students and others to

²⁶ Pickering, W., (2014) Zero-hours contracts: A UCU briefing, UCU

undertake occasional catering or cleaning type roles. Students are also employed on a NGHC basis to help in marketing institutions to prospective students, for example during open days.

Other Public Sector Organisations (including the Welsh Government)

- 3.37 Only one of the eight other public sector organisations used NGHCs, though across the board, they made more use of agency and self-employed, 'fee-paid' or freelance workers. The data would also suggest that other public sector organisations tended to use agency and self-employed or freelance workers to undertake more specialist roles such as audit, human resource and information technology and to undertake specific project work.
- 3.38 Most other public sector organisations responding to our survey reported that their use of agency and self-employed or freelance workers had decreased over the last three years and they generally regarded their use as a short-term measure.

NGHCS' FIT WITH ORGANISATIONS' WIDER WORKFORCE STRATEGIES

- 3.39 Contributors to our fieldwork generally felt that NGHCs of various kinds formed an integral and coherent part of their workforce strategies, and that their use was necessary where needs were inherently unforeseeable or where the quantum of work to be undertaken was very small. In particular, it was argued that banks of various kinds represented a comparatively cost effective way for organisations to cope with fluctuations in staffing needs. Firstly, banks provided an alternative to paying substantive full time staff overtime, and secondly, they avoided organisations having to use agency staff. As one local authority representative put it: 'we need the core team and we need our peripheral team ... if we didn't have this model in place we'd have to use temping agencies to find staff for us'. In the same vein, a health board representative argued: 'the bank is fundamental to us maintaining services ... without it we would have to go to agencies ... which means premium costs

and we can't manage the quality in the same way'. In this context, another argued that health boards might as well just employ more staff (and more than they need) than use agency nurses because 'the agency premium is so loaded'.

- 3.40 Over three quarters (77%) of public sector organisations using NGHCs responding to our survey said that they were likely to continue employing people on NGHCs, with 42% saying that they envisaged doing so in the long term (that is for the next four years or more). This was in keeping with the findings of UK level research undertaken by the CIPD that 75% of public sector organisations which used zero hours contracts envisaged doing so in the future, with 58% intending to do so in the long term²⁷.
- 3.41 Of those organisations responding to our survey and currently using self-employed and agency workers, only 16% envisaged that they would continue to do so in the long term, with 23% seeing this kind of employment practice as a medium term strategy (for the next two or three years) and 33% seeing it as something for the next twelve months only. Again, this accorded with the findings of our fieldwork that several organisations were anxious to reduce their use of agency and self-employed/ freelance workers, primarily to reduce costs, but as a means of better managing quality.
- 3.42 Overall, around a third of respondent organisations had considered using alternatives to NGHCs and/or engaging people on a self-employed or agency basis. The alternatives most commonly considered were:
- permanent or open-ended full time contracts (33%);
 - permanent or open-ended part time contracts (35%);
 - fixed-term full-time contracts (33%);
 - fixed-term part-time contracts (35%);
 - variable hours contracts, though with the minimum hours specified (23%);
 - using agency staff (33%);
 - contracting-out services (15%).

²⁷ Chartered Institute Of Personnel And Development, (2013) Zero-hours contracts: Myth and reality. London: CIPD, p.13

- 3.43 Other strategies noted by individual contributors included developing ‘more efficient recruitment process to rely less on agency and bank to fill gaps’ (health board), ‘bank staff, building up numbers’ (health board) and ‘multi-skilling current staff’ (local authority).
- 3.44 56% of all organisations responding to our survey did not use NGHCs at all. This figure dropped to 43% among public sector organisations. Of the organisations that did not use NGHCs:
- 24% said that they currently had no plans to introduce them;
 - 6% said that they did not plan to introduce them at the moment, but might consider doing so in the medium term;
 - 70% said that they were unlikely to use NGHCs in the foreseeable future.
- 3.45 Although public sector organisations were more likely to be using NGHCs already, there was no evidence from the survey that those which did not were more likely than private sector organisations to be considering doing so in future.
- 3.46 Organisations responding to our survey which used NGHCs generally said that it is no harder or easier to recruit staff on this basis than it is on permanent contracts.

JOB ROLES PREDOMINANTLY ASSOCIATED WITH NGHCS

- 3.47 The CIPD (2013) noted that across the UK, ‘a significant proportion of employers that use zero-hours contracts use them to resource lower-skilled roles’²⁸. Whilst the findings need to be treated with a degree of caution, our survey also suggested that employers involved in the delivery of public services in Wales used NGHCs to employ people in elementary occupations, including ‘administration’, ‘care’, ‘catering’ and ‘cleaning’ roles. Local

²⁸ Chartered Institute Of Personnel And Development, (2013) Zero-hours contracts: Myth and reality. London: CIPD, p.11

authorities also appeared to make marked use of NGHCs to employ people in 'sport and leisure' roles.

- 3.48 The CIPD also found that employers used zero hour contracts to employ skilled workers such as nurses, teachers and tutors²⁹. Given that our survey was targeted specifically at organisations delivering public services, it is not surprising, perhaps, that it pointed to an even greater degree than the CIPD's report to the use of NGHCs to employ people in these professions. 71% of health boards responding to our survey said that they employed nurses on NGHCs, generally through 'bank' arrangements. By the same token, 54% of the local authorities that responded said that they used NGHCs to employ teachers, whilst 40% said that they used agencies or engage self-employed teachers. The response rate among FEIs and HEIs was too low to allow us to comment on the proportion using NGHCs, but as already stated, research at a national level has suggested that about a third of teaching staff in FEIs were employed on hourly-paid contracts and that over half of HEIs in the UK used such arrangements.
- 3.49 Our survey would also suggest that a number of organisations employed 'administration' and 'care' workers as well as 'drivers and transport workers' (including refuse drivers and collectors) via agencies. It was also interesting to note the use of agency and freelance contracts to employ 'project workers' and people in highly skilled roles such as 'audit', 'human resource' and 'information technology'. Indeed, contributors to our fieldwork noted that a number of senior public service workers had taken redundancy in the wake of funding cuts, but had gone on to work as freelance consultants, often at higher rates, and often within the same organisations that they left previously.
- 3.50 Our survey suggested that women were considerably more likely than men to be employed on NGHCs in public sector organisations. This very much correlates with the use of NGHCs to employ workers in occupations such as 'care', 'catering', 'cleaning' and 'leisure' as well as in the 'teaching' profession,

²⁹ Chartered Institute Of Personnel And Development, (2013) Zero-hours contracts: Myth and reality. London: CIPD, p.11

all of which are associated with female employment. This pattern also ties in with the LFS UK level data which showed that ‘women make up a bigger proportion of those reporting working on “zero-hours contracts”³⁰. This finding does, however, need to be considered in the context of women representing two thirds (66%) of all employees across the public sector in Wales as compared to men, who make up a third (34%)³¹.

- 3.51 In contrast to the LFS finding that people employed on zero-hours contracts tended to be ‘at the youngest or oldest ends of the age range’³², our survey suggested that a greater proportion of NGHC workers in public sector organisations in Wales were aged between 25 and 64. In highlighting this finding, however, we must emphasise the limitations of our survey data and the suggestion from both the survey and fieldwork that many of those on NGHCs also held permanent full- or part-time contracts with the same organisation.

Home Care Workers

- 3.52 A recurring theme during our discussions with trade unions in particular, was the use of NGHC in the employment of home care (or domiciliary care) workers, particularly by private and third sector organisations contracted to deliver such services by local authorities.
- 3.53 This very much resonates with earlier UK level research findings, for example Alakeson and D’Arcy (March 2014), which noted that ‘in the domiciliary care part of the sector, zero-hours contracts have become standard and predate the current period of austerity’³³, noting elsewhere that 61% of home care

³⁰ Office for National Statistics, (25 February 2015) Analysis of Employee Contracts that do not Guarantee a Minimum Number of Hours, p.9

³¹ Stats Wales, Employment in the public and private sectors by Welsh local authority and status: Econ06 (accessed 15/05/2015)

³² Office for National Statistics, (25 February 2015) Analysis of Employee Contracts that do not Guarantee a Minimum Number of Hours, p.9

³³ Alakeson, A., and D’arcy, C., (2014) Zeroing In: Balancing protection and flexibility in the reform of zero-hours contracts, London: Resolution Foundation, p.9

workers in England³⁴ are employed on this basis. Similarly, UNISON (2012) found that 56% of homecare workers in the private and voluntary sector were employed on zero hour contracts compared to 22% in the public sector³⁵.

- 3.54 Both stakeholders and the literature pointed to a growth in the contracting out of home care services by local authorities, more often than not, linked to the financial pressures they have been facing over recent years. Pennycook (2013) argued that, across the UK, 'reductions in formula grant from central government have seen local authorities drive down unit rates for care, at the same time as they have been shifting away from purchasing guaranteed volumes to spot purchasing through framework contracts. In removing guaranteed block volumes of paid care to providers, framework agreements incentivise the use of zero-hours contracts among providers as a means of managing risk.'³⁶ UNISON (2012) noted that 'outsourced homecare services ...tendered for on the lowest price basis ... has a huge bearing on how much the provider can pay their staff and what working conditions they are subject to'³⁷. This very much echoed the views of contributors to our study who spoke of care providers adopting 'exploitative' employment practices by making extensive use of zero hours contracts, allowing insufficient time for home visits (with several contributors speaking of '15 minute visits') and not paying staff for the time spent travelling between appointments. Indeed, in connection with this last point, UNISON (2012) found that across the UK 82% of home care workers in the private and voluntary sector were not paid for the time they spent travelling between appointments, compared to 11% of their counterparts in the public sector³⁸.

³⁴ This information is based on information provided by Skills for Care (the Sector Skills Council for the Care Sector in England) in response to a parliamentary question. The Care Council for Wales is responsible for organising and regulating the care profession in Wales, but does not regulate care workers in the private care sector. It is not, therefore, in a position to provide comparable data for Wales

³⁵ UNISON, Time to care: A UNISON report into homecare. P.18

³⁶ Pennycook, M., Cory, G., and Alakeson, V. (2013) A matter of time: the rise of zero-hours contracts [online], London: Resolution Foundation, p.15

³⁷ UNISON, Time to care: A UNISON report into homecare, p.11

³⁸ Ibid. p.5

- 3.55 A number of contributors called for the use of 'social responsibility' clauses in the contracts between local authorities and the care providers they commission to deliver services. Some local authority representatives felt that the guidance issued by the Joint Council for Wales (see item 4.24) provided a blueprint for this and argued that their authorities already 'consider' the actions recommended 'in the way contracts are awarded', alongside the 'aspiration' that contractors 'pay the living wage'. UNISON goes further by calling for local authorities to 'commit to becoming Ethical Care Councils by commissioning homecare services which adhere to [its] Ethical Care Charter'. Stage 2 of the Charter specifically provides for adherents to state that 'zero hours contracts will not be used in place of permanent contracts'³⁹. Guidance accompanying the three stage Charter recommends that local authorities 'convene a review group with representation from providers, local NHS and UNISON reps to work on a plan for adopting the charter'⁴⁰. Whilst some local authorities had indicated that they were keen to adopt the Charter, others were more hesitant, primarily because of the perceived difficulties of implementing it in practice.
- 3.56 Contributors to our fieldwork were acutely aware that local authorities face a real challenge in providing or procuring home care services at the volumes and of the quality needed within the budgets available. As one contributor noted: 'there is a political desire to provide good services, but a lack of resources to deliver it ... they want to keep the level of service, but need to save money ... and the money in social care is spent on people [home care workers], so if [providers] want to keep the level of service, they have to take money off the people ... and the way they do that is by managing the service through everybody always being available' by virtue of being employed on NGHCs. The same contributor went on to say 'you'd think it would be an easy one for authorities ... just stick the [social responsibility] clause in contracts and make [providers] do the business for them ... but then [providers] need to charge more to deliver the service'.

³⁹ Ibid, p.5

⁴⁰ Ibid, p.6

- 3.57 A number of local authority representatives contributing to our study were unfamiliar with arrangements for commissioning contracted-out services, but seemed to think that seeking to dictate the terms under which contracted service providers employ their staff could amount to ‘anti-competitive’ practice, albeit that the commissioning process could refer to ‘aspirations’ in relation to good employment practices. Even where local authorities might be minded to seek to build social responsibility clauses into their contracts for home care provision, it must be recognised that this could take time, given that it may not be possible easily to change the terms of existing contracts.

CONDITIONS APPLYING TO NO GUARANTEED HOURS CONTRACTS

Exclusivity Clauses

- 3.58 Our fieldwork suggested that exclusivity clauses were very much a rarity, though some contributors suspected that they might be more common in the private than the public sector. In practice, exclusivity clauses are likely to become a thing of the past as provision has been made in the Small Business, Enterprise and Employment Bill to render them ‘unenforceable’⁴¹. However, it was argued that ‘overt exclusivity clauses aren’t needed ... you just need a big pool of employees and if they don’t respond positively, you don’t phone them again’.
- 3.59 As previously mentioned, FEIs across Wales have signed up to the use of a standard contract of employment and it is arguable that this contains what might be described as a soft exclusivity clause in that it ‘reserves the right to refuse permission’ for employees to undertake ‘other employment or paid activities’ in certain circumstances e.g. where ‘there is a conflict or competition’ with the work of the institution or ‘it prevents the effective undertaking of [the employee’s] duties’⁴².

⁴¹ Small Business, Enterprise and Employment Bill (2014), Clause 139

⁴² National Contract of Employment for Lecturer Part-Time Hourly Paid (Permanent) in Colleges of Further Education In Wales, 1 November 2013

Obligation to Accept Work

- 3.60 Our survey found that 77% of organisations that used NGHCs did not use contracts that oblige workers to accept work that was offered to them. However, 20% of these organisations said that their staff, whilst not contractually obliged, were expected to take work offered in practice and that those who refused were less likely than others to be offered work in the future or risk being 'removed from the list of available casual support staff if [they] frequently turn down work without a valid reason'.
- 3.61 Local authority representatives contributing to our fieldwork were clear that their organisations imposed no obligation on NGHC workers to accept work when offered. However, organising casual or unforeseen work is generally devolved to front line managers and it was conceded that in practice, managers probably avoided asking NGHC workers on their lists who repeatedly turned down work.
- 3.62 Health board bank arrangements were also entirely voluntary and it was argued that the on-going shortage of nurses and health care support workers meant that managers are in no position to penalise bank staff who turned down work. Having said this, however, our discussion with one ward manager suggested that he relied on a fairly limited pool of bank workers that he knew to be competent and dependable.
- 3.63 One FEI respondent explained that there was a tacit understanding that hourly-paid lecturers would be expected to fulfil the teaching hours they agree at the start of the academic year. Where they were offered additional hours part-way through the year, as they sometimes were, however, they were under no obligation to take them.

47other employment benefitsNotice Given when Work is Offered or Cancelled

- 3.64 Only two of the organisations responding to our survey said that they had prescribed minimum periods of advance notice that must be given to individuals on NGHCs when work was available to them. This was primarily because bank or casual worker arrangements were generally used in emergencies or unforeseeable circumstances, e.g. to cover the illness of permanently employed staff. In the case of work already offered being cancelled, a slightly higher number of organisations (five) said that they adhered to prescribed notice periods. The periods of notice given in both circumstances varied quite significantly from one organisation to the other.
- 3.65 46% of organisations using NGHCs said that they had no prescribed minimum notice period in the event that work previously offered was cancelled. Our fieldwork would suggest that it was ‘virtually unheard of for [health board] bank staff shifts to be cancelled’. However, in the unlikely event that a shift was cancelled, contributors said that there were processes in place to ensure that staff were paid for a proportion of cancelled shifts, where shifts were cancelled within so many hours of starting.
- 3.66 Contributors said that it was also very rare for local authorities to cancel bank or casual work, once offered and accepted. It was suggested that, where such work was cancelled, local authorities generally sought to compensate workers in some way, if not pay them in full for the hours which they had been asked to work.

Rates of Pay

- 3.67 The vast majority (85%) of organisations that used NGHC responding to our survey said that the rates paid to workers on such contracts were either the

same or higher than those paid to permanent workers with set contracted hours doing the same job.

- 3.68 This was very much borne out by our fieldwork, though nurses working via banks were paid 'plain rates' for individuals on their particular grades, in line with Agenda for Change⁴³ pay banding. This comparability of pay rates meant that employing people via the bank was a more 'cost effective' way of managing spikes in staffing need than paying substantive staff overtime. In this context, it is worth noting that staff who worked part time hours, but who agreed to work additional hours were not paid overtime rates until they had worked the agreed standard working hours.
- 3.69 Some health boards paid bank staff on a weekly basis rather than, in line with substantive staff, on a monthly basis. This arrangement was introduced to assuage discontent among workers at having to wait a month before being paid for their bank work. One contributor said that having to wait a month to be paid had proved a barrier to people joining banks and had deterred some from taking up work offered. It was also said that the delay had been among the factors 'driving nurses into the arms of agencies'.
- 3.70 Whilst it was thought that those employed on NGHCs within public sector organisations were generally paid the same rates as colleagues on permanent contracts, UNISON found that, across the UK, 'there is a marked difference between the pay rates of homecare workers employed by private and voluntary sector employers and those employed directly by councils', with 75% of those in the private and voluntary sectors being paid between the national minimum wage and £8 an hour, compared to 22% of similar workers employed by councils. Although this difference in pay was not necessarily confined to those working on NGHCs, the report goes on to say that 'the practice of zero hour contracts was far more prevalent in the private and voluntary sector'⁴⁴ (at 56% compared to 22%) and it would, therefore, seem reasonable to conclude that the pay rates of at least some NGHC workers in

⁴³ Agenda for Change is the national system which allocates all posts within the NHS to set pay bands

⁴⁴ UNISON, (2012), Time to Care: A UNISON report into homecare, p.14

the private sector are lower than those of comparable workers in the public sector.

- 3.71 Hourly-paid Welsh for Adults tutors were generally paid 1.28 times the standard rate to compensate them for the preparation, marking and administration work necessary to support their time in the classroom as well as the time taken to travel to community settings at which courses were often delivered. It was argued by a union representative that this was wholly inadequate, particularly in more rural areas where the distances travelled could be quite significant.

Agency workers

- 3.72 The hourly rates paid by agencies to healthcare workers (from healthcare assistants to managers in charge of specialist units) could be as much as two or three times the rates paid to staff on substantive contracts with health boards. Agencies typically paid agency workers' travel expenses and sometimes also offered additional payments such as 'self-booking' fees where workers arranged shifts directly with employers. Other types of agency worker were also paid more per hour than the going rate for people doing similar jobs on permanent contracts, though the premium tended to be considerably more modest than that paid to healthcare workers.
- 3.73 In contrast, the rates paid by agencies to supply teachers varied from about £80 to £120 a day, as compared to salary-only rates of some £113 to £165 paid to permanent appointees. Some agencies also offered mileage and lunch allowances in addition to the daily rate paid to supply teachers, but Estyn (2013) noted that the fact that supply teachers working through agencies are 'not paid in line with the teachers' main pay scale' means that 'morale among supply staff working through recruitment agencies is low'⁴⁵.

Other employment benefits

- 3.74 Table 3.1 below sets out the proportion of organisations that used NGHCs responding to our survey which offered staff employed on such contracts a range of wider employment benefits.

⁴⁵ Estyn (September 2013) The impact of teacher absence, p.5

Table 3.1: Proportion of Respondents that use NHGCs Offering Wider Employment Benefits

	Yes	No	Don't Know/ No Response
Annual paid leave	69%	15%	15%
Performance related bonus	4%	58%	38%
Workplace pension automatic enrolment ⁴⁶	69%	12%	19%
Occupational sick pay	38%	35%	27%
Statutory sick pay	54%	19%	27%
Maternity/paternity/adoption leave/pay	46%	23%	31%
A minimum contract termination period	50%	19%	31%
Redundancy Pay	46%	27%	27%
Right to receive written statement of terms and conditions	58%	12%	31%
Right not to be unfairly dismissed	54%	19%	27%

- 3.75 On the whole, a greater proportion of employers responding to our survey offered staff employed on NGHCs a wider range of employment benefits than the CIPD survey suggested they benefited from across the wider workforce. Table 3.2 below compares the proportion of employers responding to our survey offering various types of employment benefits to the proportions of public sector employers across the UK responding to the CIPD's 2013 survey offering the same benefits.

⁴⁶ For employees aged between 22 and the state pension age earning in excess of £10,000 per annum

Table 3.2: Proportion of Survey Respondents Using NHGCs that Offer Wider Employment Benefits

	CIPD Survey ⁴⁷	Our Survey
Annual paid leave	46%	69%
Performance related bonus	N/A	4%
Workplace pension automatic enrolment	29%	69%
Occupational sick pay	15%	38%
Statutory sick pay	37%	54%
Maternity/paternity/adoption leave/pay	25%	46%
A minimum contract termination period	38%	50%
Redundancy Pay	28%	46%
Right to receive written statement of terms and conditions	47%	58%
Right not to be unfairly dismissed	43%	54%

3.76 Notwithstanding that the findings of our survey need to be treated with caution, the differences are striking in relation to some benefits, not least the entitlement to paid holiday, to occupational sick pay, to maternity/ paternity/ adoption leave/pay, redundancy pay and the right not to be unfairly dismissed. It is possible that some of these differences can be attributed to public service providers becoming more aware of the difference between ‘workers’ and ‘employees’ and, therefore, providing staff on NGHCs with employment benefits to which it was not previously understood they were entitled⁴⁸. For example, recent case law surrounding holiday pay exposed a ‘systemic’ problem with the way in which NGHC workers’ holiday pay entitlements were being calculated by some local authorities and it was thought that this was likely to lead to some back-pay claims. Indeed, it is notable in this context that only 69% of respondents to our survey said that those on NGHCs qualified for annual paid leave, a benefit to which workers as well as employees are entitled by law.

⁴⁷ Chartered Institute of Personnel and Development, (2013) Zero-hours contracts: Myth and reality. London: CIPD, p.29

⁴⁸ Annex 1 provides a summary of the employment rights enjoyed by individuals enjoying various types of employment status for reference purposes

- 3.77 It is also possible that the sharp difference in the proportions of employers offering automatic workplace pensions enrolment is attributable to the timing of the CIPD's survey, which was undertaken only a few months after the relevant legislation first came into force⁴⁹.
- 3.78 Having said all of this, it must be remembered that local authorities and health boards in particular made significant use of substantive staff via banks and it is possible that there could be some confusion as to the benefits afforded to workers under the terms of NGHCs and, separately, substantive contracts. On a related point, it is also possible that the highly sporadic and limited nature of some work done under NGHCs (e.g. providing cover in the event of staff sickness or acting as election officers) means that workers do not actually work long enough to accrue any employment benefits. On the whole, however, trade unions were not aware of any major issues in relation to disparities between NGHC and permanent employees' terms and conditions within the public sector, though as one contributor put it, 'we only find out when things are failing'.
- 3.79 The standard contract which FEIs had signed-up to use with hourly-paid staff sets out the minimum number of hours with which employees would be provided each week, term or year, subject to review on an annual basis and 'subject to change depending on the requirements of the college'. It also sets out employees' holiday entitlement, provides for automatic enrolment onto the Teachers' Pension Scheme, sets out employees' eligibility for maternity/paternity/parental/adoption leave and states that employees 'may be eligible' to receive occupational sick and maternity pay, in accordance with individual institutions' policies⁵⁰.

⁴⁹ The Pensions Act 2008

⁵⁰ National Contract of Employment for Lecturer Part-Time Hourly Paid (Permanent) in Colleges of Further Education In Wales, 1 November 2013

Agency workers

- 3.80 Neither agency healthcare workers nor supply teachers, qualified for wider employment benefits (beyond the protection bestowed by the Agency Workers Directive) such as holiday pay (though this was generally already factored into the hourly or day rates paid), sickness pay and pensions. Some agencies did, however provide a limited range of training opportunities.

Training

- 3.81 73% of survey respondents who employed people on NGHCs said that all such staff were eligible to participate in organisational training and development activities and a further 12% said that some were. Where some but not all staff were able to participate in the organisation's training activities, the focus tended to be on mandatory training and on whether the individual undertook a particular role on a regular basis.
- 3.82 In this context, however, Estyn (2013) noted that supply teachers 'do not have access to a wide range of professional development opportunities', that accessing courses can result in individuals 'losing a day's pay' and that 'supply staff seeking a permanent post are badly affected by the lack of appropriate professional development'⁵¹.

⁵¹ Estyn (September 2013) The impact of teacher absence, p.6

4. IMPACT OF THE USE OF NGHCS ON EMPLOYERS, INDIVIDUALS AND SERVICES

- 4.1 It was generally recognised that NGHCs, agency and self-employed or freelance employment arrangements offered both advantages and disadvantages to both individuals and employers. In this chapter, we discuss the benefits and the downsides of using NGHCs first from the perspective of individuals employed under these kinds of arrangements, then from an employer's perspective and finally we discuss the impact of using NGHCs upon services.

IMPACT UPON INDIVIDUALS

- 4.2 While we had hoped to speak to at least some individuals working on NGHCs as part of our research, trade unions representative were not able, within the timescale available, to highlight specific work situations within public sector organisations where we would gain insight from doing so. We have relied instead upon exploring the views and experiences of trade union representatives and upon reviewing what has become a fairly extensive body of literature surrounding the use and effects of zero hours contracts (rather than NGHCs in the wider sense). Human resource managers within key public service organisations also offered their views, drawing upon their experiences of dealing with NGHC workers and the issues they face.
- 4.3 Employer representatives who contributed to this study believed that individuals' motives for accepting work on a NGHC basis were quite mixed, but it was argued that many genuinely wanted the flexibility that NGHCs can offer. Examples given included:
- students wishing to earn money whilst at university or college working as catering assistants or cleaners;
 - recently retired workers, who were happy to work a few hours now and again without having any fixed commitments. The reasons people choose to do this were said to include wanting to 'earn a little extra', wanting to

‘keep their hand in’ and, in some cases, wanting to ‘help out their old employer’;

- people with caring commitments who wanted to choose when they work. Contributors thought that this was all the more important given the predominantly female workforce in nursing, care work and teaching related roles, where NGHCs were more common;
- people who already held part-time jobs but were happy to take on extra work on some occasions but not others;
- people who had substantive ‘term time contracts’, but who wished to take on ‘occasional’ or ‘casual’ work during the school/college holidays;
- trainee and qualified nurses who wanted to ‘get a stretch of skills’ by working in areas other than their main discipline.

4.4 Previous research has also pointed to people choosing NGHCs because such arrangements offer a better fit with family, leisure or academic commitments. Pennycook, for example, suggested that NGHCs suit students and older workers who wish to reduce their hours as they approach retirement. He also suggests that NGHCs offer clear advantages to ‘those who do not need a fixed number of working hours in order to live or support dependents and who value flexibility and choice over the certainty of a fixed level of income’⁵². Indeed, an employment agency representative contributing to our fieldwork noted that ‘ten years ago, people did agency work because there wasn’t much choice, but now lots of people choose to do it because it offers a balance between flexibility and the assurance of an income’.

4.5 Alakeson and D’Arcy noted that ‘NHS nursing banks were well established and offered individuals genuine choice to top up their hours’⁵³

4.6 It was thought that other people take-on NGHCs because of a lack of employment opportunities. Indeed, UKCES found that, at a UK level, a third

⁵² Pennycook, M., Cory, G., and Alakeson, V. (2013) A matter of time: the rise of zero-hours contracts [online], London: Resolution Foundation, p.8 (2013) p.6

⁵³ Alakeson, A., and D’arcy, C., (2014) Zeroing In: Balancing protection and flexibility in the reform of zero-hours contracts, London: Resolution Foundation, p.8

(33%) of those employed on zero hours contracts worked on this basis because 'it's the only option available, with this proportion increasing to 54% among people aged 16-24⁵⁴. One contributor to our study noted that this is a particularly difficult time for anyone seeking work in the public sector. Beyond the obvious economic reasons, it was thought that people accept NGHC work:

- as 'taster opportunities' for individuals thinking about careers in certain fields. This mostly applied to young people still at college or university, but can also provide older people looking for a career change a means of trying-out alternatives without compromising their incomes;
- to gain experience and beef-up their curricula-vitae. This was said to be particularly the case for PGCE graduates wishing to accumulate 'classroom time';
- to get a 'foot in the door' with employers which might at some stage be recruiting into substantive posts. A number of contributors said that their organisations regarded those on NGHCs of various kinds as 'internal applicants' for vacancies that arise and that they are, therefore, given preferential consideration. It was also said that health boards looked to their banks when appointing individuals into permanent posts.

4.7 It has previously been mentioned that a number of organisations had sought to move 'casual' or hourly-paid staff who were seen to be working fairly regular hours onto permanent 'guaranteed hours contracts' over the last few years. However, contributors to our fieldwork said that several individuals had turned down the offer of substantive contracts on the basis that they wanted to maintain the flexibility of NGHCs, or as one contributor put it, 'they choose the right to say no'. A health board representative added that individuals valued the 'flexibility to say "no" to certain shifts and they can work it around their own commitments ... you'll often find that [substantive contracts] are not what they want'. This led contributors to conclude that some workers were on NGHCs out of positive choice rather than compulsion.

⁵⁴ UKCES, (2014) Flexible Contracts: behind the headlines, p.2

- 4.8 It was thought that individuals chose to work on an agency or freelance basis for similar reasons, though some argued that the comparatively high rates paid to some types of agency worker provided an additional incentive. As previously mentioned, healthcare workers can earn two or three times the hourly pay of those doing the same jobs on permanent contracts. By the same token, Comensura noted that, across the UK, social workers were increasingly attracted to freelance work by 'better pay rates' and that they were 'increasingly demanding additional benefits such as paid travel, subsistence and accommodation'. The report also noted that 'they are more likely to commute longer distances to work for local authorities offering higher rates of pay'⁵⁵.
- 4.9 Few of the employers who responded to our survey felt able to comment on satisfaction levels of staff employed on NGHCs relative to their colleagues on permanent full or part time contracts. Most of those that offered an opinion said that staff on NGHCs were equally satisfied as their colleagues, though a minority of commentators thought that NGHC workers tended to be a little less satisfied.
- 4.10 Contributors to our fieldwork also found it difficult to comment on NGHCs workers' satisfaction levels relative to the wider workforce. In part, this was because staff employed via banks or on casual, hourly-paid contracts were, as often as not, also employed on a permanent full- or part-time basis. Nevertheless, one local authority that had compared satisfaction levels among 'casual' staff and those on permanent contracts and found that they were broadly comparable.
- 4.11 UKCES (2014) found that, across the UK, satisfaction levels among people employed on zero hours contracts was only marginally lower than it was among permanent employees (at 66% compared to 68%). The same study found that temporary employees tended to be slightly less satisfied, with 64% saying that they were satisfied with their current jobs⁵⁶

⁵⁵ Comensura (2014) Socialcare Index: Review of 2013/14 Financial Year, p.7

⁵⁶ UKCES, (2014) Flexible Contracts: behind the headlines, p.2

4.12 Whilst the literature also points to individuals making positive choices to work under NGHCs, a rather less benign picture emerges overall, for example:

- the Labour Force Survey suggested that individuals on zero hours contracts work fewer hours on average than those employed on permanent contracts⁵⁷. Survey findings suggested that this might not necessarily be a matter of personal choice in that a higher proportion of zero hours contract workers reported that they wanted more hours and were looking for a new or additional job⁵⁸;
- the CIPD found that ‘zero-hours contract workers were more likely to be at the lower end of the earnings spectrum’⁵⁹ and the Quarterly Labour Force Survey, April–June 2013 showed that the average gross hourly pay for permanent workers was 36% more than that of zero hours contract workers and 16% more than that of agency workers⁶⁰;
- UKCES found that a greater proportion of people on zero hours contracts than those on temporary contracts ‘feel that they have to accept work if their employer asks’ at 60% compared to 50%⁶¹;
- UNISON noted that ‘the need to be available for work when required by the employer hinders the ability of staff to take up other employment’⁶², regardless of the existence of exclusivity clauses;
- UNISON also found that ‘the need to respond to calls to attend work, frequently at short notice, disrupts life outside of work and places a particular strain on families and arranging care for dependants’⁶³;
- the UCU argued that further and higher education lecturers were often left ‘thousands of pounds out of pocket over a year compared to those doing the same job’ as a result of being employed on hourly-paid rather than

⁵⁷ Office for National Statistics (February 2015) Analysis of Employee Contracts that do not Guarantee a Minimum Number of Hours, p.10

⁵⁸ Ibid, p.11

⁵⁹ Chartered Institute of Personnel and Development, (2013) Zero-hours contracts: Myth and reality. London: CIPD, p.24

⁶⁰ TUC, (2014) The Decent Jobs Deficit, p24, drawing on Office for National Statistics, Quarterly Labour Force Survey, April–June 2013 data

⁶¹ UKCES, (2014) Flexible Contracts: behind the headlines, p.3

⁶² UNISON (March 2015) Bargaining Support paper: Zero Hours Contracts, p.3

⁶³ UNISON (March 2015) Bargaining Support paper: Zero Hours Contracts, p.3

permanent or fractional contracts and this also ‘has a knock on effect on pensions’⁶⁴;

- Pickavance (2014) pointed to the ‘precarious’ nature of life on zero hours contracts in that people ‘struggle to make ends meet’, are forced into debt and experienced ‘difficulty in calculating benefit entitlements’⁶⁵;
- UNISON (2015) also noted that zero hours contracts offer ‘no guaranteed level of regular earnings that provides any certainty over meeting bills or planning for the future’. It also pointed to the knock-on effects of variable earnings upon ‘an individual’s eligibility to claim various state benefits’ including the working tax credit⁶⁶;
- the TUC found that ‘workers who have no fixed hours or guaranteed incomes increasingly find that mortgage applications are turned down. Some are even being refused tenancy agreements. Some need to resort taking out pay day loans and even to use food banks to cover their basic household bills and to feed their families’⁶⁷;
- UNISON noted that the ‘experience of working within such exploitative terms and conditions of service can fundamentally reshape people’s experiences of work, lowering expectations ... increasing tolerance of bad treatment’⁶⁸ and leading to ‘fear among staff about complaining or raising issues concerning any aspect of the job or service’⁶⁹;
- UNISON also argued that zero hours contract are ‘more open to abuse than regular permanent contracts’⁷⁰ and that workers lose out on basic workplace protections, because they fail to qualify as employees, lack the necessary continuity of service or because their employer takes

⁶⁴ UCU, (July 2013) Members Briefing: The over use of Part Time Hourly Paid contracts in Further and Higher education

⁶⁵ Pickavance, N., (2014) Zeroed Out: The place of zero-hours contracts in a fair and productive economy, pp. 10-11

⁶⁶ UNISON (March 2015) Bargaining Support paper: Zero Hours Contracts, p.3

⁶⁷ TUC, (December 2014) The Decent Jobs Deficit: The Human Cost of Zero-Hours Working in the UK, p.26

⁶⁸ UNISON, (undated) UNISON Cymru/Wales Labour Link submission to Welsh Labour on zero hours contracts, p.3

⁶⁹ UNISON (March 2015) Bargaining Support paper: Zero Hours Contracts, p.3

⁷⁰ UNISON (March 2015) Bargaining Support paper: Zero Hours Contracts, p.3

advantage of their uncertain employment status to evade employment rights obligations⁷¹.

- 4.13 Contributors to our study spoke of the problems caused by variable and often low earnings associated with NGHCs, with one commenting that ‘they’ve got bills to pay like the rest of us... it can be nerve-wracking just waiting for the phone to ring’ and another saying that ‘lots of doors are closed’ to people on NGHCs, ‘like a mortgage and credit ... lenders want the guarantee of a regular income’. Indeed, it was argued that even where NGHC workers ‘get lots of work and earn lots of money’, it can still be difficult for them to access credit.
- 4.14 In relation to the home care sector in particular, UNISON noted that ‘zero hours contracts contribute to the perception that home care is not a desirable career choice and help to exacerbate other poor employment practices in the sector’⁷².
- 4.15 It is probably worth noting at this point that ‘those employed on zero-hours contracts are less likely to have their pay and conditions affected by union arrangements and are less likely to be a member of a trade union or staff association’⁷³. In this context, it is notable that all public sector employers in Wales recognise trade unions and collective bargaining rights and that the public sector in Wales is relatively strongly unionised.

IMPACT UPON EMPLOYERS

- 4.16 Two main reasons were given by respondents to our survey for using NGHCs, self-employed or agency workers. Almost half (48%) of the organisations using such contracts said that they did so to manage fluctuations in demand for services, with one contributor from a health board speaking of a hospital

⁷¹ UNISON, (undated) UNISON Cymru/Wales Labour Link submission to Welsh Labour on zero hours contracts, p.3,

⁷² Ibid, p.4

⁷³ Pennycook, M., Cory, G., and Alakeson, V. (2013) A matter of time: the rise of zero-hours contracts [online], London: Resolution Foundation, p.6

ward being opened up specially to cope with winter seasonal demand and being staffed entirely by 'bank staff', many of whom already held substantive contracts.

- 4.17 A third (33%) of respondents to our survey said they used NGHCs to provide flexibility for individual employees. Having said this, however, it is notable that a small majority of respondents who used NGHCs said that the typical working patterns of staff employed on this basis were driven largely by fluctuations in demand, which possibly suggests that flexibility for employees was not the primary motive for using NGHCs.
- 4.18 These findings very much chimed with the findings of the CIPD's 2013 UK level study. However, in contrast to the CIPD's findings and rather surprisingly perhaps, given fluctuations in demand for health services in particular, only 8% of respondents to our survey related the use of such contracts to uncertain business conditions (compared to 21% of CIPD respondents) and only 5% said that they used them for reasons of cost efficiency (compared to 28% of CIPD respondents). Our fieldwork suggested that cost considerations probably did play a more prominent part in organisations' decisions to use NGHCs, however. As previously discussed, health board representatives spoke of using bank nurses in order to avoid paying substantive staff overtime. Similarly, the use of bank staff was considered preferable to the use of agency workers by a number of organisations, primarily because of the comparatively high cost of using agencies. Indeed, it was suggested that a perverse result of any attempt to crack down on the use of NGHCs would be an increased use of agencies, thus increasing the cost to the public purse, whilst also possibly worsening workers' terms.
- 4.19 Contributors from local authorities also spoke of the benefit of using bank staff in terms of their possessing the 'up-to-date skills' required without the employer having to provide additional training or close supervision. This was echoed by health board representatives who said that banks provided greater 'continuity with staff ... staff tend to go to areas where they've been before and they know the set-up and they're skilled'. In the same vein, a ward

manager said that he tended to call in the same bank staff because ‘they know the ropes’ within particular ward settings and, therefore, required less supervision. Pennycook also argued that using banks allowed employers ‘to reduce the initial costs associated with recruiting and training staff’ and he further noted that ‘this practice appears to be common in higher and further education where staff working on zero-hours contracts can be brought in to teach a module for a term without any delay but without any on-going costs after their work assignment is complete’⁷⁴.

- 4.20 On an allied point, one contributor said employing people on NGHCs or an agency basis offered employers an opportunity to ‘try before they buy’, thus reducing the risk of recruiting ill-suited people directly into permanent posts.
- 4.21 According to several contributors, another significant advantage of using bank arrangements from an employer’s perspective was that, where relevant, staff registered with banks were pre-vetted (e.g. via a Disclosure and Barring Service check) and could, therefore, take up placements straight away.
- 4.22 10% of respondents to our survey noted that the use of NGHCs enabled them to retain workers during periods when staffing needs were not so high, though this may well imply sub-optimal use of available labour and that individual workers were being precluded from working the hours they might have wished. Indeed, Brinkley noted that zero hours contracts were thought by some to be ‘an important reason why unemployment has been lower and employment higher than we would have expected’⁷⁵.
- 4.23 On an allied, point, it is notable that 63% of organisations responding to our survey which used NGHCs said that the number of staff they need was fairly or very consistent across the year, suggesting that there might be some scope to reduce the numbers employed on a contingency, ‘as needed’ basis. Having said this, our fieldwork would suggest that, where people worked fairly

⁷⁴ Pennycook, M., Cory, G., and Alakeson, V. (2013) A matter of time: the rise of zero-hours contracts [online], London: Resolution Foundation, p.13

⁷⁵ Brinkley, I. (2013) Flexibility or insecurity? Exploring the rise in zero hours contracts [online]. London: The Work Foundation. p.5

regular hours under NGHCs, some organisations already sought to offer them permanent positions, though we did not come across any explicit policies or formulae for determining when this should happen. However, contributors also spoke of conflicting pressures upon local authorities in particular not to increase their permanent staff headcount one the one hand, and on the other, to reduce their use of NGHCs.

4.24 In April 2014, the local government Joint Council for Wales (JCW) issued guidance to local authorities which recommended that they should ‘conduct a review of their zero-hours arrangements’, including their bank staff arrangements, ‘to ensure that they incorporate the following:

- making it clear to the worker what a zero-hours contract means including their employment rights;
- ensuring comparable pay with staff doing same or similar work on permanent contracts;
- giving reasonable notice of work;
- giving reasonable notice of cancellation of work;
- providing compensation for work cancelled at very short notice;
- an effective system of holidays and holiday pay;
- permitting employment with other organisations;
- allowing individuals to turn work down;
- ensuring fair and non-discriminatory methods of selecting workers for work;
- ensuring that new contracts are issued where the employment relationship changes (e.g. from worker to employee);
- training of line managers to ensure that the reality of the employment relationship is consistent with the contract and associated employment rights of zero-hours workers;
- regular review of the appropriateness of such contracts for the nature of the work and the balance of flexibility for employer and employee⁷⁶.

⁷⁶ WLGA, (April 2014) Zero-Hours Contracts – Guidance, p.3

- 4.25 Local authority representatives contributing to our work were adamant that their employing organisations adhered to this guidance and indeed, largely did so before it was issued.
- 4.26 The wider literature points to some rather more dubious benefits to employers of using NGHCs, though it has to be said that there was no suggestion from our fieldwork that the organisations which contributed to this study employed NGHCs for these reasons. For example, it has been argued that ‘the power imbalances that operate in many workplaces’ means that the flexibility which NGHCs offer workers can be ‘more apparent than real’⁷⁷ and that that NGHCs can be a means of controlling workers’ behaviours and maintaining downward pressures on wage rates. A union representative noted that that employers also benefited from using NGHCs because doing so can lessen the burden of having to organise rotas by putting pressure upon employees to make themselves available ‘at the drop of a hat’. Another contributor spoke of a ‘dependency culture’ among employers which habitually use NGHCs whilst another still argued that ‘if an employer’s got a large number of either zero hours or casual contracts, they’re doing something wrong’.
- 4.27 Whilst our research has not any revealed any deliberate or systematic use of NGHCs as a way of undermining employees’ bargaining position and employment rights, it must be recognised that the use of NGHCs, agency and freelance workers ‘transfers some of the business risk from the employer onto the employee’⁷⁸. Pennycook argued that it is easier for employers to ‘transfer the burden of varying demand onto the workforce’ ‘in low-paid, low-skilled sectors of the economy in which employers are often (though not always) competing on cost and price rather than on service quality’⁷⁹.

⁷⁷ Pennycook, M., Cory, G., and Alakeson, V. (2013) A matter of time: the rise of zero-hours contracts [online], London: Resolution Foundation, p.6

⁷⁸ Chartered Institute Of Personnel And Development, (2013) Zero-hours contracts: Myth and reality. London: CIPD, p.6

⁷⁹ Pennycook, M., Cory, G., and Alakeson, V. (2013) A matter of time: the rise of zero-hours contracts, London: Resolution Foundation, p.8 (2013), p.13

- 4.28 Pennycook also suggested that some employers utilised zero-hours contracts in order to ‘avoid conferring the formal employment status of “employee” upon staff and, thus, ‘reduce statutory obligations towards staff’^{80 81}.
- 4.29 Contributors to our fieldwork suggested that there were also disadvantages to the use of NGHCs from an employers’ perspective. In particular, it was argued that ‘it’s difficult to create a happy team when staff are all on different contracts ... some not being paid to be at meetings whilst others are ... all vying for the same jobs’. It was further argued that the discontent fostered by these kinds of things ‘doesn’t help the quality of services’ provided. Contributors also thought that the use of agency staff can lead to similar problems, but with the added disadvantages of being less likely to provide continuity and being considerably more expensive.

IMPACT UPON SERVICES

- 4.30 As previously discussed, some types of NGHC arrangements were crucial in enabling health boards in particular to maintain service at times of crisis. The example was given of a ‘pop-up’ hospital ward being staffed entirely by bank workers in order to cope with an unforeseen spike in winter seasonal demand. Similarly, the use of ‘casual’ workers enabled local authorities, HEIs and other public service providers to offer non-core services (e.g. events and add-ons to school services) in a flexible and efficient way.
- 4.31 However, several contributors were concerned that the use of NGHCs to deliver core services, particularly in the home care sector, is having a negative impact upon the continuity and, thus, the quality of services. This very much accords with UNISON’s findings that the use of NGHCs ‘increase the possibility of homecare workers doing varied hours and therefore increases the likelihood that they will not end up visiting the same clients’⁸². The report

⁸⁰ Ibid

⁸¹ See Annex 1 for the distinction additional benefits which ‘employee’ as opposed to ‘worker’ status affords individuals

⁸² UNISON, Time to care: A UNISON report into homecare, p.16

goes on to say that this is particularly detrimental to the most vulnerable clients, not least dementia sufferers.

- 4.32 Allied to this, contributors from the health sector noted that home care workers were critical to the process of 'reablement', but that the lack of time available to them often prevented them from contributing to this process and forced them to do things for clients rather than helping them do things for themselves. It was argued that this undermined the work done by other parts of the health service, for example hospitals and 'occupational therapists'. It was further argued that this was totally contrary to the supposed focus of Welsh Government policy on supporting early interventions and, in the longer term, would have the perverse consequence of increasing the costs to the public purse as a result of having to provide additional care. This very much echoes the findings of Alakeson and D'Arcy (2014) that 'the costs of poor quality care in the home are felt elsewhere in the public sector'⁸³.
- 4.33 Turning to the impact of the use of supply teachers upon learners' progress, Estyn (2013) noted that 'in most schools, teaching by supply staff not employed by the school is often ineffective, mainly because they do not know enough about the pupils they teach. It is difficult for these staff to match activities and the level of support to the individual needs and abilities of pupils.' The report goes on to say that 'due to the short-term nature of supply work, it can be more difficult for supply staff to establish effective working relationships with learners. Learners generally have less regard for supply staff compared with their usual teacher' and that 'in the majority of instances, classroom misbehaviour or low-level disruption remains an issue'⁸⁴.
- 4.34 Estyn notes that in the wake of an increased use of 'cover staff and externally-sourced support staff in the delivery of education' in both primary and secondary schools, 'learners make less progress in developing their skills, knowledge ... and learners' behaviour is often worse, particularly in

⁸³ Alakeson, A., and D'arcy, C., (2014) Zeroing In: Balancing protection and flexibility in the reform of zero-hours contracts, London: Resolution Foundation, , p.18

⁸⁴ Estyn (2013) The impact of teacher absence, p.9

secondary schools'⁸⁵. It is, however, worth noting here, particularly in the context of item 3.72 above, that the Wales Audit Office (2013) noted that 'the lower rates paid for agency staff (see) did not have a significant impact upon the quality of supply teachers and on learners'⁸⁶.

⁸⁵ Ibid, p.3

⁸⁶ Wales Audit Office (September 2013) Covering Teachers' Absence, p.45

5. CONCLUSIONS AND POSSIBLE WAYS FORWARD

- 5.1 The ONS has shown that NGHCs have become a more prominent feature of employment practice in the UK over recent years and our study would suggest a fairly widespread use of such arrangements across organisations involved in devolved public service delivery in Wales. The extent and nature of NGHC arrangements used varies from one organisation to the next, but it is very clear that, almost without exception, they involve no mutuality of obligation i.e. employers are not obliged to offer work and workers are not obliged to accept work offered to them.
- 5.2 Our study would suggest that a significant proportion of people employed on NGHCs across Welsh public services are employed via staff banks, often on a 'casual' basis alongside substantive permanent jobs. Whilst staff banks had their detractors, by and large they were seen by stakeholders (both employers and trade unions) as a good thing and a central plank of organisations' workforce strategies, most particularly within the health service. Staff banks would seem to represent a cost effective way for organisations to cope with fluctuations in staffing needs.
- 5.3 Organisations providing public services also use employment agencies to source temporary staff, though the use of agency staff is considerably less common than the use of staff via organisations' own staff banks. Organisations that used agency staff were generally seeking to reduce their use of such arrangements in order to control costs and better manage the quality of services. The one exception to this related to the growing use of agencies to source supply teachers.
- 5.4 Where organisations use NGHCs, we found no evidence of exclusivity clauses and, whilst unions and employers alike perceived that it is far preferable for people to be employed on permanent contracts, our fieldwork with stakeholders did not reveal any major issues in relation to disparities between NGHC and permanent employees' terms and conditions within the

public sector, particularly where bank arrangements were used. Having said this, our survey would suggest that workers on NGHCs do not always enjoy the full range of employment benefits available to permanent appointees, even where they might be legally entitled to those benefits.

- 5.5 Our study pointed to both advantages and disadvantages to the use of NGHCs for both employers and individuals. However, it is widely accepted that the advantages tended to accrue to employers and the disadvantages to employees, quite simply because NGHCs effectively transfer risk from the employer onto the employee. Nevertheless, as Pennycook noted, ‘it is important not to assume that employment on a zero hours contract is uniformly undesirable’⁸⁷.
- 5.6 Stakeholders generally, and unions especially, wished to see a reduction in the use of NGHCs (particularly in FE and HE) but we detected little appetite for a wholesale ban on their use in public service delivery. Indeed, it was argued that Government needs to be careful not to legislate to deal with what amounts to bad management practice and that there is a serious risk that further legislation would lead to undesirable results such as the cynical use of ‘15 minute contracts’ or an increase in the use of agency workers in place of NGHC workers. It was also argued that ‘regulation needs enforcement’ and would, therefore, require that additional resources be made available, particularly given that individuals employed on more exploitative kinds of NGHCs are unlikely to seek to enforce their own rights.
- 5.7 This having been said, several stakeholders felt that action needs to be taken to tackle the inappropriate use of NGHC to employ home care workers. Contributors called for further work, led by the Welsh Government, to build upon ‘guidance’ already issued by the Joint Council for Wales as well as UNISON’s ethical care charter. This would include working with local authorities and other commissioners to improve procurement practice, including the inclusion of ‘social responsibility clauses’ within the terms of

⁸⁷ Pennycook, M., Cory, G., and Alakeson, V. (2013) A matter of time: the rise of zero-hours contracts [online], London: Resolution Foundation, p.8 (2013) p.16

contracts with home care providers. This very much echoes a recommendation made by Alakeson and D'Arcy that 'workforce terms and conditions' should be included 'within definitions of social value in procurement'. They went on to say that the 2014 EU Procurement Directive and the Public Services (Social Value) Act 2012 make it clear that 'procurement should take into consideration the wider economic, social and environmental impacts of the provider contract, not just price and quality'. They argue that 'the potential relevance of these new approaches as drivers to improve workforce terms and conditions are being overlooked'⁸⁸.

- 5.8 Alakeson and D'Arcy also recommend that 'local authorities should play a wider role as market managers' by working 'more closely with providers to develop sustainable local care markets that can offer workers greater choice between zero-hours and fixed hours contracts'. This would seem particularly relevant in areas where local authorities contract several home care providers.
- 5.9 In making these recommendations, we are acutely aware that the timescale and resource available for this study did not allow detailed dialogue to take place with private and third sector care service providers or with local authority procurement and service management professionals. Thus, whilst offering some important headline messages, this study does not provide the granularity of information necessary to understand the factors that will help or hinder the inclusion of workforce terms and conditions within service contracts and the wider role that local authorities might play as market managers. Further research should, therefore be undertaken, to involve detailed dialogue with those involved in commissioning and delivering home care services
- 5.10 In calling for improvements to the way in which home care services are procured, stakeholders were not blind to the serious financial pressures bearing down on local authorities. Individual contributors argued that 'there needs to be an honest dialogue ... politicians still talk about "world-class

⁸⁸ Alakeson, A., and D'arcy, C., (2014) Zeroing In: Balancing protection and flexibility in the reform of zero-hours contracts, London: Resolution Foundation, p.21

quality services” and “constant improvement in services” ... but we’re now about trying to protect the level of service that we’ve got’.

- 5.11 Finally, we believe that the Welsh Government has an important part to play in keeping the message alive, even after the current media interest has waned, that the inappropriate use of NGHCs is unethical and unacceptable, particularly within the provision of publicly funded services.

ANNEXES

Annex 1: Main Types of Employment Status

Worker

A person is generally classed as a 'worker' if:

- they have a contract or other arrangement to do work or services personally for a reward (the contract does not have to be written)
- their reward is for money or a benefit in kind, e.g. the promise of a contract or future work
- they only have a limited right to send someone else to do the work (subcontract)
- they have to turn up for work even if they do not want to
- their employer has to have work for them to do as long as the contract or arrangement lasts
- they are not doing the work as part of their own limited company in an arrangement where the 'employer' is actually a customer or client

Workers are entitled to certain employment rights, including:

- getting the National Minimum Wage
- protection against unlawful deductions from wages
- the statutory minimum level of paid holiday
- the statutory minimum length of rest breaks
- to not work more than 48 hours on average per week or to opt out of this right if they choose
- protection against unlawful discrimination
- protection for 'whistleblowing' - reporting wrongdoing in the workplace
- to not be treated less favourably if they work part-time

They may also be entitled to:

- Statutory Sick Pay
- Statutory Maternity Pay
- Statutory Paternity Pay
- Statutory Adoption Pay
- Shared Parental Pay

Employee

All employees are workers, but an employee has extra employment rights and responsibilities that don't apply to workers who aren't employees. These rights include all of the rights workers have and:

- Statutory Sick Pay
- statutory maternity, paternity, adoption and shared parental leave and pay (workers only get pay, not leave)
- minimum notice periods if their employment will be ending
- protection against unfair dismissal
- the right to request flexible working
- time off for emergencies
- Statutory Redundancy Pay

Some of these rights require a minimum length of continuous employment before an employee qualifies for them. An employment contract may state how long this qualification period is.

Self-employed (freelance)

A person is self-employed if they run their business for themselves and take responsibility for its success or failure.

Self-employed workers aren't paid through PAYE, and they don't have the employment rights and responsibilities of employees.

Someone can be both employed and self-employed at the same time, eg if they work for an employer during the day and run their own business in the evenings.⁸⁹

⁸⁹ <https://www.gov.uk/employment-status/overview>

Annex 2: Employment Rights Appertaining to the Main Types of Employment Status⁹⁰

Employment right associated with each status	Employment status			
	Employee (incl. full/ part time & fixed term contracts)	Employee shareholder (incl. full/ part time & fixed term contracts)	Worker (incl. agency workers, contractors, freelancers)	Self-employed (incl. freelancers, consultants, contractors)
National Minimum Wage	✓	✓	✓	
Protection from unlawful deductions from wages	✓	✓	✓	
Paid annual leave	✓	✓	✓	
Automatic enrolment for pensions	Dependent on earnings			
Maternity, Paternity, Adoption leave and pay	✓	✓		
Part-time status (no less favourable treatment)	✓	✓	✓	
Fixed-term status (no less favourable treatment)	✓	✓		
Rest breaks	✓	✓	✓	
Right to request flexible working	✓			
Right to request time to train (companies over 250 employees)	✓			
Protection from discrimination	✓	✓	✓	✓
Minimum notice periods	✓	✓		
Collective redundancy consultation	✓	✓		
Statutory redundancy pay	✓			
Protection from unfair dismissal (gained after 2 years in continuous employment)	✓			
Protection from unfair dismissal (automatically unfair)	✓	✓		
TUPE	✓	✓		

⁹⁰ Department for Business Innovation and Skills, (December 2013) Consultation on Zero hours employment contracts, p.8

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