

Citizens Advice Scotland

Scottish Association of Citizens Advice Bureaux
www.cas.org.uk



Scottish Affairs Committee inquiry into zero hours contracts

Response from Citizens Advice Scotland

October 2013

- Citizens Advice Scotland and its member bureaux form Scotland's largest independent advice network. CAB advice services are delivered using service points throughout Scotland, from the islands to city centres.
- Citizens advice bureaux in Scotland helped clients with over 500,000 new issues in 2011/12 – more than 1,400 new issues for every day of the year. Nearly 200,000 clients brought new issues to a bureau over the year.
- In 2011/12, Scottish bureaux achieved a financial gain of almost £140million for clients based on funding of £16.9million.

Introduction

Citizens Advice Scotland welcomes the opportunity to respond to the Scottish Affairs Committee's inquiry into zero hours contracts. Bureaux in Scotland advised clients on over 44,000 new employment issues during 2012/13, making it the third most common area of enquiry after benefits and debt. Although we do not collect statistics on zero hours contracts specifically, we are aware that case evidence regarding the effects of such contracts has been increasing.

Because we are a generalist service, we are able to see how zero hours contracts affect other areas of a client's life and how employment issues interact with other difficulties clients are facing. Benefits and employment issues are respectively the first and third largest areas of advice provided by the CAB Service in Scotland. Our in depth knowledge of the benefits system in particular allows us to see how being on a zero hours contract affects clients who are claiming in and out of work benefits.

The context of this rise in zero hours contracts is high levels of unemployment and high levels of underemployment. Many people struggle to find work for which they are qualified and experienced, or which pays enough for them to meet essential living costs. This is the result of limited economic growth, rapidly increasing living costs and a reduction in the pay and hours of employment available. In this context, the use of zero hours contracts is susceptible to abuse by employers when workers do not have the option of alternative employment.

Key points

- 1) Due to the lack of mutuality of obligation between employers and workers, those on zero hours contracts have fewer rights than those with a contract of employment. There is also a lack of clarity around what employment rights zero hours workers are entitled to (especially around holiday pay entitlement).
- 2) Workers on zero hours contracts are at risk of experiencing an unexpected drop in hours and are susceptible to being dismissed without their employer following a proper dismissal procedure (when employers simply stop offering a worker any hours).
- 3) Those on zero hours contracts have fewer maternity rights and, due to the lack of security these contracts entail, can be more vulnerable to discrimination.
- 4) As a result of fluctuating and part time hours, those on zero hours contracts have difficulty claiming in and out of work benefits. They may have to submit information about changes of circumstances on a weekly basis, and manage Job Seeker's Allowance and Working Tax Credits Claims interchangeably.

- 5) Job seekers can feel pressured into taking on a zero hours contract despite the working hours, pay and skill level being inappropriate. Job seekers can be at risk of being sanctioned if they fail to accept a zero hours contract, or leave one voluntarily.
- 6) The varying hours and pay which zero hours workers experience makes it difficult to budget and manage household costs. This can lead to rent arrears and workers seeking high interest credit in order to meet their living costs.

Employees and workers

People on zero hours contracts most often fall under the definition of 'worker' rather than 'employee', although it should be noted that in some cases a 'zero hours worker' may have an express variation in their contract which an employment tribunal might consider a criterion for that worker to be considered an employee. Workers are not employees because mutuality of obligation does not exist between employer and worker: the employer has no obligation to guarantee any number of hours, and the worker has no obligation to work the hours which are offered. As a result, they do not have the rights that employees have, such as the right not to be unfairly dismissed, or to receive redundancy pay.

Insecurity of working hours

Zero hours contracts serve a function for those workers who want flexible working hours. Students, for example, might find these contracts appealing as they can fit their hours around their studies. However, this flexibility can become a problem for workers who are on zero hours contracts but would prefer to have a contract of employment. Scottish citizens advice bureau have seen numerous cases of clients who have experienced an unexpected drop in their usual working hours, leaving them suddenly unable to meet their basic living costs. Zero hours workers tend to be on a low wage with little or no disposable income, reducing their ability to save and making them more susceptible to income shocks.

- An East of Scotland CAB reports of a client who is Spanish and has been working for a private care providing company for 5 years on a zero hours contract. She used to be regularly given 30 hours a week or more but recently this has reduced, often to less than 20, and she is struggling to cope financially. Getting a second job would be difficult because the hours she works in her current job tend to be around breakfast, lunch and tea, leaving relatively small gaps in between.
- A West of Scotland CAB reports of a client who has been working under a zero hours contract since April 2012 as a carer in the community. She has received 30 hours per week until approximately 2 months ago when the hours dropped significantly. Her employers are awaiting the outcome of a contract bid to the Council and are taking on many more staff. The new staff are jobseekers and the company receives government payments for taking them

on. As a consequence all of the additional hours are being passed on to them, leaving existing workers with hardly anything. Some weeks the client works 4 hours, some she works 10, last month she had to borrow money to get petrol so she could drive to work. Today she spoke to her employer and asked to be paid off but the employer refused saying they would need to keep her on and hopefully the hours situation would get better in two month's time. The client cannot afford to carry on working there, but she is afraid that if she leaves her job voluntarily she will be sanctioned by the Job Centre.

- A North of Scotland CAB reports of a client who came into the bureau with a query about his entitlement to benefits. He is currently working in a nightclub and is on a zero hours contract. When he started he was initially taken on for Thursday, Friday, Saturday and Sunday nights. The nightclub was not busy on Sundays so now it is only open 3 nights per week and he is only getting 2 nights per week work (Friday and Saturday). His employer agreed to his working on Thursdays as well, however he is never allocated this extra shift when the rota is set. He is currently only getting 11 hours per week and receiving about £63, and received more income when he was on Job Seeker's Allowance. The client was advised that if he leaves his job voluntarily he will have to consider that he may be sanctioned and could end up with no Job Seeker's Allowance. The adviser asked if he thought that his employer might write him a letter saying that there is no possibility of further hours but he said he doubted whether he would do this. He was advised that he would be taking a risk just to leave the job.

Constructive dismissal

One major concern for those on zero hours contracts is the risk of constructive dismissal. When a worker has no guaranteed hours, it means they are at risk of not receiving any shifts if they present any difficulty for the employer. This makes workers anxious about raising issues with employers, and unable to ensure that their statutory rights are being met. An employer is able to effectively dismiss a worker on a zero hours contract by not offering him/her any shifts, but without having to follow a dismissal procedure. The following cases show clients who had their hours cut as a result of complaining about unlawful deductions from wages, and even for taking a holiday.

- A North of Scotland CAB reports of a client who is a security worker with a zero hours contract. He and several other workers are perturbed that their wages are not paid on the due date, and that they are paid into the bank by cheque which then takes several days to clear. Also, there are always deductions for unspecified reasons so that the actual wages are at least £30 less than the payment for the hours worked. They do not receive itemised payslips and if they do ask for them they are many weeks behind. The client queried why his money was not in the bank. He was then taken off the job he

was on and put on standby. The client is finding these inconsistencies both stressful and distressing.

- An East of Scotland CAB reports of a client on a zero hours contract who wished to take leave in order to bring his children over from Spain. His employer told him he could not take leave because it was a bad time due to the Edinburgh Festival, but agreed he could take leave in September. However, when the client returned, the employer told him he was being given three week's notice. The client has not received any hours since this. Because the contract states no minimum hours, there is no requirement for the employer to give him any more hours, and he has effectively been dismissed. The adviser helped the client to write a grievance letter, but he was advised to seek alternative employment.

Vulnerability to discrimination

The risk of constructive dismissal also means that zero hours workers are often more vulnerable to discrimination. Employers do not always have an incentive to deal with equality and discrimination issues responsibly when they can offer the work to other employees on similar contracts.

A West of Scotland CAB reports of a client who works as a carer with a zero hour contract. She works in a service user's house but is getting harassed by him. The client reported these incidents to her supervisors and was advised to report the incidents to the police. The police advised her not to go back to the house. She has now been told by her employers that they now have very little work for her and offered to train her with the view of moving to another placement. The client does not want to accept this as it is less hours than she is already doing but is waiting to see what, if anything, her employers will offer her. She feels let down by them as it was her employers that told her to report the matter in the first place. The client was advised to check her contract but warned that with this type of contract she has very little rights. The employer is only required to offer her employment as and when she is needed.

Holiday pay and leave

Not only do zero hours workers have fewer rights than employees, but there is also confusion about what exactly those rights are. Often workers lose out on their entitlement to holiday pay, or the holiday pay gets added on to their hourly rate, which can leave workers underpaid. Conversely, a client might not be paid for an enforced break in their usual hours as the case below demonstrates.

- An East of Scotland CAB reports of a client who came in and reported that she had been employed for around two years and she had not had any paid holidays. She spoke to her manager about this and was told that as she was on a "zero" hours contract she was not entitled to any paid holidays. The bureau assisted the client in writing a grievance letter.

- A North of Scotland CAB reports of a client who, following a period of paid leave, was due to return to work at her hotel job on 13th June as detailed in a letter dated 9th April. The leave followed a lengthy period of sickness absence. However, the client received another letter dated 4th June from the company indicating that the start date would be moved to 27th June instead because "we are not here to do your induction and return to work training". The client wished to know if she should be paid during the additional two week's enforced leave. The client's contract transpired to be a zero-hours contract ("Your normal hours of work are as and when required") and, as a result, the client was advised that the employer has no contractual obligation to provide work and therefore pay the client for the additional two weeks enforced leave.

Maternity rights

Workers, as opposed to employees, are not entitled to as many maternity rights, including maternity leave and the right to return to the same job.

- Citizens Advice Direct reports of a client who is pregnant, works for the NHS and is in the process of applying for maternity pay. She has been told she is 11 weeks short of being eligible for the full entitlement, as she only became an employee in November 2012. However, she has worked for the NHS since May 2011, when she was on a zero-hours contract but was "more or less working full-time". She wishes to know if this can be disregarded when calculating her entitlement.

These are all examples of rights which employees enjoy, and which workers do not. Employees and workers having different rights set out in employment law is not a problem in itself as long as these definitions are used appropriately, and employers are not offering zero hours contracts instead of employment contracts in order to circumnavigate certain statutory responsibilities. However, our evidence suggests that employers are misusing this type of contract, causing detriment to workers who are unable to find more secure employment.

Eligibility for benefits

Workers on zero-hours contracts can slip through the benefits system as they have difficulty claiming in-work benefits and means tested benefits. Unite research¹ found that people on Zero hours contracts are likely to work less than 20 hours a week. To be eligible for Job Seeker's Allowance one must work less than 16 hours, and to be eligible for Working Tax Credit, one must work more than 30 hours a week or, for couples with children, they need to work more than 24 hours a week. If one works between 16 and 20 hours, and those hours fluctuate, it is likely that one's income will be very low – potentially lower than those in receipt of out of work benefits.

Means tested benefits

Zero hours workers face other difficulties in claiming benefits. Case evidence suggests that some clients are told they are unable to make a claim for Job Seeker's Allowance despite having no income and no work. This may be because having a contract (albeit a zero hours contract), means they do not meet the requirements of being available for work, and actively seeking work. The consequence of this is that when a worker on a zero hours contract has no work for a period of time, they may not have any income whatsoever.

- Citizens Advice Direct reports of a client who was on a zero hours contract but had not been working for some time. He had made a claim for Job Seeker's Allowance which was rejected. He has not been working for 3 weeks at present - and it has been forecast he is unlikely to get any work for another 10 weeks. He wanted to know if he could claim any benefits in his situation. The client was advised that he cannot claim to be laid-off or claim a guarantee payment. He is under a contract of employment that the Job Centre view as being in work.
- A West of Scotland CAB reports of a client who came in with several mobile phone debts. However, early in the conversation it transpired he had no income. The client has a zero hours contract working in a department store. However, he has had no work and thus no income for some time. He had been to Job Centre Plus to ask about Job Seeker's Allowance for the weeks he did not get any work. They informed him that he was not eligible for Job Seeker's Allowance - as he had a contract for work and it would not be possible to give him Job Seeker's Allowance for the times he was not earning. The client was advised that there was a possibility that if he withdrew voluntarily from his contract and then applied for Job Seeker's Allowance he could be sanctioned for 13 weeks.

There is a danger that Job Seeker's Allowance claimants may be pressurised into taking zero hours contracts, despite the working hours, pay, and instability of the contract being inappropriate for their situation. Citizens Advice Scotland has case evidence which shows that Job Seekers are more and more likely to face sanctions if they do not follow Jobseeker's directions. Often Job Centres appear to expect claimants to take up any work, regardless of whether it is appropriate to the claimant's skill level and lifestyle. This situation can lead to clients entering employment for short periods of time before having to claim Job Seeker's Allowance again. If an individual enters into employment that is appropriate for them, it is more likely to be sustained for a long period of time. This cuts the administrative costs of people making consecutive rapid reclaims for benefits, and helps people to become independent of income-related benefits.

When an employee leaves employment voluntarily, they are at risk of being sanctioned when claiming Job Seeker's Allowance. This can be problematic for those who have a zero hours contract of employment, but who are not able to secure any hours, or for those whose employers are not meeting their contractual

obligations. Citizens Advice England and Wales recently received confirmation from the Department for Work and Pensions (DWP) that Job Seekers would not be required to accept work which did not offer a secure contract with a defined minimum number of hours per week. The DWP also agreed that Job Seekers would not be sanctioned for leaving such contracts. This is a welcome change which will make it easier for people to avoid exploitative working conditions. However, as with any aspect of the benefits system, this change in policy must be followed through in practice: Job Centres must comply with the new conditionality rules if this is to help people into sustainable employment. Citizens Advice Scotland looks forward to working with the DWP to ensure that this is implemented.

- A West of Scotland CAB reports of a client who had been pressured by the adviser at Jobcentre Plus into taking a job as a care assistant on a zero hours contract. The first week she worked 22 hours but found that she could not manage that many hours and spoke with the employer about reducing them to 16 hours which was agreed. However, since then her hours have dropped to 5 hours per week. The client was not told that she should continue claiming Job Seeker's Allowance in the mean time, especially since she is only working about five hours per week. The client also said that the job is too much for her as it is too heavy and demanding. She states that she cannot walk the 5 miles each day it takes to do the job as she has no car and ends up always being behind schedule. The client was advised not to quit her job because the Job Centre would be likely to apply sanctions to her claim.

One of the main problems faced by clients of the CAB Service in Scotland is administration of benefits. This includes not being able to get through to the DWP on the phone; having paperwork lost; experiencing delays in benefit payments; receiving inaccurate information from Job Centre advisers; and having sanctions applied inappropriately. These issues are only exacerbated when somebody on a zero hours contract has to submit information about changes in hours on a weekly basis, and manage claims for Working Tax Credits and Job Seeker's Allowance interchangeably. The cases below demonstrate some of the benefits administration problems which clients on zero hours contracts face.

- An East of Scotland CAB reports of a client who was unemployed but offered a zero hours contract which he took. He was doing relief work and only got around 17 days of work in a 3 month period. He kept going to the Job Centre and stating that he was either working or not but he states he did not get good advice because the staff were not aware of the procedures. He kept claiming Job Seeker's Allowance and knows that he was not entitled at times but has now been charged with fraud of around £1500. The DWP are taking back the overpayment of Job Seeker's Allowance at £8.05 per week. The Council is taking back his Housing Benefit overpayment at £3.40 per week. This has also affected his Housing and Council Tax accounts. He has a solicitor working on his behalf for his defence. The pending case for fraud has resulted in the client not being able to apply for jobs as he has to notify employers on

the application form. The client also lives in a three bedroom house and is being charged the under occupancy charge of £25 per week.

- An East of Scotland CAB reports of a client who has had no Job Seeker's Allowance for a month and has made lots of telephone calls, trips to the Jobcentre and now the bureau to try to resolve his situation. He keeps being told different stories. The client also seems to have a sanction due to signing on on the wrong day, although he has been told to disregard the letter. He was taken off Incapacity Benefit in January (after 12 years) and was told to apply for Job Seeker's Allowance. The client did not appeal the decision. The client applied for Job Seeker's Allowance but was refused as the job centre said his wife was earning too much and he also has a pension of £80 per week. The client's wife works on a zero hours contract for the Council. The Council lost the contract she worked on 20th July and she has had no work since. The client reported the change of circumstances to the Benefits Centre but following a catalogue of telephone calls the client still has had no money for his Job Seeker's Allowance. On his most recent telephone call yesterday he was told that he would not get any money until 21st August and that he should apply for a Crisis Loan if he needed money urgently.

In work benefits

Zero hours contracts also make it difficult to claim in-work benefits. Having fluctuating hours and income makes it difficult to calculate Working Tax Credit entitlement. To be entitled to Working Tax Credit under normal circumstances a claimant must be working between 16 – 30 hours a week. When hours vary from week to week it can mean shifting entitlement between Job Seeker's Allowance and Working Tax Credit and back again. As these benefits are administered by different agencies (DWP and HMRC, respectively), the time and administrative costs of processing such claims is significant. Working Tax Credit is paid retrospectively, dependent on hours averaged over a given period. When hours and pay fluctuate dramatically, this often means that employees receive benefit that is at its highest when they earn the most and at its lowest when they earn very little.

Another issue for some zero hours workers is that Working Tax Credits are only payable to those over 25 years, meaning there is a section of young workers on zero hours contracts on low incomes who are unable to top-up their income from employment with tax credits. Zero hours contracts are becoming increasingly common amongst young people. Figures from the Office of National Statistics (ONS) Labour Force Survey in May 2013 show that the number of 16 to 24-year-olds on zero hours contracts has more than doubled since 2008². For workers between the ages of 16-25, this gap in income is unlikely to improve with the introduction of Universal Credit.

Housing Benefit and Council Tax Reductions

Rapidly signing on and off Job Seeker's Allowance affects claims for Housing Benefit and Council Tax Reductions. It takes time (sometimes months) to process changes in claims so a client's entitlement is often being paid retrospectively, making it

difficult to pay rent on time and budget effectively. Part of the reason for this is the time it takes for changes of circumstance to be passed between the DWP and Local Authorities. Delays in Housing Benefit payments, coupled with the Local Housing Allowance and under-occupancy changes, means that tenants are at risk of accumulating rent arrears, or having to choose between paying rent, buying food and heating their homes.

- An East of Scotland CAB reports of a client who attended an appointment regarding her debts and an issue related to her housing. She explained that the rent from her private let is unaffordable: she pays £600 a month from a salary that reaches a maximum of £800 a month. She is employed as a care worker on a zero hours contract working weekends only. Her hours of work vary continuously so she is never sure of how much she will earn. She has an award of Local Housing Allowance (LHA) but this is not high (approx £150.00 a month) and this is paid in arrears based on her previous month's earnings. In practice this often means that she will receive benefit that is at its highest in a month when she earns the most and at its lowest in a month when she has earned very little. She has managed not to fall into arrears purely because she pays her rent before anything else and her mother has been helping as she can with food and other costs. This is no longer possible as the client's mother is also struggling to manage. She cannot increase her hours at present and is trying to find another job but needs to earn enough to afford nursery costs and the rent.

Debt and budgeting

The varying hours and pay which zero hours workers experience makes it difficult to budget and manage household costs, which can lead to debt and inability to keep to debt repayment plans. When a worker experiences an unexpected drop in income, they may feel they have little choice but to access high interest credit such as payday loans partly due to a lack of recourse to alternative credit. Research undertaken by CAS in 2009³ found that 21% of debt clients at CAB had a monthly income of less than £400 and 46% had a monthly income of less than £800. Research published by Which? in November 2012⁴ found that payday loans are being used to pay for rent and regular household bills by 60% of borrowers.

CAS has seen numerous cases in which clients on zero hours contracts find it difficult to budget and meet regular payments and debt repayments. In the worst case scenario this can lead to bankruptcy, and the accumulation of rent and/or Council Tax arrears can leave a client vulnerable to eviction and homelessness.

- An East of Scotland CAB reports of a client who has two payday loans and has just lost his job. He was working full time but on a zero hour contract and recently was made redundant. He has got another part time job, but will only be earning half of what he was previously. His loans are for about £800 and £300 – with two large payday loan companies. One is already due and the other imminent – he also has an overdraft of £1000. The CAB adviser

discussed the lending code that both companies have signed up to and assisted the client with liaison.

- A North of Scotland CAB reports of a client who is aged 25 and has two very young children but does not live with their mother. He came to Aberdeen CAB because he was threatened with eviction for non-payment of rent and has a large number of debts including Council Tax, bank overdrafts and three payday loans, one for £700, and two others for £500 each. He is in employment on a zero hours contract which makes it particularly difficult for him to budget.
- A West of Scotland CAB reports of a client who attended the bureau for a debt appointment. The client had been in with a debt management company previously. The client has a zero hours contract and his wages are varied. As a result, his parents are currently paying his mortgage. The client's debts include unsecured personal loan debts and he is having difficulty making payments.

References

¹ Hansard 2013, Unite uncorrected oral evidence on zero hours contracts (11 September 2013) HC 654-i. <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmsscota/uc654-i/uc65401.htm>

² Office of National Statistics Labour Force Survey 2013

³ Drowning in Debt Evidence Report – Citizens Advice Scotland 2009

⁴ Populus, on behalf of Which?, interviewed a random sample of 4031 GB adults aged 18+ online between 10th and 12th August 2012.

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