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## Non-Standard Contracts and the National Living Wage: A Report for the Low Pay Commission

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September 2017

**Acknowledgements**

The authors would like to convey their enormous gratitude to all those who spared time to be interviewed for this research and who have made this report possible. Thanks are due to Dave Smith and Alison Foster for assistance in identifying participants. We are also grateful to Helen Connolly and Tim Butcher from the Low Pay Commission for their support and comments on previous drafts of the report.

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## 1. Introduction

This research explores the relationship between contractual arrangements and the payment of the National Living Wage (NLW). Its focus is non-standard employment arrangements; specifically zero hours contracts (ZHCs), Minimum Hours contracts (MHCs), agency work (effectively zero hours in this research) and dependent self-employment. In this report the term ‘dependent self-employed’ (DS-E) is used to refer to workers who are to all intents and purposes *employees*, but who are defined as self-employed, for example to achieve a more favourable tax and national insurance regime; the so-called ‘bogus self-employed’ (BS-E). Overall, these contractual forms may mean that workers receive variable pay from week to week and that once hours worked and related costs are taken into account, they may be paid below the NLW, and/or dependent upon in-work benefits to supplement pay. Using qualitative data collection the research contributes a set of worker case studies - 36 in total - drawn from six low paying industry sectors where the types of contracts under investigation are known to be in use. The approach allows detailed scrutiny of hours and their relationship with earnings and consideration of whether the NLW is achieved, taking into account fluctuations and paid and unpaid components of working time. The case studies explore elements of unpaid working time, highlighted in homecare (travel and waiting time), but increasingly in other sectors<sup>1</sup>. They capture the organisation of working time, the notion of unsocial hours and, concretely, the payment of premia. The case studies identify changes in contractual arrangements and pay and grading structures (compression or removal of differentials) in the light of the NLW, along with perceptions of employer behaviour in relation to its introduction. The report identifies factors driving contractual arrangements and the extent to which these represent individual preference or are involuntary, including where workers are deemed ‘self-employed’ and particularly in the context of recent Employment Tribunal cases. The impacts of contractual forms on work and the work-effort bargain are explored. Finally the research illustrates how workers survive in the context of wider household and familial relationships, including interaction with the tax and benefits systems. In focusing upon the ways that workers are formally or informally removed from employment protection, including the NLW, the report addresses a number of issues that the Taylor Review of Modern Working Practices<sup>2</sup> proposes might, in the future, fall within the remit of the Low Pay Commission (LPC).

The report is organised as follows. Following a summary of key findings, Chapter Two provides a context for and overview of non-standard contracts in the UK labour market. Chapter Three explains the research methods which privilege the experiences, perceptions and words of workers with non-standard employment contracts. It describes the rationale for the sample selection in terms of region and sector, how access was achieved and the composition of the sample as well as the ethical issues. Chapters Four to Nine set out the research findings; Chapter Four describes the working arrangements of the 36 workers and what non-standard contracts mean for them, including an exploration of so-called ‘self-employment’. The chapter starts to unravel worker preference and autonomy and these are developed in Chapter Five which highlights unpredictability and fluctuations in hours. Chapter Six looks at pay and the operation of the NLW and NMW, including the costs of work (particularly for dependent self-employed workers), adjustments to terms and conditions made in light of the introduction of the NLW and holiday and sickness entitlement. Chapter Seven identifies unpaid elements of work and Chapter Eight explores the wage-effort bargain. Chapter Nine examines standards of living and how workers survive financially and Chapter Ten presents some conclusions.

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<sup>1</sup> For example Sports Direct and unpaid time taken for security checks; *The Guardian* 9.12.2015.

<sup>2</sup> Taylor, M. (2017), *Good Work: the Taylor Review of Modern Working Practices*.

## Summary of Findings

### Contractual Status

- The case studies reveal uncertainty about contractual status amongst those on ZHCs and MHCs with variability in hours leading to confusion over permanence;
- Workers on MHCs and ZHCs are required to be available to the employer; in some cases they have to state availability, in others it is assumed and workers may feel that they are continually on-call;
- Contracted hours bear little relationship to actual hours worked, and in retail can be extensive and entail night and weekend working;
- MHCs and ZHCs reflect on-demand working where workers can be sent home if there is insufficient work. At the same time workers report having to work back-to-back shifts to cover for staff shortages;
- While ZHCs offer flexibility for some workers, including students, those with other jobs or those who have taken their pensions, workers in the sample also expressed fears about rejecting work and had a clear understanding of worker dependence and the imbalance in the employment relationship;
- Amongst ZHC and MHC workers there is a desire for permanence and more predictable hours;
- The use of MHCs appears to be used in retail to restrict employment rights to contracted hours only; and
- Despite some preferences for the autonomy that dependent self-employment appears to offer, in all cases, on the criteria adopted in recent Employment Tribunal cases, there are at least some elements of dependence, which would qualify workers for employee status.

### Hours

- Under ZHCs the scheduling of hours and days of work can vary from week to week, with shifts arranged only days in advance and changed at short notice. It is this instability that workers found most problematic;
- Fluctuations mean that some workers wanted more hours and others did not want to take on the extra hours that they could be called in to work at short notice;
- Where workers on ZHCs worked regular hours the capacity to be dismissed with no notice engendered insecurity;
- ‘Self-employed’ workers have limited control over their working time;
- Unpaid availability is a feature of ZHCs where not only can workers be sent home if there is no work, but in homecare and hotels workers may wait around between visits or shifts. In homecare there is still no guarantee that travel time between visits is fully paid.
- The use of non-standard contracts can allow employers to redefine elements of the working day as ‘non-productive’ time and thus without the remit of paid work.

### Pay

- Seven of the workers were on an hourly rate at or close to the NLW, although the inclusion of London in the sample to some extent pushed hourly rates up. While the introduction of the NLW was appreciated, there is a feeling that pay rates remained insufficient;
- Across the worker case studies awareness of the NLW and NMW varies. In dependent self-employment workers do not consider it as relevant. In homecare, workers had benefited from its introduction. There was some awareness of age-related rates amongst the 20-29 age group;
- While dependent self-employed workers may earn above the NLW, after the costs of self-employment and lack of paid holiday and sickness are taken into account, pay can be precarious and there may be unrealistic perceptions of self-employment;
- For those interviewed in the hotels, logistics and security sectors, hours are paid at a flat rate with

- no premia for evening or weekend work or time worked over and above contractual hours. In other sectors premia are vulnerable to reduction or abolition, including in homecare;
- With the exception of dependent self-employed workers there is often confusion about sick pay and holiday entitlement, but a shared reluctance to go sick, because of loss of pay, but also employer responses, which might affect further hours;
  - Unpaid overtime is a feature of hotel work and this can extend into the night. Even where unpaid overtime represents only minutes per shift, for low paid workers this can add up to substantial periods where they are not paid;
  - Shifts of under six hours mean workers are only entitled to a 15 minute breaks and the evidence from the sample suggests that working time can be constructed to avoid the 30 minute breaks that workers would be entitled to after six hours;
  - In logistics and gyms self-employment and piece-work transfers risk onto workers in the form of unpaid labour, while the costs associated with self-employment have to be subtracted from income;
  - There is evidence of the withholding of pay, partly because where there are no standard hours it is difficult to keep track of 'extra' hours; pay systems, particularly for 'piece work', are complex or not transparent and this can facilitate the non-payment of wages;
  - There is some evidence that employers have made adjustments to terms and conditions to accommodate the introduction of the NLW, primarily through cuts to hours and premia, but on occasion the increased use of younger workers;
  - Workers are experiencing the intensification of work, in particular due to reductions in staffing;
  - There is evidence of the compression of grading and differentials and in particular of workers having little incentive to take on supervisory or managerial positions;

### Survival

- A number of workers in the sample struggle to pay bills. Others did not because they have second jobs or live with parents, family or share accommodation with other adults and it is evident that for the majority home ownership is an aspiration only;
- Where workers are in receipt of Working Tax Credits or Income Support and are in jobs with fluctuations in hours, they worry about complying with required hours thresholds and the danger of having their own or their partners' benefits removed.

## 2. Background to the Research

The 'standard' employment contract is defined as continuous, full-time and with a direct relationship between employer and employee (ILO, 2017<sup>3</sup>). While these contracts predominate, the rise of 'non-standard' employment in the UK labour market has been documented, covering a range of contractual and non-contractual relationships, generally characterized by the potential for variable and irregular hours. Wave 6 of the Understanding Society survey (UKHLS), undertaken in 2015, found that 92.4 per cent of employees had a permanent job, 2.9 per cent had a contract for a fixed period, 1.6 per cent were in casual employment and 1 per cent were agency workers. The remaining employees were seasonal workers with some form of non-permanent employment<sup>4</sup>. Self-employed workers were excluded from the sample. Examples of non-standard contracts include Minimum Hours or 'small hours' contracts (MHCs) and 'zero hour contracts' (ZHCs). Under Minimum Hours contracts, the employer provides some

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<sup>3</sup> International Labor Organization (2017), *The rising tide of non-standard employment*. ILO, InfoStory, May.

<sup>4</sup>The survey covered 19156 employees (the self-employed are excluded from the analysis).

guaranteed, contracted hours, usually between six and eight hours (Pennycock et al. 2013<sup>5</sup>). In this case there is an expectation that the employee will be tolerant of shifts in the company's staffing requirements for additional hours beyond the contracted minimum. In the case of ZHCs the employer is not required to provide a minimum of hours and, in principle, there is no obligation for the worker to accept work offers (Adams and Deakin, 2014<sup>6</sup>). Nevertheless, employees may fear that refusal could result in no further work offers which may encourage compliance and a preparedness to be available or 'on call' (CWU, 2014<sup>7</sup>). 'Exclusivity clauses' in ZHCs contracts, prohibiting acceptance of other employers' job offers in periods of 'downtime' (but without the concession of employee status) have been proscribed, yet individuals may remain tied to one employer by lack of other work opportunities and/or the unpredictability of their hours<sup>8</sup>. ZHCs are, however, only one type of contract that restricts earnings potential between assignments; agency work may entail Payment Between Assignment contracts, associated with the 'Swedish Derogation' provisions of the 2010 Agency Workers Regulations (LRD, 2015<sup>9</sup>). The research for this report confirmed 'the overlap between agency work, self-employment and other contingent forms such as zero-hours contracts', demonstrated in the recent Resolution Foundation report (2016:41<sup>10</sup>). This drew on the Labour Force Survey (LFS) to show that there are an estimated 865,000 agency workers in the UK, 2.5 per cent of workers and comparable in numbers with those on ZHCs. Further there has been a 30 per cent rise in their recorded numbers since 2011. They include workers in temporary agency work, permanent agency workers (who regard themselves as permanent but work for an agency) and so-called 'self-employed' workers (paid through umbrella companies). Agency work is more likely to be lower skilled work, and young and BAME workers (three times as likely as white) are more likely to work through agencies. Agency workers are also more likely to be under-employed. The Resolution Foundation analysis shows that nearly one quarter of agency workers have been employed continuously for over two years, 60 per cent want permanent work and 14 per cent were on ZHCs – three times the national average. It also shows an on average 22 pence per hour pay penalty for agency workers compared to non-agency comparators after controlling for work and personal characteristics (2016:7).

### 2.1 Zero and Minimum Hours Contracts

The Labour Force Survey for the final quarter of 2016 puts the number of people employed on zero-hours contracts, in their main job, at 2.8 per cent of those in employment (905,000). This is an increase over the previous year, which the Office for National Statistics (ONS) suggests could be an outcome of greater awareness and recognition of the term 'zero-hours contract'<sup>11</sup>. Yet in the same quarter for 2013, the proportion had been 1.9 per cent of all people in employment (586,000). Since April 2014 ONS has published estimates of the number of contracts that do not guarantee employees a number of hours of work<sup>12</sup>. The estimates are based on a survey of businesses and complement LFS data. The findings from the November 2016 survey of businesses suggest that 1.7 million contracts did not 'guarantee a minimum number of hours, where work had actually been carried out under those contracts'. This figure amounts to six per cent of all employment contracts. Under-recording has been acknowledged to be a problem in the LFS, which relies on respondents' evaluation of their contractual status; individuals may report themselves as in part-time employment, for example. While the LFS counts people who report that their main employment is a ZHC, the ONS Business Survey counts ZHCs contracts offered by employers, reflecting workers who have more than one contract. The available evidence is persuasive that ZHCs have

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<sup>5</sup> Pennycock, M., Cory, G. and Alakeson, V. (2013), *A Matter of Time. The rise of ZHCs contracts*, London, Resolution Foundation, June.

<sup>6</sup> Adams, Z. and Deakin, S. (2014), *Re-regulating zero hours contracts*: London, Institute of Employment Rights.

<sup>7</sup> Communications Workers Union (2014), *Submission: BIS Consultation – Banning Exclusivity Clauses: Tackling Avoidance*, 28 October.

<sup>8</sup> Exclusivity terms in zero hours contracts (Redress) Regulations 2015.

<sup>9</sup> LRD Workplace Report (2015), *Agency workers want umbrella pulled from above*. London, Labour Research Department, February.

<sup>10</sup> Judge, L. & Tomlinson, D. (2016), *Secret Agents: Agency workers in the new world of work*, London, Resolution Foundation.

<sup>11</sup> Office for National Statistics (2017), *People in Employment on a Zero-Hours Contract*.

<sup>12</sup> Office for National Statistics (2016), *Contracts that do not guarantee a minimum number of hours*.



become more prevalent over the years of slow growth economic recovery since the deep recession of 2008/9.

Theories of workplace flexibility<sup>13</sup> suggest that employers can achieve numerical flexibility through different forms of non-standard employment. Variable and ZHCs provide employers with the capacity to economise on wage bill costs by flexing staff numbers/hours to match customer volumes or production peaks and troughs, and to manage risk; that is, to shift the costs of weak or variable demand to the workforce. Numerical flexibility is also attained through restricted recruitment and dismissal costs, making greater use of on-call for the retained workforce. The accent on cost minimisation also suggests that investment in workforce skills and development is not a priority, which may in turn contribute to pressure towards compressed pay and grading structures. Individuals on ZHCs are unlikely to have the continuous employment required to enjoy certain employment rights and protections available to those within a standard employment relationship, including protection from unfair dismissal, statutory redundancy pay, minimum notice periods and maternity and paternity leave and pay. Typically, ZHCs staff are construed by the employing organisation as workers, rather than employees, and some authors argue that this may be a purposeful attempt to limit the scope of their employment rights (Pennycock et al., 2013:13<sup>14</sup>).

The LFS released in March 2017 and cited in the Taylor Report found that one fifth of those on ZHCs were in full-time education and that over two thirds (68%) did not want more hours<sup>15</sup>. Using data from an earlier LFS, Koumenta and Williams (2016<sup>16</sup>) found that more educated workers are overrepresented in ZHCs relative to groups with middle levels of education, such as GCSEs or A-levels. Moreover, they found a higher concentration of ZHCs among younger (less than 24) and older workers (over 55). Although some may argue that ZHCs reflect workers' preferences (for flexibility), the authors point out that the result of the observed sorting of ZHCs is indicative of labour market disadvantage. They found ZHCs to be associated with indicators of inferior job quality even compared with other forms of non-standard employment. Pennycock et al. (2013<sup>17</sup>), USDAW (2014<sup>18</sup>) and Unison (2016<sup>19</sup>) each provide a fairly lengthy list of the respects in which ZHCs are disadvantageous: hours and earnings insecurity, difficulties in establishing employee status and hence employee rights, the disruption to family life of 'on call' work and irregular working hours. The TUC estimates that median pay for a zero-hours worker is a third (£3.50) less an hour than for an average employee<sup>20</sup>. Moreover, eligibility to claim various state benefits may become problematic with variable hours and earnings. Individuals require 16 hours of paid work (and parents, 24) to be eligible for in-work tax credits.

The introduction of Universal Credit (UC), as originally designed, was intended to incentivize labour market participation among benefit recipients on lower weekly hours (work allowances have been made progressively less generous with successive cuts to the aggregate benefits budget). The policy ambition has been a reduction in the incidence of workless households. Yet the current problem, at least for employment analysts, is under-employment and in-work poverty (Blanchflower, 2015<sup>21</sup>; Finch, 2016<sup>22</sup>). In the Eurostat series the former is a measure of part-time workers (predominantly women) who want to

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<sup>13</sup> For example, Atkinson and Meager (1986), *Flexibility in firms: A study of changing working patterns and practices*, Brighton, IMS; Beatson, M. (1995), *Labour Market Flexibility*, London, Department for Employment Research Paper No 48.

<sup>14</sup> Pennycock et al. (2013), *Op.Cit.*

<sup>15</sup> Taylor, M. (2017), *Op.Cit.*

<sup>16</sup> Koumenta and Williams (2016), *An Anatomy of Zero-Hour Contracts in the United Kingdom*. QWL Working Paper No. QWL001.

<sup>17</sup> Pennycock et.al. (2013), *Op. Cit.*

<sup>18</sup> USDAW (2014), *Zero-Hours and Short-Hours Contracts*, Usdaw Executive Council Statement to the 2014 ADM.

<sup>19</sup> UNISON (2016), *ZHCs Contracts*, London, UNISON.

<sup>20</sup> <https://www.tuc.org.uk/economic-issues/industrial-issues/zero-hours-contracts-allow-bosses-treat-workers-%E2%80%9Cdisposable-labour>.

<sup>21</sup> Blanchflower, D. (2015), Britain's hidden army of underemployed, *The Independent*, 29 April.

<sup>22</sup> Finch, D. (2016), *Universal Challenge. Making a Success of Universal Credit*, London, Resolution Foundation.

work more hours than their employer is willing or able to provide, but who are dependent on in-work benefits due to low earnings. Under-employment in the UK in 2014 was above the EU average and the LFS for the final quarter of 2016 shows that 19 per cent of those on a ZHC wanted more hours in their current job compared to seven per cent for those who were not.

The novel provision with Universal Credit (UC) is *in-work conditionality*, implemented through Job Centre Plus, which is intended to encourage additional work hours – a norm of 35 hours a week for those without dependents - and at ‘no greater ambition’ than the NLW rate (Finch, 2016<sup>23</sup>). It is not clear how it will satisfy individuals with part-time work who want more hours, not necessarily full-time work, and better quality and better paid part-time jobs. In-work conditionality promises to be especially problematic for individuals on ZHCs and MHCs, who, it seems, will be subject nonetheless to regular Job Centre reviews of their work hours and UC. The self-employed who claim UC are liable to become subject to the rule of the *minimum income floor*. This is the amount of profit self-employed UC claimants are expected to earn each month, assessed on the basis of a 35-hour week and the NLW, even though statutory minimum pay is not an entitlement for the self-employed (Low Incomes Tax Reform Group, 25 November 2015<sup>24</sup>).

The incidence of ZHCs has grown in the public sector as well as the private sector. Rather than misclassification, there would appear to be an association between such contracts and structural change involving deregulation, privatization and changing IT capacities. UNISON (2016<sup>25</sup>) suggests 35 per cent of education and 27 per cent of healthcare employers are now using ZHCs in response to competition and commissioning in the context of public expenditure austerity. The extreme case is domiciliary or homecare; ZHCs have become standard across the homecare sector and it has been calculated that 58 per cent of homecare workers are on ZHC<sup>26</sup>. Bessa et al.’s (2013<sup>27</sup>) research for the Low Pay Commission found that in the context of local authority budgetary restrictions homecare providers were reliant upon ZHCs, which meant that whilst hourly rates were equivalent to the NMW, certain elements of the working day (for example travel time, supervision and training and waiting times between visits) were increasingly unpaid. ZHCs thus means that care workers may not receive pay for all the hours they work bringing them below statutory minimum hourly rates (Bessa et al., 2013). The UKHCA (2012<sup>28</sup>) has estimated that travel time comprises an average of 19 per cent of available hours and is generally unpaid. While UNISON has mounted a successful legal challenge to the non-payment of travel time<sup>29</sup>, the evidence suggests that local authority charge rates cannot always accommodate such costs. In a study of domiciliary care providers Rubery *et al.* (2015<sup>30</sup>) also found widespread tendencies to use ZHCs contracts and limit paid hours to face-to-face contact time (where providers are paid only for the time that care workers are in the service-user’s home), leaving travel time and other work-related activities unpaid. Subsequent research by Moore and Hayes (2017) has suggested that the minute-by-minute commissioning of care through electronic monitoring may have exacerbated this situation<sup>31</sup>. For Moore and Hayes electronic monitoring in combination with Zero Hours Contracts (ZHCs) contribute to the reconfiguration of paid and unpaid working time because they enable the removal of what might be deemed ‘unproductive’ working time

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<sup>23</sup> *Ibid.*

<sup>24</sup> Local Incomes Tax Reform Group (2015), Press release: *Double blow for self-employed workers in Autumn Statement*, 25 November.

<sup>25</sup> UNISON (2016), *Op. Cit.*

<sup>26</sup> Skills for Care (2016), *The State of the Adult Social care Sector and Workforce in England - September 2016*, Leeds, Skills for Care.

<sup>27</sup> Bessa, I., Forde, C., Moore, S. and Stuart, M. (2013), *The National Minimum Wage, earnings and hours in the domiciliary care sector*, University of Leeds.

<sup>28</sup> UKHCA (2012), *Care is not a Commodity*, London, UKHCA.

<sup>29</sup> *Whittlestone v BJP Home Support Limited* UKEAT/0128/13/BA, 2013.

<sup>30</sup> Rubery, J., D. Grimshaw, G. Hebson and S. Ugarte (2015), ‘It’s all about time: time as contested terrain in the management and experience of domiciliary care work in England’ *Human Resource Management Journal* 54, 5,772.

<sup>31</sup> Moore, S. and Hayes, LJB (2017), ‘Taking worker productivity to a new level? Electronic Monitoring in homecare—the (re)production of unpaid labour’ *New Technology, Work and Employment*, 32, 2 101–114.

through ‘client contact only payments’. ZHCs are thus central to the removal of elements of working time from the remit of paid labour. Employment Tribunals (ET) have also shed light on the issue of worker availability in homecare, but with wider implications. In April 2017 an Employment Appeals Tribunal (EAT), the body that hears appeals over ET decisions, reviewed three related appeals on the issue of ‘sleep-ins’ and whether the NMW applies to carers throughout their shifts whether or not they are asleep. The appeal upheld the ET decision in the case of Royal Mencap Society v Tomlinson-Blake that a carer who worked a nine hour sleep-in shift looking after vulnerable adults in their own homes who was not allocated any specific tasks and could sleep, was entitled to be paid the NMW. The key criterion was the requirement for her to be present and intervene or respond to requests for help whenever necessary and that disciplinary action would be taken if she left her post, as well as putting her employer in breach of its legal obligations<sup>32</sup>. Mencap was to appeal the decision on the basis that *‘if sleep-ins have to be paid at the minimum wage the sector is faced with a real and potentially overwhelming funding crisis that will affect the well-being of hundreds of thousands of disabled people who rely on the personal support provided by organisations like Mencap to be able to live a fulfilled and independent life’*<sup>33</sup>.

UNISON’s Ethical Care Charter, which has been adopted by approaching 30 UK local authorities, demands the payment of a Living Wage for homecare workers, but also a move away from ZHCs (Moore, 2017<sup>34</sup>). While a number of councils have given homecare workers the option of Guaranteed Hours Contracts (GHCs) there is evidence that some care workers have been reluctant to move to GHCs because they are predicated upon the wider unscheduled availability of workers, including early mornings, evenings and weekends which those with caring responsibilities cannot or do not want to work, but which under GHCs (unlike ZHCs) they cannot then turn down. In this context GHCs are not fixed hours contracts<sup>35</sup>. GHCs, as they have been termed in homecare, share characteristics of Minimum Hours (MHCs) contracts in sectors such as retail, namely demanding availability beyond contractual hours<sup>36</sup>. Data on MHC contracts is less extensive than that on ZHCs. A Joseph Rowntree report has recognised a preference amongst retailers for the flexibility of MHC contracts (2016:20<sup>37</sup>). The CIPD suggest short-hours contracts are more prevalent in retail, particularly in larger organisations (2015<sup>38</sup>). It defines short-hours contracts as where an employer guarantees a small minimum number of hours each week (up to eight in their report) and has the option of offering additional hours, which the employee ‘may have the option of being able to refuse’ (CIPD, 2015:3). The CIPD quote USDAW’s 2014 survey (of members in workplaces with union recognition) in suggesting short-hours contracts are ‘commonplace’ in the retail sector. Its Combined Labour Market Outlook Survey for 2015 showed that 11 per cent of employers in retail used ZHCs and 18 per cent short-term hours contracts. USDAW points to the fact that in the case of short-term hours, employee benefits such as sick pay, holiday pay and maternity pay and pensions may be based upon contractual, rather than total hours worked (2014). In the USDAW survey half of respondents regularly worked additional hours above their contracted hours, but three quarters of these would have liked to have had these guaranteed.

Both MHC and ZHCs are seen as indicative of under-employment in the UK economy, understood by

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<sup>32</sup> A multifactorial approach was endorsed which emphasised the sensitive nature of this issue which has to be determined on a case by case basis. It was acknowledged that there are cases where this is a difficult line to draw. Royal Mencap Society v Tomlinson-Blake (National Minimum Wage), Court of Appeal - United Kingdom Employment Appeal Tribunal, April 21, 2017, [2017] UKEAT 0290\_16\_2104.

<sup>33</sup> <https://www.mencap.org.uk/blog/reflections-mencap-outcomes-sleep-ins-case>.

<sup>34</sup> Moore, S. (2017), *An Evaluation of UNISON’s Ethical Care Charter*, London, UNISON.

<sup>35</sup> The Taylor Report quotes the example of McDonald’s similarly offering GHCs to workers and finding the take-up to be only around 20% - it is unclear whether additional hours were expected.

<sup>36</sup> This report uses the term MHCs as under the Ethical Care Charter in homecare there may be an understanding that Guaranteed Hours are fixed hours - whatever the reality – our understanding is that wider availability is germane to MHCs.

<sup>37</sup> Ussher, K. (2016), *Improving Pay, Productivity and Progression in the Retail Sector*, York: Joseph Rowntree Foundation.

<sup>38</sup> CIPD (2015), *Zero-hours and short-time contracts in the UK: Employer and employee perspectives*, London, CIPD.

employment analysts<sup>39</sup> as suppressing worker bargaining power and increasing employer ability to exert downward pressure on pay. With competition on the basis of low pay entrenched, there has been some anticipation that the NLW will encourage more employers to substitute ZHCs and variable hours contracts for 'regular' ones, notably at the lower end of the labour market (e.g. Philpott cited in *The Guardian* 02/09/2015).

### 2.2 Dependent Self-Employment

Turning to the second focus of this research, self-employment increased its share of total employment in the UK in the 1980s and into the first half of the following decade. In most years from the early 2000s, the numbers of self-employed grew more rapidly than the numbers of employees, initially in a context of falling unemployment. Following the 2008-9 recession, self-employment was a main source of employment growth. Tomlinson and Corlett (2017<sup>40</sup>) estimate from LFS data that it accounted for 45 per cent of the growth from March-May 2008 to the end of 2016 when it totalled 4.6million (5million including those self-employed in a second job) or one in seven of the workforce (15%). The rate is high among western European countries. The sector spread of self-employment has increased. Whilst skilled trades remain the largest occupational group, self-employment has increased among lower paid occupations (care work, leisure, hairdressers, beauticians) and higher paid: indeed, Tomlinson and Corlett's analysis suggests the rates of growth since 2008 have been fastest in some 'privileged sectors' (educational qualifications and mean annual income) including advertising, public administration and banking. Women's share of the UK self-employment total has increased to around a third, although women are more likely than men to work part time hours (Dean, 2016<sup>41</sup>). People over 50 comprise two-fifths of the recorded self-employed, compared to a quarter of employees. Yet young peoples' involvement in self-employment appears to be on the rise, in some regions of the country at least. There are different interpretations of the trends. One celebrates the rise of self-employment as evidence of entrepreneurial vigour and individuals' quest for independence and control (Dean 2016, ONS, 2014<sup>42</sup>). Another suggests a darker side.

The resurgence of self-employment, following its long trend of decline in the twentieth century (in sectors beyond agriculture), has focused attention on its forms and guises which blur the boundary between self-employment and dependent employment – the employee's situation within the employment relationship. The trend towards outsourcing and contracting out on the part of large firms – characterised as 'vertical disintegration' in the transition to the 'network organisation' – is thought a milieu for such blurring of employment forms (Eurofound, 2002<sup>43</sup>), although not the only contemporary context (Thörnquist, 2015<sup>44</sup>). A central issue is whether the 'independent contractor' achieves autonomy and control (in respect to working hours and/or self-direction at work) to match the flexibility that accrues to the lead organisation in the supply chain – to cut work orders to match customer demand.

The ILO (2015:2<sup>45</sup>) has highlighted *dependent self-employment*. The situation is one in which '*workers perform services for a business under a civil or commercial contract but depend on one or a small number*

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<sup>39</sup> Blanchflower, D. (2015), *Op.Cit.* Also Philpott cited in *The Guardian* 02/09/2015.

<sup>40</sup> Tomlinson, D. and Corlett, A. (2017), *A tough gig? The nature of self-employment in 21<sup>st</sup> Century Britain and policy implications*. London: The Resolution Foundation.

<sup>41</sup> Dean, J. (2016), *Self-Employment Review: An independent report*, February.

<sup>42</sup> ONS (2014), *Op.Cit.*

<sup>43</sup> Eurofound (2002), '*Economically dependent workers', employment law and industrial relations*, 13 June.

<sup>44</sup> Thörnquist, A. (2015), 'False Self-Employment and Other Precarious Forms of Employment in the "Grey Area" of the Labour Market', *International Journal of Comparative Labour Law and Industrial Relations*, 31:4, 411-429.

<sup>45</sup> ILO (2015), *Non-standard forms of employment. Report for discussion at the Meeting of Experts on Non-Standard Forms of Employment*' (Geneva, 16-19 February 2015). ILO, Geneva.

*of clients for their income and receive direct instructions regarding how the work is to be done*'. The 'independent contractor' would seem to be in the equivalent position of an employee in terms of economic dependence on a main employer and subordination to the management's authority. However, their contractual status of self-employment means they do not have the employment protection rights of an employee. Eurofound (2013<sup>46</sup>) conjectured that economically dependent workers are in a less favourable position in comparison with the self-employed on the one hand and employees on the other. Its analysis of European Working Conditions survey data found the main difference was in respect to financial situation. The incomes of the economically dependent worker group '*lie in the lowest tertile of their country disproportionately often*' and their households '*have a correspondingly high level of difficulty making ends meet*'.

The ILO (2015: 14<sup>47</sup>) views dependent self-employment as an example of *ambiguous employment relationships*, when '*the rights and obligations of the parties concerned are not clear, or when inadequacies or gaps exist in the legislation, including regarding the interpretation of legal provisions and their implementation*'. An obvious issue arising is who is to accept the onus for clarifying the ambiguity: government, the social partners or the dependent self-employed worker by pressing their claim at an employment court or tribunal? The ILO's Recommendation 198 calls on member states to 'combat disguised employment relationships that hide the true status of workers' (ILO 2015: 35). Bogus (sham or false) self-employment is an example of the 'grey area' phenomenon to be addressed: 'i.e. subordinate employment relations which are disguised as autonomous work, usually for fiscal reasons, or in order to avoid the payment of social security contributions and thereby reduce labour costs, or to circumvent labour legislation, such as provisions on dismissals' (Eurofound 2002: 2<sup>48</sup>). Employers may insert 'substitution clauses' into workers' contracts to imply self-employment. Bogus self-employment is sometimes discussed as presenting issues distinct from those relating to dependent self-employment: it is a relatively straightforward matter of misclassification whereas the concept of dependent self-employment combines two issues that may each need to be addressed to establish the employment relationship (subordination in addition to economic dependence). However, analyses that present the distinction also emphasise how the 'two aspects are strongly intertwined, not least because the emergence of the latter 'ambiguous' forms of employment' (i.e. dependent self-employment) 'makes the disguise of 'bogus self-employment' easier' (Eurofound, 2013<sup>49</sup>). In this research the concept of dependent self-employment is used because the interest is in the at-work situation of low-paid self-employed workers, as well as the effects of contractual status on hours and pay and achievement or otherwise of the NLW. However, at the same time the research engages with the issue of bogus self-employment.

This misuse of self-employment was once thought localised to the construction industry, but appears to have spread (Seely, 2016<sup>50</sup>). Within construction, developments over the past 15 years have included the interjection of intermediaries – or umbrella companies – that organise false self-employment on a large scale. These umbrella companies and the chains of supply agencies they work with have become common in other sectors, for example warehousing (or logistics) in the retail supply chain. The loss of revenue from such practices has prompted the Exchequer to introduce a series of measures to curtail the abuse of PAYE

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<sup>46</sup> Eurofound (2013), *Self-employed or not self-employed? Working conditions of 'economically dependent workers'*, Background paper. European Foundation for the Improvement of Living and Working Conditions, Dublin.

<sup>47</sup> ILO (2015), *Non-standard forms of employment*. Report for discussion at the Meeting of Experts on Non-Standard Forms of Employment' (Geneva, 16-19 February 2015). ILO, Geneva.

<sup>48</sup> Eurofound (2002), *Op. Cit.*

<sup>49</sup> Eurofound (2013), *Op. Cit.*

<sup>50</sup> Seely, A. (2016), *Self-employment in the construction industry*. House of Commons Library, Briefing Paper No. 000196, 23 May.

(Pay as You Earn tax and national insurance contributions)<sup>51</sup>. In the case of Personal Trainers (PTs) in gyms, Harvey *et al.* have described the arrangement whereby they provide free labour to multi-national gym chains in lieu of rent as ‘neo-villeiny’, characterized by ‘bondage to the organisation’ involving the payment of rent, no guarantee of income and unpaid and speculative work (2016<sup>52</sup>). The authors explore how neo-villeiny ‘*sheds light on the dark side of changing flexible work arrangements that offer autonomy on the surface but shift financial and other responsibilities to the worker*’ (2016:5). As is the case for others on non-standard contracts, risk is transferred to the worker, who loses employment rights, but also take on various employment costs.

The Taylor report calls for clarity in distinguishing workers from those who are legitimately self-employed, with dependent contractors most likely to suffer from ‘unfair one-sided’ flexibility and needing protection. The House of Commons Work and Pensions Committee (2017<sup>53</sup>) identified a wide range of practices that seemed to blur the line between ‘employment’ and ‘self-employment’. These included:

- Aspects of control by the contracting company over working patterns: for example, being assigned shifts or rounds, with the risk of work being permanently withdrawn or charges levied if workers failed to fulfil them;
- Workers who carried out regular working hours over substantial periods of time, up to periods of years for one company;
- An inability on the part of workers to negotiate or set pay;
- Workers experiencing difficulties in having “substitute” workers accepted by the contracting company, if they were unable to work their scheduled shifts;
- Guidance given to salaried staff on how to avoid referring to their workers in terms that might imply an employer-employee relationship, in light of their employment model.

In October 2016 an Employment Tribunal ruled that a group of Uber drivers were not self-employed, but workers and entitled to receive the National Minimum Wage and holiday pay<sup>54</sup>. The decision of the Tribunal (pending appeal) was based upon Uber’s exertion of significant control over and direction of its drivers. This control included recruitment and also the setting of prices, instructing them in their work and controlling their duties and performance as well as their terms and the absence of any contract with the customer. Uber drivers were in a dependent work relationship and an unequal bargaining position. Interestingly in the light of the case studies presented here, the judgement also concluded that being available i.e. waiting to pick up fares, was classified as working (where drivers are in the territory in which they work and not commuting to it), at the disposal of the employer and part of the service provided by drivers. A further ET ruling in November 2016 also ruled that a CitySprint bicycle courier should be classed as a worker and entitled to holiday pay, with CitySprint’s assertion of couriers as self-employed described as ‘window dressing’<sup>55</sup>. Here the control exercised by the company, the fact the claimant was tracked by GPS technology and wore a company uniform, along with her lack of control over pay, were considered germane. She was considered to have no real right to appoint a substitute in practice with little autonomy over the performance of the services performed. A third judgement in February 2017 against Pimlico Plumbers also ruled that a plumber apparently self-employed had worker status because he was subject to a range of controls through the company: he had to wear a uniform, be available for work full-time, and conform to rules and standards.

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<sup>51</sup> HMRC (2013), *Onshore intermediaries: False Self-Employment*.

<sup>52</sup> Harvey, G., Rhodes C., Vachhani, S., and Williams, K. (2016), ‘Neo-villeiny and the service sector: the case of hyper flexible and precarious work in fitness centres’, *Work, Employment and Society*, 31(1) 19-35.

<sup>53</sup> House of Commons Work and Pensions Committee (2017), *Self-employment and the Gig Economy*.

<sup>54</sup> <https://www.judiciary.gov.uk/wp-content/uploads/2016/10/aslam-and-farrar-v-uber-reasons-20161028.pdf>

<sup>55</sup> <http://www.bwblp.com/file/judgment-pdf>

Although income from self-employment varies, data suggests the extent of low pay and the sizeable gap with the average pay of employees. Citizen's Advice (2015<sup>56</sup>) estimated that the median weekly income for the self-employed in 2013/14 was £209, or just 54 per cent of that for employees. Around half (49%) of the self-employed are low paid (below two thirds of median earnings) compared to 22 per cent of employees, according to Broughton and Richards (2016<sup>57</sup>). They see the UK labour market as now highly bifurcated as a consequence of discriminatory employment law and tax and national insurance regimes for the self-employed and employees. Their argument, in essence, is that in reinforcing this divide, the NLW will tip the balance. The regulatory framework 'is making it artificially cheaper for firms to move to a model of firm-contractor, and away from the employer-employee model of working' (2016: 6-7<sup>58</sup>). Similar views have been aired by senior figures in large employment agency businesses such as Manpower (*The Guardian*, 8 September 2015), although in favour of downwards rather than upwards harmonisation.

### 3. Research Methods

Focusing upon the relationship of non-standard contracts to the NLW, this research takes a qualitative approach in the form of 36 worker case studies (Appendix One). These are drawn from six sectors known to use non-standard contracts in the form of ZHCs, MHCs, agency work and dependent self-employment. The research is based upon descriptive and evaluative case studies (Merriam, 1998<sup>59</sup>) based on interviews with two workers in each of the six sectors in three regions (Table 1). Whilst utilising micro-data (Machin et al., 2003<sup>60</sup>) to capture lived experience, the case studies are contextualised in the sector and local labour market. The cases allow detailed scrutiny of pay and hours. They explore the factors that drive self-employment, variable hours and under-employment and the extent to which these are the result of individual preference or are involuntary. The cases look at the impact of variable contractual arrangements for work, whilst work is located within the wider household context, illustrating how working hours fit with caring responsibilities and the interaction with in-work benefits.

As Table 1 shows, the six sectors lie within the LPC's definition of low-paying industries (retail, hotels, logistics, social care, security, recreation, sports and leisure) with 12 case studies located in each of three regions: London; the South West; and Yorkshire and Humberside. A focus on London captures interaction between the NLW and the London Living Wage, whilst the capital has seen the biggest increase in self-employment with nearly one in five people self-employed (Citizen's Advice, 2015<sup>61</sup>). The South West is a large internally diverse region, which has also seen an increase in self-employment (Citizen's Advice, 2015<sup>62</sup>); at the same time the South West is one of the three regions which have seen a significant growth in the number of ZHCs since 2014 (Resolution Foundation, 2016<sup>63</sup>). The proportion of employees on low hourly pay in the Sheffield city region (including Barnsley, Doncaster, Rotherham) is 25 per cent – the highest amongst UK cities (compared to 12 per cent in London and Bristol) and workers in Sheffield were predicted to be most likely to receive a pay rise as a result of the NLW, with 28 per cent of employees expected to gain in total (compared to 14 per cent in London), according to the Resolution Foundation

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<sup>56</sup> Citizens Advice (2015), *Who are the self-employed?* Citizens Advice; New Policy Institute.

<sup>57</sup> Broughton, N. and Richards, B. (2016), *Tough gig: Low paid self-employment in London and the UK*, Social Market Foundation, March.

<sup>58</sup> Ibid.

<sup>59</sup> Merriam, S. B. (1998), *Qualitative research and case study applications in education*. San Francisco, CA: Jossey-Bass.

<sup>60</sup> Machin, S., Manning, A. and Rahman, L. (2003), 'Where the Minimum Wage Bites Hard: The Introduction of the UK National Minimum Wage to a Low Wage Sector', *Journal of the European Economic Association* 1, 154-80.

<sup>61</sup> Citizen's Advice (2015), *Op.Cit.*

<sup>62</sup> Ibid.

<sup>63</sup> Resolution Foundation (2016), *Zero-hours contracts: casual contracts are becoming a permanent feature of the UK economy*, 9 March.

(2016<sup>64</sup>). Total wage bills were anticipated to increase by around 0.8 per cent compared to 0.5 per cent and 0.3 per cent in Bristol and London respectively.

There are six case studies of workers in retail, employed by large national retailers in the three regions. Wholesale and retail has eight per cent of those in employment on ZHCs<sup>65</sup>, although as described above retail is particularly dependent upon MHC contracts. Retail is the second lowest paid industrial sector, after Accommodation and Food Service Activities. The LPC projected that the bite of the NLW could reach 90 per cent in retail by 2020 (LPC, 2016<sup>66</sup>). In 2014, 55 per cent of retail employees in London and 59 per cent in the rest of the UK were paid less than the living wage (ASHE, 2015<sup>67</sup>). Retail has a young workforce, with more than half of retail jobs being held by workers aged 34 or younger, and only 11 per cent aged 55 or over, according to the 2015 Annual Population Survey. At least one large retailer had publicly anticipated difficulties in meeting NLW rates, whilst others have pre-empted its introduction, although the exclusion of those under 25 from the NLW may cushion retailers.

There are six worker case studies in hotels in the three regions and these represent a mix of national chains and independent hotels. Hospitality has a higher rate of low pay than other industry sectors (with the exception of wholesale and retail) and the highest proportion of ZHCs, at 22 per cent of people in employment in the sector<sup>68</sup>. The LPC reported that in 2016 one in three jobs in hospitality (30 per cent) was set to be paid at the minimum wage and that the bite of the NLW could reach 100 per cent in hospitality by 2020 (LPC, 2016<sup>69</sup>). An estimated 65 per cent of employee jobs in hospitality and catering in London and 70 per cent in the rest of the UK were paid less than the Living Wage Foundation's living wage (ONS, 2015<sup>70</sup>). Overall, the workforce in this industry is younger, working part-time and more likely to have been born overseas compared to that in other industries.

As outlined above domiciliary care services had the highest proportion of workers on ZHCs; just over half of the workforce (51%) worked on a full-time basis, 37% were part-time and 11% had no fixed hours (Skills for Care, 2016<sup>71</sup>). Workers in the care sector are typically poorly paid and investment in training and qualifications across the sector is also low. Women make up the vast majority of the care workforce and there is also a high proportion of workers born overseas. Since homecare providers may be locked into contracts negotiated before the announcement of the NLW there may be little room for maneuver over pay in the context of existing local authority budgets. There have been large increases in self-employment in caring, leisure and other services (Citizen's Advice<sup>72</sup>), and this is likely to reflect the increase of Personal Care Assistants.

The huge increase in online shopping has increased the demand for home delivery services; the logistics sector has seen a proliferation of owner-drivers, working alongside directly employed drivers, in large

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<sup>64</sup> Corlett, A. (2016), *Paved with gold? Low pay and the National Living Wage in Britain's cities*, London: Resolution Foundation.

<sup>65</sup> ONS, (2017), *Op.Cit.*

<sup>66</sup> Low Pay Commission (2016), *National Minimum Wage – Low Pay Commission Report*, Spring.

<sup>67</sup> ONS (2015), *Annual Survey of Hours and Earnings, Provisional Results*.

<sup>68</sup> ONS (2017), *Op.Cit.*

<sup>69</sup> Low Pay Commission (2016), *Op.Cit.*

<sup>70</sup> Office for National Statistics (2015), *Estimates of Employee Jobs paid less than the Living Wage in London and other parts of the UK*.

<sup>71</sup> Skills for Care (2016), *Op. Cit.*

<sup>72</sup> Citizen's Advice (2015), *Op.Cit.*



delivery companies paid by delivery (Newsome and Moore, 2016<sup>73</sup>). Six individual case studies are of parcel delivery drivers attached to large national logistics companies in the three regions.

Leisure services have a relatively high proportion of staff on ZHCs (5.3%), whilst exploratory research suggests that staff working in gyms are largely self-employed. A small survey by Payscale indicates that the average hourly rate for fitness instructors was £6.85 an hour in 2016<sup>74</sup>. The research provides six case studies of Personal Trainers based in gyms in the three regions, two of which are national chains.

The Security Industry Authority’s Guidance for Approved Contractors (2015<sup>75</sup>) reports that HMRC had alerted the Authority to the non-payment of taxes in the private security industry through the misuse of ‘self-employment’. The GMB states that ‘most’ employers in the security industry employ workers on contracts which either don’t guarantee any work, or only commit to low numbers of hours, despite regular long working hours and that workers experience unilateral hours reductions<sup>76</sup>. Six individual case studies are based on security workers working for agencies or directly for night clubs in each of the three regions.

**Table 1: The Sample of Workers**

Sector	London	South West	Yorkshire & Humberside	Total
Retail	2 (MHC)	2 (MHC)	2 (ZHC)	6
Hotels	2 (Agency/ZHC)	2 (Agency/ZHC)	2 (ZHC)	6
Social Care	2 (ZHC)	2 (ZHC)	2 (ZHC)	6
Logistics	2 (DS-E)	2 (DS-E)	2 (ZHC)	6
Recreation, Sports & Leisure	2 (DS-E)	2 (DS-E)	2 (DS-E)	6
Security	2 (DS-E/Agency)	2 (Agency/other)	2 (ZHC)	6
<b>Total Worker Case Studies</b>	<b>12</b>	<b>12</b>	<b>12</b>	<b>36</b>

<sup>73</sup> Newsome, K. and Moore, S. (2016), ‘Supply Chain Capitalism’, *Parcel Delivery Workers and the Degradation of Work: Exploring the Impact of Technology on Parcel Delivery Workers*. Paper to International Labour Process Conference 2016, Berlin.

<sup>74</sup> [http://www.payscale.com/research/UK/Industry=Fitness\\_Club/Salary](http://www.payscale.com/research/UK/Industry=Fitness_Club/Salary).

<sup>75</sup> Security Industry Association (2015), *Guidance for Approved Contractors*.

<sup>76</sup> <http://www.gmb.org.uk/newsroom/end-abuse-of-zero-hours-on-security-contracts>.

Access to workers was obtained through contacts built in existing research and through approaches to employers and trade unions. In homecare in two regions respondents were located through trade unions, in the third through a provider. Again, trade unions helped locate respondents in retail. In sports and leisure identification was through an employer in one region, but in the other by approaching Personal Trainers in gyms. There were difficulties finding respondents in hotels and this was eventually done through individual networks, union contacts and word of mouth. In logistics a grassroots worker network was used, along with individual networks. Security was another difficult sector and respondents were found through individual contacts and approaching workers in their work environments. A snowballing approach was utilized; in all cases once one worker was identified they were asked if they had a colleague who might be prepared to be interviewed – in some cases this was not possible. The sensitivities of the issues addressed were recognised as a major challenge in achieving requisite research access. Access proved difficult and the identification of participants was a painstaking process, partly because the workers targeted had few organizational or institutional ties. The nature of their contracts meant that once contact was made workers might not know if and when they would be working; this made the scheduling of interviews problematic. If individuals were called into work interviews got cancelled at the last minute. Casting the net as wide as possible meant that a number of interviews were excluded from the final sample because of initial confusion over contractual status and subsequent clarification that workers had some kind of standard contract, however tenuous. The line between ‘worker’ and ‘employee’ can be unclear in the UK and this is underlined in this study where in one case (Kerem) it was almost impossible to unravel contractual status, despite intensive probing, although it became clear that at most it was ‘informal’<sup>77</sup>. This case study has been included as ‘other’ to convey the contingency of contractual status. In each sector two primary case studies were selected, using the additional interviews to triangulate. An additional two interviews with managers in retail and security helped to contextualise the scheduling of work and three additional interviews with trade union officers provided a wider context on contractual status – all five are drawn upon in the analysis. Few workers had fixed workplaces where they felt comfortable being interviewed, so interviews were generally conducted in public places – for homecare workers in the cafes that they based themselves in between visits. Initially it was decided to interview two workers within one organisation in each of the six sectors in each region covering 18 different organisations. This proved difficult in some cases and ultimately the research covers 23 different organisations. As Table 2 shows, there is a spread in terms of contractual status, with those employed through agencies essentially on zero hours. The ‘other’ is Kerem; a participant apparently employed on an entirely casual basis.

Methodologies adhered to the Social Research Association Ethical Guidelines based on voluntary participation; informed consent; confidentiality and anonymity. In all cases organisations and individuals have been anonymized and research participants have been given pseudonyms. Each were offered £20 gift cards to participants and while this did not drive participation the value of these to respondents should not be underestimated.

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<sup>77</sup> Kerem’s previous experience in security on a variety of contracts further justified inclusion.

**Table 2: Contractual Status by Gender**

Contractual status	Worker Case Studies		
	Male	Female	Total
Zero-Hours	5	10	15 (42%)
Minimum Hours	2	2	4 (11%)
Dependent Self-Employed	9	2	11 (31%)
Agency	2	3	5 (14%)
Other	1		1 (3%)
<b>Total Worker Case Studies</b>	<b>19 (53%)</b>	<b>17 (47%)</b>	<b>36</b>

Initially it was decided to focus upon workers aged over 25 to directly reflect the impact of the NLW, however the difficulties in gaining access mean that there are seven workers aged between 21 and 25 and these cases do bring out age-related issues, suggesting that in some sectors the introduction of the NLW has had some indirect effects on workforce composition. In the sample all but one retail worker is under 30. The remaining workers are diverse in terms of age with three over 60 and one quarter between 30 and 39 (Table 3). As Tables 2 and 4 show the sample is also diverse in terms of gender and race and ethnicity, broadly reflecting the overall make-up of the sectors. Table 2 shows that dependent self-employed workers are predominantly male, which reflects national statistics, but may also be a function of sector selection or self-identification. The case studies thus form a purposive sample, but the inclusion of six in each sector across three regions aims to increase its representativeness in terms of the sectors chosen. At the same time regional and organisational variation is captured. Of the organisations 14 were multinational or national chains or agencies and nine (under half) smaller local or regional operations. Workers thus represent a range of large, medium and small organisations, providing a range of experiences and impacts. In terms of educational qualification seven (under a quarter) had degrees and three were full-time students, reflecting student participation in the labour market. Six of the sample were recent migrants, predominantly eastern European. However, the intent is not to generalise from individual case studies, but to encapsulate rich detail in specific contexts.

Interviews took place between October 2016 and July 2017 and lasted between 45 minutes and two hours and were recorded and transcribed with the consent of participants. Field notes were produced after each interview to identify emerging themes. The case studies were written up in a standardised format around key themes eliciting common or conflicting experiences, perceptions and/or understandings. Each was located in an organizational context. In a discipline that often relies upon large data sets and regression analysis to identify impact, this study is unashamedly qualitative in its focus upon the lived experience of work, but in particular the words of workers themselves are privileged through the generous use of quotes. The findings thus bring out overarching themes and draw together the common and differentiated implications of the NLW for individual workers.

**Table 3: The Sample of Workers by Sector and Age**

Sector	Age						Total
	Under 25	25 -29	30 - 39	40- 49	50 - 59	60 plus	Total
Retail	2	3	1				6
Hotels	1	2	2		1		6
Social Care				2	3	1	6
Logistics			1	1	2	2	6
Recreation, Sports & Leisure	2	1	3				6
Security	2		2	1	1		6
<b>Total Worker Case Studies</b>	<b>7 (19%)</b>	<b>6 (17%)</b>	<b>9 (25%)</b>	<b>4 (11%)</b>	<b>7 (19%)</b>	<b>3 (8%)</b>	<b>36</b>

**Table 4: The Sample of workers by sector, gender, race and ethnicity**

Sector	Gender		Race and Ethnicity				Total
	Male	Female	Black British	Black other	White British	White European	
Retail	2	4	2		3	1	6
Hotels	2	4		1	2	3	6
Social Care	1	5		1	5		6
Logistics	5	1			5	1	6
Recreation, Sports & Leisure	5	1	3		3		6
Security	4	2	1		4	1	6
<b>Total Worker Case Studies</b>	<b>19 (53%)</b>	<b>17 (47%)</b>	<b>6 (17%)</b>	<b>2 (6%)</b>	<b>22 (61%)</b>	<b>6 (17%)</b>	<b>36</b>

#### 4. Key Findings: Contractual status

This chapter establishes the contractual status of the sample and what this means for work. It starts to unravel preference, particularly the proposition that ZHCs provide valued flexibility for workers (Taylor Report, 2017<sup>78</sup>), but also the nature of self-employment in the light of the recent Employment Tribunal rulings. One half (18) of the workers in the sample, principally those in their 20s and 30s, had never had a permanent contract; three had taken their pensions and returned to the labour market on non-standard contracts; three had other jobs on standard permanent contracts (one full-time, one part-time, the other a job-share) and five others had second jobs on non-standard contracts, one of which was full-time in the same occupation and sector. With the exception of those who were dependent self-employed, across the three regions there was some uncertainty amongst workers over contractual status and in particular the notion of permanence, which could be obfuscated by variability in hours.

<sup>78</sup> Taylor (2017), *Op.Cit.*

#### 4.1 Zero Hours Contracts

As with the majority of homecare workers in the UK, the six in the sample described themselves as on ZHCs. Mary had worked for the same homecare organisation for 20 years, although it had recently been taken over by another company and she was unsure whether she was permanent: *'I presume it's a permanent contract, but they call it variable don't they? But it was always called zero [hours] contracts'*. Linda, who had worked for the same company for 19 years, referred to 'flexi' contracts, but she thought that this meant ZHCs, which had previously been the basis of her contract. Both Mary and Linda reported that despite having no guarantee of hours under the new company they were required to demonstrate unlimited availability; *'We're actually being told now that this is a job that's 24/7. If you don't particularly want to do those hours you shouldn't have come to the company'*. Being available does not guarantee hours, but at the same time can be experienced as being 'on call', even if work could be refused. Linda's availability is 20 hours one week and 30 hours the next week when she is available to work weekends<sup>79</sup>. She had not been given work on a Sunday in the middle of the day for several weeks and then, exceptionally, requested two hours off to see her sister. She was told she would need to submit a request for leave because it was during her available hours and on that weekend work was available at that time. Terri was a homecare worker in Yorkshire whose preference for a ZHC was on the basis that she could not afford to be a care worker full-time; she earned £8 an hour for homecare, but £10 in her second job - cleaning:

*'I love caring, I always enjoyed caring, it makes me feel like a better person. I know that sounds sad but it does. I do enjoy it but like I say, I can't pack the [cleaning] jobs in - these cleaning jobs - because they pay more. So in actual fact I always said I wouldn't do zero [hours] contract stuff because I don't fully agree with it to be honest, but at the moment strangely enough it suits me in that I can fit the cleaning work in'. (Terri, YorksHomecare1)*

Bob worked for the same provider on a ZHC, working regularly 12 days on with two days off. For him the issue was less about hours than the imbalance in the employment relationship and resulting insecurity:

*'Zero hours gives them more power, that's what he [the employer] thinks anyway, because it's like hire and fire and he can just give me zero hours one week and he can just change things very quickly using those contracts. But he doesn't quite realise that if he wants long term, if he wants committed staff he should put them on fixed contracts. I understand from his point of view why he wants zero hours, from a business point of view, but longer term, if he wants to build a longer-term business and better quality staff, more committed staff, he should have proper contracts'. (Bob, YorksHomecare2).*

In logistics Jim and Tom worked for a leading European vehicle rental company delivering hire cars. They were both on ZHCs, but Jim was a retired police officer who had taken his pension and Tom had a full-time job in the public sector, which he said was low paid and since he had a young family needed the extra income. He worked nights, often into the early hours of the morning on average 14-15 hours a week and he summed up the contractual relationship:

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<sup>79</sup> Linda and Mary's contracts have some resonance of Guaranteed Hours Contracts being introduced in homecare in response to demands to abandon ZHCs (for example where Councils have adopted the Ethical Care Charter), here GHCs may grant care workers some fixed hours, but they also require that they are available for additional hours when required and which they cannot generally turn down.

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*'It varies every week, there isn't a set time, it's up and down all the time, it's as and when required, you can be half way through a shift and they can say we don't need you anymore. And you've no rights really if you want to get paid you just have to do your job and that's it' (Tom, YorksLogistics1).*

Workers in the security sector varied in their contractual status; one was self-employed, one worked on a regular casual basis; two were on ZHCs and two were employed through agencies, but essentially on ZHCs. In the South West during the day Stuart worked as a security guard overseeing CCTV in a supermarket, employed through an international agency labour supplier. At night he was a door supervisor at a nightclub. His colleague at the nightclub, Kerem, described his employment status:

*'It's a little bit of a strange one. It started as an informal arrangement but obviously then because I stayed there for his business, there has to be some sort of formality because it's showing on his books, so he produced me some sort of contract and I signed for it but to be honest, I haven't read it. It's an informal contract.'* (Kerem, SWSecurity1)

He identified himself as an employee of the nightclub although this was as he was developing a comparison of 'in-house' and agency contracted security provision which he felt was characteristic of the sector. Later in the interview he indicated he did not achieve worker rights to sick pay and paid holiday leave and it appeared that both he and Stuart were paid cash-in-hand. Pauline worked through two event management agencies in London providing security for concerts or sporting events. She described how one of the companies used an online workforce management system for work allocation (as well as monitoring of real-time attendance):

*'I phone up for work or they text me or phone me or even email me. It depends because [the agency] has gone over [to] a thing called Timegate; we're supposed to go on there and look for our work and half the time it's on there for about five seconds and then it's gone so I just call them up and say, "have you got any work"? And they say did you look on Timegate, and I go "yes, but it's gone"'. (Pauline, LondonSecurity1)*

Jade and Kevin worked on ZHCs for a security company in Yorkshire covering events management and they regularly provided stewarding at football matches. In this case they felt a sense of control as the company communicated jobs to them via text messages and they would text back to accept or reject them. Jade also worked for a restaurant on a ZHC, while Kevin also worked in retail on a MHC contract of 20 hours, based upon four hour shifts. Jade saw the advantage of ZHCs for her as a student, but also discussed the fear in her restaurant job that if you did not agree to shifts you would lose them, particularly where staff could be asked to work at a day's notice:

*'There is a fear of upsetting your managers or anything if you say so many times that you can't do it, or if you say you can do it and you phone up and say "oh actually I can't", then there is a risk of you being sacked'.* (Jade, YorksSecurity1)

Also in Yorkshire, Lisa and Orla worked for a multinational food service retailer on ZHCs. Orla also combined work with higher education and appreciated the flexibility of a ZHC:

*'It's a zero-hour contract, but you're guaranteed to have at least a four-hour shift every week. So you select your availability. When I applied for the job, I said I'm a college student so I can't work full-time, but I can work after college and at the weekend. And they pretty much fit it around you,*

*really easily. So whatever you can do, as long as they've got the labour to spend on you, they'll give you the shifts that fit your availability. So it just completely depends on what I'm doing at university. They just work it round whatever you can do'. (Orla, YorksRetail2)*

Lisa considered herself full-time, working eight-hour night shifts five days a week in a 24 hour outlet. She reflected on the perceived flexibility of ZHCs for young people:

*'A lot of people who work in the fast food industry are young students, migrants who, I think just see it as normal, especially young people - it'll be one of their first jobs and in this current climate with zero hours, they'll take it as normal and they'll be used to it. I don't think it's right to say that no one likes working on a zero hours contract; I think there's definitely, people that it works really well for, but I think those people are a minority. But I think also, a lot of people are just used to it and don't know anything different' (Lisa, YorksRetail1).*

Three of the six hotel workers were employed through an agency, but all were effectively on ZHCs. Reka had worked in four different jobs in the past five years and stated that hotels *'prefer agency people because if they don't need them they just send them away or they just tell the agency, "no, I don't need them"'*. Goncalo worked through an agency, with no guaranteed hours, but currently did 40 hours a week. Gemma and Andreas worked for a national chain of hotels in Yorkshire and were both on ZHCs. Gemma worked around 30 hours a week, but had worked up to 49 hours on occasion; Andreas worked between 30-35 hours a week.

Those on ZHCs could work near to full-time and/or regular hours, but with no assurance of permanence. These contracts were characterised by a need for workers to be available and on-call with consequences for work-life balance. The interviews suggest an overlap between agency and zero hours work. Workers could refuse work, but there were clear pressures mitigating against this with implications for the allocation of future work. The testimonies also indicate how the use of technology, via text, Facebook or on-line scheduling systems, facilitate ZHCs and MHCs while obviating the need for personal interaction with managers.

### 4.2 Minimum Hours Contracts

In retail all case study workers were on MHCs with core or guaranteed hours, but where they were expected to state their wider availability and to 'flex-up' as required. Contractual uncertainty was also evident amongst those on MHCs. In retail two workers had started on temporary contracts at Christmas and then been retained, but were not clear of their subsequent contractual status. Alexis had been offered an 8-hour contract with a national retailer in the South West after Christmas: *'I'm gathering it's on a permanent basis because Mum said to me that they wouldn't have offered it to you otherwise, they would have told you different after Christmas'*. Hanna had been working for three years at the same national retailer as Alexis and also had an 8-hour contract, but worked 20 hours a week on a regular basis, and had worked 30-40 hours and up to 50 over Christmas. The store did not offer contracts over 16 hours. Hanna said that she did not think that she was temporary. Romesh, working for another national retailer had also been kept on after Christmas and consequently felt unsure of refusing shifts:

*'Because I haven't got my contract sheet yet, I feel like they can play around with me. That's why my job isn't fully secure 100%. Because I really need this job for now' (Romesh, LondonRetail1).*

Romesh had 22.5 guaranteed hours, but regularly worked night shifts of 45 hours over five days. At the same retailer Roshane was on a five hour contract. He reported that newer, younger staff were all on five



hour contracts or seven hour contracts, but on the basis that they worked additional hours. In all cases actual working hours bore no relation to contracted hours. As a Manager for this national retailer described, this arrangement allows retailers to base sick and holiday entitlement on contractual hours:

*'It's budget saving. You've got more people in, you don't have to pay a full time member of staff a full rate. You don't have to owe them a holiday of 22 days. You can cut that down. Also, by putting someone on a flexible contract, you can manipulate when they come in and when they can take time off. I think it works well for the company. All of our staff members are, I believe, now on flexible contracts, so that means you can flex it down to their contracted hours. You can't take contracted hours away. So we could have someone, an employee could work, one week they could work 36 hours, the next week they could work 14 and then up to 21, depending on the need of the week. They can find it frustrating. It depends on the employee.'* (Manager, LondonRetail)

MHCs in retail once again raise the issue of worker availability, with shifts changed at short notice to cover fluctuations in demand. Requirements to 'flex-up' present particular difficulties for those with caring responsibilities, but also for students in full-time education. Fears of refusing such changes suggest that flexibility benefits the employer rather than the worker.

### 4.3 Dependent Self-Employment

In all cases the 11 dependent self-employed respondents were aware of their contractual status, but there was some variation in the autonomy that they felt they had over their work and their feelings about so-called 'self-employment'. They were conscious that they had no access to employment rights, in particular sick and holiday pay. Further, all described at least some elements of dependent work relationships where they were instructed how to do their work and controlled in the performance of their duties (as emerged as criteria in the Uber and Citysprint cases).

John and Janice were what is known as 'lifestyle couriers' (where delivery is seen to fit around people's lives!) and worked for a multi-national parcel delivery company from home on a self-employed basis. The contract with the company was their only paid work and they were not registered as a business. The company paid them directly into their personal bank accounts and they were responsible for tax and National Insurance (NI). John was clear there was no choice but to take the job on a self-employed basis: *'We haven't a leg to stand on. It's difficult to negotiate with somebody that actually turns round and says "well, if you don't want to do what I want you to do I'll take the job away from you"'*. He had recently been cautioned that he would lose his job if he did not find someone to cover his round while he was unwell. Janice concurred that the company had told her the round 'is your business' and there is an expectation for couriers to organise cover if unable to complete it themselves because they are unwell or on holiday, illustrating the assertion of a managerial prerogative:

*'I phoned up and said "I'm so sorry but I really cannot work today, it's impossible, can you help?" And the first thing I got was "this is your responsibility. If you don't do it and I find somebody else to do your job today you will lose it". And I said "I can't do anything about it, I cannot get out of bed". And then I had continual calls of "I want to know how you are, I want to know if you'll be back tomorrow?". It's always "your responsibility" this is your business, your job, it's up to you to have cover available if you are ill. And in the end, on the third day after numerous threats of losing the job, I got very angry with them and said "all the help I give you, the help you need if somebody is off and you need extra help. I do my job and I go off and do somebody else's job. I give you endless cover and I help you out and for the first time in three years I desperately need help and all I've had is threats"'. (Janice, SWLogistics1)*

Janice also reported that the company was exploring the option of allocating a substitute for every round. She had not had a holiday in the time she had been in courier work, in part because of the difficulty of finding someone sufficiently familiar with the work and up to speed with the round to cover in her absence. She worried that the company would call her back from her holiday, to 'take responsibility' for her round; she had heard of this happening to another courier. She explained that a lorry delivered parcels to her from a company depot, so she was dependent on its timely arrival in order to complete the round to her planned schedule, but it was not uncommon for the lorry to be late. She was allowed to reject the day's order if the lorry was not with her by noon, but she would then lose the opportunity to be paid for that day and the rejected order would be added to her next day's workload. Janice thought her 'self-employment' was 'weird'; aside from the company rules and regulations and the dependence on other work groups in the supply chain she noted the capacity for surveillance of her own work performance through the Hand Held digital Terminal (HHT) provided to the couriers to record delivery:

*'We even have compliance officers to make sure that you are using the HHT; "where are you?, what are you doing?'. The HHT is a machine [that] actually shows them where you are at any given time and what you've done and what you've got to do. I've had a call before I'd finished my round about a parcel I have delivered in the first hour as to where that parcel is because the customer can't find it. They're that close behind you into what you're actually doing. It's like being on camera all of the time and you have constant telephone calls. So no, I don't feel like I'm self-employed'. (Janice, SWLogistics1).*

In the same sector Alan and Olsi were self-employed bicycle couriers in London working for a large national logistics company providing same day delivery. Controllers were responsible for allocating jobs and Olsi believed that individual relationships with controllers influenced the allocation of work. Olsi recalled that he had paid £125 in NI contributions and £200 in tax in the previous year. The company did not provide any help or guidance in setting up as self-employed and Alan commented that *'there is no encouragement to go to HMRC and declare yourself self-employed'*. He had a £3,000 fine to pay because he had not submitted his tax returns on time. In the previous year he had broken his collarbone in an accident whilst working and was out of work for three weeks without pay. His trade union has been negotiating around employment status and he stated:

*'The argument is that self-employment isn't without employment rights - it's not mutually exclusive. I hate them, I mean, we are really treated as second-class citizens. You'd think that somebody would give you some sort of thanks for the work that you've done for that year, but no, you don't even get invited to any sort of Christmas parties. You are seen as being self-employed and therefore not part of the company until it suits them'. (Alan, LondonLogistics1)*

In security, Jason was self-employed, but also described himself as on a permanent contract. He worked for a company providing security on film-sets, although had previously been on a ZHC elsewhere in the security sector. A supervisor for the company (also self-employed) would ring him up to offer him work and send him to different film locations where the company was contracted and where he would be part of a team of security staff put together by the supervisor, some of whom he may have worked with previously. Like other self-employed workers interviewed he had a company uniform. Unlike in logistics the company would provide cover for sickness, although there was no sick pay. Workers opted out of the Working Time Directive and Jason perceived that 12 hour shifts were characteristic in security. In this job he tended to work intensively on contracts and then take periods of unpaid holiday and this ability to take leave when he wanted gave him a sense of control over his work:

*'Sometimes I've had, like, maybe two days off, three days off and then I might sit down at home for a week when there's nothing going on, or two weeks I might be sitting at home. But it's just that you treasure that time. Because obviously, when you've got to go to work, you go to work. Like I tell my partner "look, you're not going to see me for four weeks. I'm going to be out by 5am, I'm not going to be back until 9p.m.". She's totally happy with that- I'm out there making the money'. (Jason,LondonSecurity2)*

As he indicates he was extremely positive about the company he was working for and perceived opportunities for promotion and a long term career there.

In recreation, sports and leisure the respondents were Personal Trainers (PTs) who were 'self-employed', but who worked in gyms for a number of hours per week in lieu of rent to the gym in order to be able to train their own private clients there. In the South West Stephen's contract with a global gym franchise meant providing six hours of classes each week unpaid, along with a £70 per week rental fee to see his clients. There were four weeks of the year when he did not pay rent and so could go on holiday. In London Jordan and Denis worked for a large national 'low-cost' 24 hour gym. It engages PTs on two models: where they give 15 hours to the gym in lieu of rent to train clients (as Jordan and Denis did) and a 'rent model' where PTs pay a monthly rent. For Jordan *'their overheads are literally way down because they haven't got to pay much, it's nothing.'* The company supports PTs through a development programme, including 12 week business coaching, a PT Business Manual, a two day business workshop and 1-2-1 mentorship programme. It also offers a 20 per cent discount on Personal Liability Insurance. In all cases PT's wore the gym uniform, including when training their own clients. Denis had previously worked for a major bank on a permanent contract and made the point that contractual permanence does not preclude insecurity; he described the attraction of self-employment and the way it fitted with his parenting:

*'I just saw the progression or lack of it for some people, even though you got that guaranteed money coming in monthly, you ain't got a guaranteed job. A lot of people were getting made redundant, being in jobs for like ten, 12 years and so I thought, no I'd rather do something, even though it seems like a bigger risk, you're kind of more in control and it's what you give in is what you get out. There are actual drawbacks as well like getting up at six in the morning and other things and when you don't work, you don't get paid and stuff, but I like being in control. But it's something you love because it's more of a career than a job, you do like it. Overall, I live the lifestyle I live because I've got a daughter as well and it gives me a lot of freedom to do things around her. It's a different energy drive. (Denis,LondonSports1).*

Denis had worked for a different fitness chain where he paid £670 per month rent to the gym to see private clients, but currently, like Jordan, worked 15 hours per week in lieu of a £600 per month rental fee. He had a contract with the gym which outlined expectations; PTs can be given a warning or dismissed for transgressing these and their facilities withdrawn. On top of rent they pay a £250 license fee to the gym; the company provides uniforms and training. PT hours involve inducting new members, looking after members on the gym floor, delivering classes as well as cleaning equipment according to a staff rota. Training provided by the gym includes support for self-employment as well as updating techniques, exercises and classes. Training and staff meetings may fall within the 15 hours provided to the gym, but sometimes will not. PTs have reviews every three months with the gym manager or assistant manager. In the event of sickness PTs make up the hours and they normally gets three weeks (nine shifts) holiday. Managers and assistant managers are directly employed and it was perceived that there were opportunities for promotion within the gym to these roles and Denis thought he might want to go into management when his daughter was older and so was thinking about going back into direct employment.

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In the South West Jamal worked in a job share 18.5 hours per week, directly employed by a college gym. He worked as a self-employed PT in the other half of his week, ten hours per week for the gym unpaid ('pay-back'). While this arrangement has been characterised as neo-villeiny (Harvey et al., 2016) Jamal did not necessarily perceive it as exploitative:

*'Ten hours a week I'm on the gym floor so it's an opportunity for me to get new clients, speak to people and that's how I look at it. The thing is with personal training it can be very up and down. I think any self-employment, you haven't got that security. Some months can be good, some months can be quiet'. (Jamal,SWSports1)*

However, he also commented that there was little difference between the management of his work as directly employed and as self-employed where he is assigned to fitness instructor work:

*'If my manager said look, we need this doing, we need that doing, I'd just say yeah. It would be exactly the same as my senior position, even in those ten hours I do for pay-back, I'm still seen as a fitness instructor, if that makes sense?' (Jamal,SWSports1)*

Jamal acknowledged that 'a lot of personal trainers struggle' and that his combination of permanent and precarious work was unusual and that he could fall back on his part-time permanent contract. In Yorkshire Dan was a manager of a local fitness club working 25 hours for the gym as an employee, but then also paid rent at a preferential rate to the gym to work self-employed with personal clients. Jane worked for the same fitness club as a PT running group sessions part of the week with paid guaranteed hours, but on a self-employed basis. The remainder of the week she had her own private clients and paid a facilities fee of £155 per month to use the gym for private clients. However, her account suggested she had little control over work, she had one day off per fortnight, but did not feel she could turn work down, 'my bosses don't really like turning down hours. I mean, they do all the scheduling and stuff'. While she loved her work, she was not so positive about her contractual status:

*'It does wind me up because we don't get any benefits. I don't get sick pay, holiday pay - basically if you want to take holiday then the other trainers will have to cover it among themselves if they can, but when I started a year ago we had three more full time trainers than we do now so it's getting a lot harder if you want time off to find someone who isn't working - pretty much we all work all the time. This is what I've always wanted to do, and you do know you're going to be working evenings and Saturdays and you are going to be self-employed so I knew what I was getting into but sometimes it does wind me up a little bit. I do worry that what if I get ill?' (Jane,YorksSports1)*

At other times in the interview she said that she would prefer to be directly employed in her narrative, like others, conveys ambiguity:

*'I've no idea what I'm doing with taxes or I'm going to be on the phone to dad all the time. I'm crying over a box of receipts or something and I don't have a clue yet. That does scare me. There are bits of it I do like and then bits of it I don't like, so obviously we have a lot less benefits and just generally worrying about how to do a tax return'. (Jane,YorksSports1)*

Jane reflects the contradictions of 'self-employment' expressed by other respondents. Personal Trainers enjoyed their work, but were more ambivalent about contractual status. While there was variation in how

far workers expressed a preference for self-employment and the extent of their autonomy, it was clear that in all cases their work and the workforce are regulated and that this is dependent self-employment where workers were contracted with one organisation.

### 5. Key Findings: Hours

The Institute of Employment Studies QulnnE<sup>80</sup> indicators of job quality utilised by the Taylor Report include predictability of weekly hours as well as involuntary long and part-time hours work. The research presented here confirms that in the case of ZHCs or MHCs there is little relationship between actual hours and contractual arrangements and in all sectors there are examples of unpredictability and fluctuations in hours, and thus pay, leading to insecurity. Across the sample, there were workers, including the self-employed, who felt they had little control over their working lives. There were few cases where *both* contractual arrangements and working hours constituted preference or choice.

#### 5.1 Zero-Hours Contracts

In homecare ZHCs accommodate the fluctuations in the demand for care commissioned by local authorities within constrained budgets and providers often state that they cannot win local authority tenders on any other basis (Hayes & Moore, 2017<sup>81</sup>). Here care workers are generally paid for the time in which they spend in client's houses; when clients are hospitalised or die or do not want to receive a visit, workers lose hours and are often unpaid. Mary explained that there were no guaranteed hours; insecurity in respect to hours and pay was a function of the work:

*'It goes through fits and fancies. You could be doing 15 to 30 hours for quite a while and then suddenly, obviously in this job people go into respite, people pass away so you can lose hours quite quickly. And then it could take quite a long time to build those hours back up or it could happen very quickly again, it just depends. There's never a structure, there's no rhyme or reason. They can take people away from us at any time because they are not our permanent jobs - we are told "no job is your own"'. [Mary, SWHomecare1]*

Mary and Linda reported having limited control over their hours, which were subject to change. Mary had had an hour's visit taken away (someone she had been going to for three years), and replaced by a half hour visit to another client. She currently worked 24 or 25 hours per week. Her weekly hours and hence pay had fallen over the previous year, as client numbers had contracted, obliging her to work a regular 'waking sleep-in' (9 hours) on Thursday nights. She wanted to work longer days over Tuesday, Wednesday and Thursdays as she had unpaid elder care commitments. However, as a result of the contraction she started at 8.15 am and finished at 2.30 or 3.00 p.m. instead of 5.00 or 6.00 p.m. She was obliged to state her hours' availability to the organisation, and this was 8 a.m. to 5 p.m. and so she could be asked to make additional client visits after 2.30 p.m. and may accept or argue the matter depending on the time of the job, its duration and location.

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<sup>80</sup> Quality of Jobs and Innovation generated Employment outcomes: a framework used to statistically analyse existing datasets to create a typology of innovation-job quality dynamics by industry and country.

<sup>81</sup> Hayes, L.J.B. and Moore, S. (2016), 'Care in a Time of Austerity': The Electronic Monitoring of Homecare Workers' Time' *Gender, Work and Organisation* 24(4):360-375.

Linda described herself as part time, she worked on the same days each week – Mondays, Tuesdays and Fridays – and every other week worked on all days of the week except Wednesdays and Thursdays which *'are for my grandchildren'*. She used to work an all-day Saturday and an all-day Sunday, where all day in principle was being available from 8 a.m. to 10 p.m. every other week, but she found this too much following an all-day Friday (and 3 days earlier in the week) and she shifted to Saturday nights (4 p.m. to 10 p.m.). Her concern was that her Saturday night hours were going down: three clients had left and had not been replaced, and her Friday client numbers had fluctuated in recent weeks, she normally had eight to ten hours work, but recently had only had an hour, meaning weekly pay was unstable. She recalled making above average earnings in previous months, when she was doing nine hour sleep-ins and five hour *'sits'*, but did not have that work at the time of the interview. Linda said she was generally happy with her days and her hours, but that the variation could cause problems financially, especially for individuals in single-earner households.

In Yorkshire Bob testified that his schedules had been sent to his mobile at only a day's notice because of staff turnover, but this had now increased to three days' notice, even so *'you can't plan a life at all'*. Terri also said that her hours were uncertain; she felt obliged to take on extra hours and could work 12 hour days, but wanted fewer hours and something more permanent. In London Carol worked five days, Sunday to Thursday, but could do anything from five to seven hours a day because of fluctuations in demand (hospitalisation or deaths of clients) so her hours varied from week to week between 24 and 30. Her pay could range from a minimum of £765 to a maximum of around £875 per month after tax and that this variation was an issue *'because you have to budget yourself'*. Her colleague Margaret said her pay varied from £850 to £1100 per month. At the time of the interview she had one client in hospital and the service had been suspended so she lost an hour and a half pay every day; she had had (not unexceptional) periods when she had only been paid for 20 hours per week and recalled a period in the previous year where three clients were in hospital and she lost nearly four hours a day.

In hotels in the South West Lidiya, a housekeeping supervisor, worked five days in a seven day week, but not necessarily the same days each week although she always worked weekends. Lidiya found out on Thursdays, when the new rota was published, which two days she had off in the next week. She said she got her choice of weekdays off, but also described her weekly hours as variable. She worked 30 hours one week and 25 the next, which was dependent upon how busy the hotel was. She wanted to work more hours, *'because it is more money'*. She thought it was only *'the English'* among room attendants who wanted part-time hours, *'15 or 16'* a week, since they might have state benefits (or working parent tax credits) to conserve. Angela's hours ranged from 24-30 per week with variation reflecting the number of guests staying in the hotel and the length of their stay (i.e. whether rooms require *'refreshing'* or a complete change). She currently worked Wednesdays to Sundays, which were the hotel's busiest days; she had requested six days in place of seven but was offered five, which was not always sufficient for her needs, she preferred to work more hours as she had a mortgage to repay. Equally, however, it is variability in her weekly hours that she saw as a problem as it caused issues with her mortgage repayments. In London Goncalo and Reka also reported that while they generally worked five night shifts, this could vary depending on hotel needs. As with other hotel workers weekend working was prevalent.

In Yorkshire Gemma and Andreas' hours were more unstable. Gemma worked around 30 hours a week, but she had done 49 hours previously and she worked on a rota, generally five days a week, with shifts varying from 10-6 p.m., 12-6 p.m. or 4-10/11 p.m. While she worked on average six hours a day her manager would sometimes ask her to go home early or not to come in the next day to save money and she felt that she was more likely to get sent home than younger workers on lower hourly rates:

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*'I think the majority of the staff that we work with are on zero [hours] contracts as well but a lot of them are younger and they're happier to go home whereas we've got a house and a car and bills to pay they haven't. So I think it would be unfair to just constantly send the same person home, even if it was constantly sending a younger person home. But they send me because I get paid more. The 18, 19-year olds, they get paid less whereas 21 and over, we get more. It costs them about £1.50 more to pay me than it does to pay the others an hour'. (Gemma, YorksHotels1)*

Andreas worked at the same hotel in the bar between 30 and 35 hours a week from 4 p.m. until 11 or 12am. He also perceived that he had limited control over his hours and would prefer to work longer:

*'My contracted hours are zero but I've been doing, since the day I started I've been doing pretty much full time, so around 30 to 35 hours. However, it's bar hours and it's not steady because if we're not busy I get sent home. And there have been days that they've called me and they've told me they don't need me, like an hour before my shift. So it varies. I don't mind doing more than five days, but I mind doing less than five days. That's the thing, you lack stability. It's very worrying and stressing because if my manager feels like it he won't give me any days next week. They are under no obligation to give me my hours. However, at the end of the month when I'll be getting paid, this will have an impact on me. I'll have to actually find the money lost this week to pay my bills.'*(Andreas, YorksHotels2)

He was also concerned that the work is seasonal and had been told that his 40 hours would drop to ten or 15 hours a week in the winter.

In the fast food sector in Yorkshire and Humberside, Lisa testified to the unpredictability of shifts and hours; she would not know from week to week what shifts she would be working which she suggested becomes normalised:

*'Come Thursday night when I'll check my schedule, I have no idea what I'm going to have next week. It causes a lot of anxiety and I know it will be a lot worse for the people who aren't as lucky as I am with the scheduling. It's a lot of instability. So some people end up with mixtures of, like, morning shifts, day shifts, evening shifts, overnight shifts, all in the same week. A lot of other people won't know until three days in advance for the week. I think you get used to it and it, kind of, becomes a normal thing. And then, when I think about it, it shouldn't really be a normal thing, but I think that's the reason why there's such a high turnover of staff at the store because it's too difficult. I can't imagine how people with children deal with it. There's a lot of forced overtime, so I've worked 12-hour shifts before. And a lot of people end up having to do that. There's a bit of a culture around - the legal thing is they're not allowed to keep us 20 minutes after we're scheduled - but if they ask us to stay on or say we can't leave, obviously they can't legally, but then we all know that we could just get our shifts taken off us. They can do it for any reason. There's only probably a handful of people who could get away with refusing and just going home without having their shifts taken off them. But most people definitely couldn't get away with it'. (Lisa, YorksRetail1)*

As Lisa testified there was also a culture of 'forced overtime' where people were asked to stay on after their shift. This meant that legal requirements for 11 hours rest periods were disregarded with workers put on 8 p.m. until 5 a.m. shifts and then scheduled to work a 5 p.m. to 11 p.m. evening shift the next day. Although in the same region, unlike Lisa, Orla worked full-time as a shift-manager with her shifts organised around her availability and university course.

In security hours and shifts appeared to be relatively regular. Stuart worked 50 hours over five days a week in his day job and (like Kerem) 20 hours over three nights of the week at the nightclub from 10 p.m. to 4 a.m. This meant that three days a week he worked for 20 hours; *'That's my choice, needs must at the moment - come Sunday I look like a zombie!'* He would like to have worked fewer hours and ideally to work exclusively at the nightclub, however it was only open three days a week and could not support him financially. The nightclub was a more sociable milieu than the supermarket where he was a lone security worker. His colleague in the nightclub, Kerem, valued the regularity of his work hours which allowed him to share childcare with his wife, however he had insufficient weekly hours of work and after years of working unsociable hours, he was looking for a day job; *'I never ever tried in my life what you would call a normal job'*. Kerem contrasted his 'direct employment' with the agency employment he thought much more typical for security staff including door supervisors. The problem for agency-employed door supervisors, he felt, was uncertainty as regards place of work: they *'don't know which door'* they are going to be working for on a particular night and a night shift might involve two locations.

In London, Jason was currently self-employed in security with regular 12 hour shifts (day or night) on different sites and client contracts. He welcomed the fact that the company he worked for would inform him if there were going to be quiet periods in terms of work – he could then balance intensive working with time off. He compared his current management's transparency to when he worked elsewhere in security on ZHCs:

*'Zero [hours] contract? I mean, like I said, it's good if you've got your own life and you want to do your own thing, so you're not structured into saying I have to work 60 hours a week for you. It gives you the flexibility to work the hours you want to work. But you have to have something you're aiming towards in order for that to work for you. If you're just on that zero [hours] contract just because it's what you have to do, but you want a more regular basis, then it's not good for you. But if you're going on it because you say you want to only work three days a week and you want to concentrate on something else for two days, like college, then it's good for you. You know what I'm saying? It's more flexible for you. But if you're put on that zero contract hour, but you've got a family to support and that's your main focus, then it's rubbish. It's absolutely rubbish'. (Jason, LondonSecurity2)*

Pauline worked in events security through two agencies, but effectively on a zero hours basis and she reported that she could arrive at a site and then be told the event was cancelled and would go home without payment for travel, which was why she used two agencies to find work. She did have choice over her hours and wanted to keep her income below £11,000 per year for tax purposes, however, there appeared to be little mutuality of obligation:

*'They've got this policy that if I cancelled a job it's got to be at least 48 hours before that job. One job I cancelled because I couldn't get home; I said I won't go because I can't get home, because the trains stop at 12 o'clock and the job doesn't finish till 12 o'clock and they won't let you go early; they moan and groan at you. So I refused to do the next day and they fined me. I said that it is illegal for them to fine me, but you've got to take them to court. They've got you under a bit of a wing there, they take it out of our money. (Pauline, LondonSecurity1)*

Jade and Kevin worked in security in Yorkshire on ZHCs, but as they generally did six hour shifts on Saturdays at football matches there was predictability and regularity and they enjoyed the job. However, they had to balance security work with their other jobs on ZHC and MHC contracts and in Jade's case also with her university course. Both stated that no week was the same. Jade worked around 15-20 hours in a



restaurant with shifts posted on a weekly basis on a Facebook page. On Saturdays she would effectively work over 12 hours, going from one job to the other and although she formally finished her evening shift at midnight would have to wait until customers left the restaurant before she could go. Kevin felt trapped in his retail job; *'If you get stuck in a job your aspirations just go. In this job I feel like I'm stuck in a rut'*. He was waiting to get his driving license so he could move into self-employed delivery work, which he anticipated would be better paid.

In Yorkshire and Humberside, Tom had a permanent day job so worked in his second job in car delivery evenings and weekends with no set times. Jim worked more regular hours between 7.30 a.m. and 4 p.m., but could be sent home if there were no deliveries or collections. They were both on ZHCs, but neither was dependent upon the income they received from delivering cars, it gave Jim *'a bit of pocket money'*, but they recognised that their colleagues were not in the same situation:

*'The other lads that are there, who are sort of full time if you like, they're there until eight, nine o'clock at night sometimes, from half seven in the morning. It's busy, we just keep them there and they just work for the basic minimum wage, there's no overtime for them either. I am sure some of the other lads, the younger lads that have got young families, they are sort of, not held to ransom, but they feel that if they don't put the hours in they won't get the money that they want. So I think it's a bit different for them. But for me, in my position, it just works'. (Jim, YorksSecurity2)*

While some workers on ZHCs had regular shifts and could balance these with their lives outside work or with second jobs, for others there was little regularity. For others on-demand scheduling meant hours could be removed or they were effectively on-call and available and could be obliged to work extensive hours. For most participants it was the unpredictability of working time that concerned them.

### 5.2 Minimum Hours Contracts

In retail MHCs shifts could vary from week to week. Hanna generally worked 20 hours, but would have preferred full-time hours. Her shifts were worked out on Saturdays for the following week, and she could work different days and different shifts. At the time of the interview her hours were fairly stable, but before her hours had been reduced to 20, her wages could vary from £400 to £600 a month. This did and did not cause problems, which is to say, *'You don't really count on this money, we wouldn't count that we get £600 every month'*. At the same retail organisation Alexis had worked at least four days a week before Christmas, but now worked four hours on two days, although as with Hanna could not be sure which days:

*'I always know I've got two days a week, I always know that, but I don't know if it's the Friday or the Saturday. It is always usually the Friday or the Saturday but it's not usually the same hours, it's usually either 2 till 6 or 6 till 10'. (Alexis, SWRetail1)*

Her shifts were coordinated with her mother's, so that they could share care for her two year-old daughter. She was not concerned about variability in the timing of her shifts because, *'I know I'm working them days and unfortunately, this might sound really sad, I ain't got much else going on'*. However she wanted to work additional hours primarily for financial reasons and had raised this with her manager, but been told *'they haven't got the funding for it'*. In London Romesh was employed by another national retailer contracted for three night shifts, which could be any days between Monday and Thursday, but regularly working two extra nights although he could arrange them around his university course. He would have liked to work fewer days, as it affected his academic work – he came to classes straight from night shifts. He commented that a number of people working on the night shift come from other jobs; *'they look tired'*

as soon as they come in'. At the same retailer Roshane had been on a five hour contract, but worked well beyond these hours, with variation from week to week, but also back to back shifts:

*'It was quite bad because sometimes you came in, you do three till eleven and then the next day you do six till three, so a back to back shift. It used to happen to me all the time like three times a week. It was kind of bad because sometimes there is no work, sometimes there is work. Sometimes you don't work for like five days, sometimes you go off for two days. Sometimes you work for five hours. It wasn't really doing that much for me. It wasn't easy to work because, obviously, I didn't know much and I couldn't learn, I couldn't train when you are doing five hours a week'. (Roshane, LondonRetail2)*

Roshane makes the point that episodic working is not conducive to training and learning. He also stated that he had been called in to work and then sent home, but was also regularly asked to work extra hours and felt some pressure to be flexible:

*'Sometimes I say yes but it depends on the mood, sometimes they'd be upset if you don't say yes, they try and force you into it. You know when someone tries to ask you something and keeps on asking and asking and asking? It's almost like they want you to do it, so they force you to do it'. (Roshane, LondonRetail2)*

As well as working in security, Kevin worked for a national homeware chain where rotas were fixed a week in advance, but he suggested that shift patterns could be chaotic and that work made incursions into social life:

*'I was going to spend the night at my friend's apartment and I was at the bar just about to order an alcoholic drink, as you would when you're at a bar normally. And they phoned me up just as I was at the bar asking where I was. And I'm thinking well, I've not been given a new rota and it's my day off. They're saying "are you having a laugh"? I'm just like "no it says on my rota it's my day off because I've not been given a new rota" and I had asked for it the day before as well. In the end, I had the right to say no, but I still went in to work anyway - it's still money at the end of the day'. (Kevin, YorksSecurity2)*

MHCs imply more formalised availability to the employer than ZHCs and the testimonies of workers in retail suggest that whilst contractual hours were low and some respondents wanted more, they were obliged to take on extra hours at short notice, once again producing unpredictability.

### 5.3 Dependent Self-Employment

Self-employment did not necessarily give workers control over their work. Janice worked for a multinational delivery company whose promotional literature advertised the work as flexible with choice over the number of days worked and the timing of a day's working hours. As a 'home courier' Janice recalled that *'I felt that I would be very much in control of my business'*. However, she worked seven days a week despite wanting *'a little part-time job'* to enable her to supplement her pension to be able to afford *'the little extras that make life worthwhile'*. She talked about the issues that arose when parcels were delivered late to her home from the depot and that many contingencies could upset the schedule planned for the day:

*'It's impossible to be absolutely sure how long it's going to take but you're only paid for the parcel you deliver or collect. You can't make plans for your day because without a doubt something can mess up and that's gone, so you don't have the freedom of your day. I've felt like it's taken over our lives and the stress and anxiety and the fatigue that it causes is huge and I just feel that we're missing life. No holidays, you can't be sick without all the threats. I'm actively searching for a part time job because I want to know what time I start and what time I finish and I want to know what I'm going to get. And I want to know that whoever I'm working for is efficient. And I want less stress, it's incredibly stressful'. (Janice, SWLogistics1)*

John worked six days a week for the same company, Monday to Saturday (inclusive). He said it was not a matter of choice: *'it's the contract'*. He described his daily and weekly work hours as *'variable'*; dependent on the number of parcels he was supplied to deliver and *'various problems'* that may arise that affect the time involved in completing the round – including the paperwork that precedes parcel delivery. Weekly working hours varied over the year. John reckoned he worked 60 to 70 hours a week in the four months of the Christmas period (October to the end of January) and 50 to 55 hours a week in the rest of the year. Although John liked the delivery part of his day, when *'you're interacting with other people and sometimes you can have quite a bit of fun on your way round'*, he would have liked to work less.

For Personal Trainers shifts might be regular, but income from self-employment was unpredictable. Jordan worked six days a week around 30-35 hours a week, with 15 unpaid hours for the gym as regular five hour shifts over three days. He was aiming to build up enough clients so that he no longer needed to work the 15 hours and to be in a situation where he could afford to pay the *'rent'* it represented thus eliminating the unpaid hours that he worked. His hours varied from month to month depending on the number of clients. Denis ideally wanted to do five hours a day five days a week (25 hours) with clients, but in fact his hours fluctuated from between six to eighteen per week. Overall he was working around 25-28 hours per week and regularly worked evenings and Sundays (but not Saturdays). Denis would have preferred to have more fixed hours, *'regularly more hours on set days'*. He had taken around 15 days holiday over the previous year, but these would be around three days at a time around the school term; he rarely had a week off at a time.

In Yorkshire Jane worked seven days a week in the gym, but sometimes this was just the odd hour; *'Like I say seven days a week – I only do an hour on a Sunday morning and an hour on a Monday, it just annoys me that I am in every day and I have to go there every day and put sports kit on every day'*. At the same fitness club Dan worked 50 hours over six days and indicated that there were periods of high and low demand, in this case reflecting the nature of the market and client preferences:

*'It's not that flexible, in that, a lot of [clients] are around first thing in the morning, so you have to accept that it's going to be an early morning start most days. And it's probably going to be an evening most days, that you'll be here. So it's not that flexible. First you have to accept that you'll probably be up early, and you'll be probably finishing a little bit later than your standard nine to five job'. (Dan, YorksSports2)*

While scheduled hours and work raise questions about *'self-employment'*, for those on ZHCs and MHCs the evident fluctuations in weekly hours have very real implications for pay and security. In particular the issue of unpaid overtime arises. While a minority can organise their work around other priorities, the unpredictability of work and episodic working meant that others spent much of their lives available to the employer raising the issue of unpaid labour.

## 6. Key Findings: Pay

The unpredictability of hours clearly affects pay, resulting in fluctuations in income. This chapter focuses upon hourly rates, awareness of the NLW and the costs of work, particularly in the case of dependent self-employment. It explores adjustments made by employers to accommodate the introduction of the NLW, particularly with regards to premia and the dissolution of the concept of ‘unsocial hours’. It concludes with a consideration of entitlement to sickness and holiday pay.

### 6.1 The National Living Wage

Seven of the workers in the study were working at an hourly rate at or close to the NLW, although the inclusion of London in the sample to some extent pushed hourly rates up. Two, under 25, were on the NMW for one of their two jobs (in retail and restaurants respectively) and in retail in Yorkshire pay for a worker aged between 21 and 25 was five pence above the NMW. The national retailer in the South West, the hotel in Yorkshire and national vehicle-hire company in Yorkshire paid the NLW and prior to the uplift in April 2017 a five star luxury hotel in London paid £7.30 an hour through an agency. Across the worker case studies awareness of the NLW varied, those who were ‘self-employed’ did not necessarily consider it as relevant, although the case studies suggest that these workers may earn around £10 per hour before taking account of the costs of self-employment and in some cases less. The case studies chime with Harvey et al. (2016) who question worker perceptions that they are economically better off than if they engaged in other working arrangements. Denis confirmed that some PTs have unrealistic expectations of self-employment and six months after the interview he had given up gym work because of the irregularity of income and was working in security.

#### 6.1.1 Zero Hours Contracts and Minimum Hours Contracts

Reka described how in the first three months of working in a London hotel through an agency she was paid £7.50 per hour, but this then increased to £8.05. She was aware of the NLW Wage and that she earned above that, although said it was not enough. In the South West, hotel worker Angela was aware of the Living Wage - *'It's about £8.50, I think, which is what you should really be on'* - and contrasted it to the NLW:

*'It's the bare minimum they can pay you and get away with it, isn't it? And nowhere near enough money to live. Even the Living Wage is not enough, when you work out the bills and everything'.  
(Angela, SWHotels1)*

In a luxury five star London hotel, Goncalo stated that his pay was £7.30 an hour (in 2016), in fact his last pay slip was £260 after tax for a 50 hour week, which suggests a rate below the NLW and he was not aware of the statutory minimum:

*'Most of the time people need the job and they should ask about their rights, but sometimes I feel afraid to ask these types of questions. I don't know why.'(Goncalo, LondonHotels1).*

He had been told that when he started working in the restaurant he would get £7.20 per hour, but would get 15 per cent more in tips, which would take him to around £8. Elsewhere in hotels there was little evidence that hourly rates were topped up with tips, probably because respondents worked in housekeeping rather than in public areas. This was the case for Angela who reported that while staff ‘downstairs’ split tips between them and that these appeared on their wage slips and were taxed, she was not included. In hotels and in the case of the food service retailer it was reported that meals were provided

and that this could make a difference to worker's survival. At another retailer Roshane said that on top of his hourly rate of £8.73, he was entitled to an annual store bonus; in the previous year he had received just over £573 and in addition staff got ten per cent discount in the stores.

In the security sector in London Jason had worked on a ZHC where the hourly rate varied according to the contract that the agency had negotiated with clients; this meant his pay had been unpredictable:

*'I was on £7.50, £8.10, £8.50, £8.75, £9.40. It just jumped around so you could never really know week to week, what you'll bring home. I'd literally sit there every week, write it down and then you'd try and work out, because it was monthly pay in that company – it's like, all right, I'll make that much a month - that's not enough. And then you were trying to fight for hours. £7.50 - I don't really want to do that because it's not enough, because I'm a bit older, I'm over 30, so that's not going to work for me at my age – you know what I'm saying? – being on minimum wage. Every other contract was minimum wage, up to £8. So it was literally like a dogsbody job, in that company'. (Jason,LondonSecurity2)*

In his current job, as a dependent self-employed worker he was earning £10.50 per hour. Pauline, working through an agency in security in London got £11.50 for one agency and £11.23 for another. In Yorkshire Kevin and Jade thought that they earned over £8 per hour as football stewards, but were not sure. In the South West Kerem and Stuart got a set rate for the night that worked out between £12.50 to £13 per hour; the owner did not engage them through an agency and hence did not pay the agency fee which they reckoned was £6 or £7 on top of the industry 'standard' pay rate of £10 per hour. Kerem had experienced a decline in his pay over the previous year because '*business has gone down*'. In his second agency job in retail security Stuart earned £8.50. He recalled that when he started in door supervisor security work in the late 1990s the hourly rate was £10 an hour. He had thought that good pay, especially for an 18 year-old; however, the differential between security and other sectors had reduced and, in Stuart's view, the skills and risks of security work are not now being adequately recognised and rewarded. He argued:

*'It is skilled because you do exams, you actually have to pass these exams to do the job so it is a skilled job. And £10 an hour basic is absolutely rubbish. So when I started, £10 an hour was great, but that's when everybody was minimum wage, it was like £4.50, £5 an hour. Now everybody is approaching £9 an hour and I don't want to sound like putting anybody down, but you can go into a chip shop and serve fish and chips for £9 an hour, and then I'm still on the door dealing with somebody that could possibly pull a knife out on me and stab me in the throat. And I'm getting paid £10 an hour for doing that, it just hasn't gone up over the 20 years that I've been doing it and you pay for your licence every three years as well, so you've got to take that into consideration. The wear and tear on your body, the amount of times you have to go and get a prescription because your knees have popped because you've been on your feet for so long'. (Stuart,SWSecurity2)*

He suggested a number of factors contributing to pay stagnation in security work: continuing growth in the number of SIA trainers and people who are SIA licensed (although he said that a substantial proportion of those with SIA licenses had no experience of security work); the presence of agency suppliers or fees charged to clients recruiting security workers and the decline in the night-time economy (people drink at home as it is cheaper).

In homecare there were signs that there had been increases in the light of the NLW, although accompanied by adjustments to premia (see below). In London prior to its introduction Margaret and

Carol were paid £7.50 an hour up to 25 hours a week with £8 after 25 hours and £8.50 for Saturdays and Sundays. Pay was now £8 an hour for all hours with the exception of Sundays which were £9. Margaret said that she had heard of the NLW on the news, but that the increase had been ‘sprung on us’, she acknowledged:

*‘It has helped. It’s made life, well it’s made it easier, but it just gets absorbed, doesn’t it? You know, you can’t say it’s made a difference, I mean, we don’t smoke. Oh yes, I like a drink, who doesn’t? But it just gets absorbed, because then your wages go up, cost of living goes up, so you’re no better off’.* (Margaret, LondonHomecare2)

Carol concurred:

*‘When it raised, yes, it was a lot different because it was just the minimum wage, and then after that they bumped it up a little bit to £7 something. Yes, so it make a lot difference. I could pay my bills a little bit better. I’m still struggling, but it’s a little bit better. We still think it’s a small amount because things are so expensive, you have to just catch what you can. We still need a little more. Things are expensive man. It helps when it goes up. It helps a little yes. But we do a lot. It’s not good’.* (Carol, LondonHomecare1)

### 6.1.2 Dependent Self-Employment

Hourly pay for dependent self-employed workers is clearly complex, particularly where pay is effectively based upon piece work. Home couriers’ pay depends on the number of parcels delivered, their type and weight. Janice and John explained they were paid £1.10 for a package, £1.45 for a parcel and 45 pence for a pick-up. Janice on average had 30 deliveries per day (rising to 50 over the Christmas period). John estimated that he earned £1 per parcel: his ambition was 90 deliveries a day. He and Janice were also paid an area allowance, which is some acknowledgement of ‘excess’ travel time in a rural vicinity. They reported that flat rate premium payments (£2 per day) had been introduced for achieving the company’s speed of service and parcel ETA (expected time of arrival) ‘quality’ targets. In addition there were enhancements for meeting particular client companies’ requirements, for example, for a signature for every parcel delivered. The company provided online an invoice of what workers were paid, but Janice conceded *‘I don’t know how to work out my wages’*, which is to say the system of payment is complex with ‘prices’ per parcel, premium payments and enhancements. Her monthly pay varied substantially over the year: *‘I think around about £1,000 around Christmas time, a month. And I can be down to about £360, £400 when it’s quiet’*. Janice referred to a £10 one-off bonus the company had paid over Christmas, when the parcel-load and additional unremunerated work involved had reached such a level that even ‘long service’ couriers were quitting. She said:

*‘It worked out we were on so little money if you took what we think is our wage - because we’re not quite sure how it all goes together - and you work out the additional time that was spent on doing the job, I think I worked out once it was £3 something an hour for the additional hours that we put in. We have said ourselves if they haven’t got it sorted we won’t do another Christmas like it. I think we were quite ill with it, it was so much stress.’* (Janice, SWLogistics1)

Both Janice and John knew something about the NLW and both referred to recent communications from the company proposing an increase in its ‘internal target earnings rate’ for couriers, which they thought was in response to adverse publicity attracted by logistics firms using ‘self-employment’ among ‘front-line’ delivery or driver staff. They were unsure how the company would go about converting the current

payment-for-parcels delivered system into a minimum hourly rate conforming to (or improving on) the NLW.

For cycle couriers Olsi and Alan pay varied by postcode, size of packages and urgency of deliveries. For local, central jobs they could earn £2.50 and for further distances between £2.95 and £3.50 up to a maximum of £4.50 per delivery. Olsi estimated he made 25-50 deliveries a day and was paid on average £90 to £100 a day. Alan was apprised of both the NLW and LLW and had worked out that he earned £10 per hour, but that it barely covered the costs of living in London. Alan, working for the same company, mentioned that there had been a pay increase on the rate of each delivery in the previous year:

*'But that also kind of coincided with a bit of a sort of decrease in the amount of work and an increase in the amount of people working, so I don't necessarily feel that change made a massive significant difference'. (Alan, LondonLogistics1)*

Stephen suggested that most self-employed personal trainers failed in the first year of business commenting that the qualification is easy to attain and people think they are going to make money, but don't reckon on the investment of time required to achieve that ambition. He said building up the business is the main challenge, but he had been relatively successful. He estimated that he had about 45 'active' clients and took 30-35 one hour sessions with paying clients a week, on average. From his records on his mobile phone he saw he had recently made £1155 for the 35 hours. On these figures he would be achieving an hourly rate of £33 (pre-tax). However this was before his rent to the gym in cash and kind (6 hours of classes would be £198 on his hourly pay) and other outgoings (business insurance, personal trainer insurance and Register of Exercise Professionals (REPs) insurance among other items). In practice he was present at the club for 50 to 60 hours, and unpaid on his breaks or while marketing his personal trainer sessions among prospective clients. On that basis his hourly pay might be reckoned nearer £19. Denis charged £30 per session and commented:

*'If you break it down, well, I'm self-employed, so I get no added benefits, like where you do at work, you get sick pay, you get annual holiday pay. Pension as well - done - that's getting paid for you. It just looks good that I'm getting paid £30, but then you've got to remember, I've got to pay tax on that as well, any sickness, I've got to pay for my own food, own travel. I know there's a lot of benefits you get at work that you don't realise'. (Denis, LondonSports1)*

Jordan had calculated that his 15 hours in lieu of rent worked out at £10 per hour. He charged on average £40 for an hour session and he estimated his weekly income as on average between £100 and £200, but ranging from £100-£400 per week. He could do classes for other gyms with pay based upon a percentage of attendance (25%) – Jordan currently did three half hour classes per week for a fitness company licensed to provide classes in private gyms working out at about £40 per month. Since he was in his first year of self-employment he was unsure of his income, he had not yet submitted any tax returns and was anticipating a tax bill. In the South West Jamal charged clients the gym's rates of £30 an hour for individual sessions or £25 if they book a block of 4 sessions. If he had ten clients in the week (as he had a part-time employed PT job) he would earn £250 in client fees and lose £114 to the gym in rental and so netted £136. Calculated for the ten unpaid and ten paid hours of his personal trainer week, his hourly pay would be £6.80. In Yorkshire Jane stated that she earned a much higher rate from her clients than her work running group sessions for the gym (although also in a self-employed capacity). However, this meant £12 an hour for groups and £20 an hour for her individual clients, she felt that she was not low paid and that the NLW was not relevant to her.

## 6.2 The Costs of Work

As suggested above, for dependent self-employed workers work incurred costs that had to be offset against their income and tax. As might be expected the couriers used their own vehicles, whether cars or bicycles. As home couriers John and Janice paid for the petrol used and for maintenance costs and insurance including 'top up' insurance the company offered to insure goods transported in a courier's car because *'it makes it legal for you to be out on the road'* and because of the reluctance of insurance firms to insure courier's cars. The company did not provide a uniform and Janice reckoned footwear was a significant work-related expense: she did a lot of walking to and from customer properties in her round which was a rural area. The company supplied the hand-held digital terminal (HHT) the courier is obliged to use to record actions taken in respect to each parcel's delivery.

As couriers, Olsi and Alan used their own bicycles and were responsible for all the associated costs such as insurance and maintenance. They had to pay £100 for a carrier bag and £10 per week to hire the radio and handheld equipment, however this equipment was not insured and workers were responsible for any damage or loss (one worker had incurred a £700 charge for this). Olsi was also charged for a DRB (Disclosure Barring Service) check. The company provided uniforms, which as elsewhere may call into question self-employed status.

Denis had to pay public liability insurance of around £70 per year in addition to the rent to the gym. He had to renew his first aid training every three years, which he thought was around £70-£80. He also paid any extra specialist training courses himself. Denis was not sure what he paid in NI and tax, Jordan thought he paid £10 per week in NI. Both had accountants (Denis paid £300 for this) and could claim a number of costs, including training, travel, trainers, haircuts, meals at work against tax.

In security workers incurred the costs of their Security Industry Association (SIA) badge, which was around £220 and subject to renewal after three years. However, there is also location specific training (for example door supervision, close protection, vehicle immobilisers, cash and valuables in transit) which could cost from a few hundred pounds to thousands. Workers may have to provide basic aspects of their uniform, but then may be supplied with branded ties, arm-bands or shirts for different venues and contracts. When working on film sets Jason would get meals provided or he would get a meal allowance and his company also paid for parking, which as apparent employee benefits again may call into question 'self-employment'. Jade and Kevin did not have a SIA badge, but had recently been asked whether they wanted to work to provide security for an air show. Travel to near London (from Yorkshire) and meals would be provided, but they would have had to use their own tents as it involved camping for a two to three day period – they reported that they could not afford to buy camping equipment. They also said that they were sometimes asked if they had a car and would be willing to take other workers to events.

Despite being employed, homecare workers could also incur costs. In London Carol and Margaret had to pay for their own DBS check, which has to be renewed every three years and this was about £60. Uniform and gloves were provided. Margaret received 30 pence per mile petrol allowance. In the South West Linda received a petrol allowance, but this was paid retrospectively: *'we have to put our petrol in and we don't get that till we get paid next time so you've always got to find petrol money'*. In Yorkshire Terri had to pay her own bus fares to travel between clients; *'I don't want to be paying bus fares for job to job, that's not fair'*.

The evidence from workers shows that the costs of work were transferred onto workers, primarily those who were deemed 'self-employed', although those in employment also bore costs. In the case of self-



employment these costs eat into what appear to be above average hourly rates and have implications for the payment of the NLW.

### 6.3 Adjustment to the NLW?

Previous work for the Low Pay Commission has shown that in a survey of employers a proportion (42%) had either implemented or were considering implementing changes to off-set the impact of the NLW - this was particularly evident in the social care sector<sup>82</sup>. Although it is difficult to infer causality, the testimonies of workers presented here suggest some examples where the introduction of the NLW coincided with cuts in other terms and conditions and/or in hours and premia. To a lesser extent there were signs of some changes in the composition of the workforce, reflecting the lower hourly rate for under 25s.

In hotels Andreas and Gemma testified that since the introduction of the NLW there had been reductions in hours, but also the recruitment of younger workers. Gemma earned £7.05 per hour and was worried that when she turned 25 in the next two months and was entitled to £7.50 per hour she would have her hours cut:

*'I would assume that I will probably be given less hours because there are quite a few younger people working there. That's just the pattern I can see. I've not been told that, but I can see the pattern. There's a gentleman who is in his 40s, he works there and his hours have decreased. We have just recruited and the three people that have been recruited are 19 years old. So that's the pattern I can see. I would assume that I'll probably get less'. (Gemma, YorksHotels1)*

Andreas, who was 27, recounted that his manager was 19 years old:

*'He's 19 and, because it costs less to be fair with you, because when the job was advertised I think there were a lot of people interested in it, but I think they went with a specific person mainly for cost purposes. That's what I've been told by my manager anyway'. (Andreas, YorksHotels2)*

Angela, as an older worker in hotels, also felt that extra hours were offered to younger workers.

Hotel workers also described reductions in hours. In London Reka recalled that the hotel where she worked used to have seven hour shifts for staff, but in early 2016 had moved to six hour shifts. This had the knock-on effect of eliminating entitlement to 20 minute breaks. While hotel workers worked over their contracted shifts a number of the sample stated that because their formal shifts were under six hours they were no longer entitled to breaks. In the South West Lidiya could take a 20-minute break during her working day, but the agency would not pay for the break: *'you have to be full-time to get paid breaks'* and a five hour shift was counted as part-time. Similarly in retail Hanna got a paid shift break of 15 minutes if she worked five hours, but not if she worked four hours when the break was unpaid, which is to say *'for that one she gets paid 4 hours and 45 minutes'*. If she was working longer days (8-10 hours) she would get a one hour break, again unpaid. Romesh was at work for nine hours a day, but he is paid for seven and a half hours with one and a half hours unpaid breaks including lunch. In security Pauline reported that she would work 5 p.m. to 11.30 p.m., but was not entitled to breaks, although the agency allowed them 20 minutes; *'but they say to us at the briefing we'll give you it but don't take the Mickey'*. Others reported

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<sup>82</sup> Income Data Research (2016), *Impact of the National Living Wage A report for the Low Pay Commission*, London:IDR.

that the intensity of work meant that they worked through breaks. Tom testified that in car delivery sometimes he did not get any breaks; *'you can go through a 9 hour shift without stopping all day'*.

In homecare the NLW had coincided with changes to terms and conditions. In the South West homecare workers Linda and Mary testified that a new contract had come into effect from April 2016 with changes in terms and conditions: *'In the last two years, we had an hourly rate pay rise and everything else was cut'*. The organisation had proposed to reduce five weeks' paid holiday by two days, but an interim 'settlement' applied this to newly recruited workers. Sick pay was reduced from six weeks on full-pay, six weeks on half-pay to five weeks full and five weeks' half-pay and the petrol allowance from 42 pence to 35 pence per mile. The hourly rate of pay (for client contact time) was increased from £7.30 to £7.50 in July 2015 and from £7.50 to £7.83 in April 2016. Prior to this there had been no increase for three years. In the run-up to the introduction of the NLW, Mary recalled that at a meeting with one manager: *'I had actually said you're taking our holidays, our rates of pay and all that, you're taking everything away but we've got the National Living Wage coming in, £7.20 in April'*. However, she was unsure how or whether the NLW and the April hourly rate increase were related.

Mary and Linda had also seen changes to premia. Wider research has suggested that a proportion of employers had moved to reduce or remove unsocial hour's premia in response to the introduction of the NLW<sup>83</sup>. Amongst the workers in the sample in hotels, logistics and security hours were paid at a flat rate with no premia for evening or weekend work or time worked over and above contractual hours. In other sectors premia were vulnerable to reduction or abolition. Lisa and Orla both worked for the fast food retail sector in 24 hours stores, however, while Orla received £1 extra for working between 10 p.m. and 6 a.m., Lisa who was 24 said she worked night shifts at a flat rate of five pence above the NMW (this might be explained by the fact that the company operates on a franchise basis, or it may be age-related or reflect the fact that Orla was a supervisor). In homecare Carol and Margaret earned £8 per hour, but £9 on Sundays. In the South West Linda said hours worked after 8 p.m. were paid at £8.75. However, Mary described how the organisation's proposal at the end of 2015 to eliminate the weekend premium rate, had met with opposition (*'the girls refused to work'*) and the employer had returned with an offer of £10 an hour; *'We said all right, whatever, but we obviously still haven't signed anything so we've appealed now against all these cuts'*. The Bank Holiday rate had been reduced from 2.5 times the hourly rate to less than double – from £18.25 to £14. In Yorkshire Terri felt aggrieved that she was not paid any extra for bank holidays:

*'For bank holidays and Christmas days and things like that, I think we should get a little bit of bonus, you know? Because [clients] don't have a Christmas – some of these people can't get out of bed if it weren't for us; these people can't maybe take themselves to the toilet some of them that we work for, so I think we should have a bit of a bonus, so yes, it's things like that.'*(Terri, YorksHomecare1)

Also in Yorkshire, Kevin and Jade were paid time and a half for working on bank holidays in their work in event security. Stuart and Kerem said they were not paid extra on bank holidays because of the informal nature of their employment. In a national retailer in London Romesh was also paid time and a half on bank holidays. He earned £8.73 per hour, including a location allowance, but said that the hourly rate had been reduced with the introduction of a new contract; those on the old contract were on £9 an hour. He received a £1 premium for working a nightshift and Roshane in another store recalled that the night shift allowance had been £2, but reduced to £1. In another store in the same company a manager confirmed

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<sup>83</sup>*ibid.*

that premia for evening work had been removed in November 2016 and now applied only from midnight to 6.00 a.m., but in his store there was no longer a night team. This had led to workers who had been with the company for a number of years on full-time night time contracts leaving, since they could not get full-time day shifts to replace their hours and pay. The manager saw it as the company getting rid of a majority of workers on full-time standard contracts, replacing them with workers on flexi-hours. Saturday premia had been removed and he believed that the company was planning to cut Sunday and bank holiday premia from time and a half to time and a quarter.

While difficult to draw firm conclusions from a small number of worker case studies, there appears to be some evidence of changes to terms and conditions in order to accommodate the introduction of the NLW. Changes to contracts might be simultaneously driven by constricted budgets for homecare commissioning, general supply chain pressures or employer preference, including for the outsourcing of particular functions. One strategy is the removal or reduction of premia and payment of flat rates for evening and weekend working. This indicates an increased rejection of the notion of compensation for unsocial hours and acceptance of 24 hour seven day working.

### 6.4 Sick and holiday entitlement

While dependent self-employed workers have no entitlement to sick or holiday pay, workers on ZHCs and agency workers have rights to paid holidays although it may be argued that the hourly rate already contains an element of 'holiday' pay (tenuous if rates are around NLW level). Both have the right to Statutory Sick Pay (SSP) after four continuous days of sickness, which may not reflect working patterns. ZHC workers will have no right to occupational sick pay because there is no obligation to work and therefore no absence from work on account of sickness. Agency workers may qualify for occupational sick pay, but not to the same levels as directly employed workers until after 12 weeks. In the study a number of directly employed workers were unclear about holiday and sickness entitlement and there was some reluctance to take holidays, but particularly sick leave. Homecare worker Margaret stated that sick pay was paid at around £69 per week after the first five days sickness and that people were reluctant to go sick:

*'People don't go off sick because we don't get sick pay. We get statutory sick pay. But that's not a lot, obviously as you know. I went into hospital at the beginning of the year to have an operation on my knee. Now really, I should've took about a month off, but I didn't, I took two weeks, because you can't afford to take a month off. I think it slowed it down recovery because I put more strain on my knee than I should've done. But most of us pick the colds up from going into other people's houses. You do try not to go sick, you know. Well I've got one lady who won't get out of bed for anybody else, so you feel terrible if you're not there.'* (Margaret, LondonHomecare2)

Care workers were aware of the implications for the quality of care of going into vulnerable people's homes when sick themselves, but countervailing pressures – both financial and their commitment to clients - often prevailed. Bob worked for a small homecare provider in Yorkshire and recalled that when he started with the provider in 2015 he did not get sick pay, but that his hourly rate had been reduced to accommodate its introduction:

*'[The employer] realised he has to do that by law and do you know what he did? He reduced my wage by 12 per cent overnight from £9 an hour to £8 an hour because he wanted to compensate for the fact that he had to pay sick pay. So he was forced to pay sick pay and all that because he has to by law, but he penalises us for the fact that he had to obey the law.'* (Bob, YorksHomecare2)

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In one national retailer it was reported that entitlement to sick pay and holiday pay were based upon contractual rather than actual hours. Romesh stated that sick pay is paid after three days and he thought that he was entitled to paid holiday of 20 days going up to 28 days after one year (including days for bank holidays). However, he had not taken any holiday because he was confused about his entitlement and when it had to be taken by. Roshane recounted that when he was on a five hour contract he effectively could not take holidays:

*'It was hard. You couldn't take holidays, because I pay rent. So I was paying rent and I couldn't get all the money I needed. So I had to do all the hours I can and work in the holidays as well'. (Roshane, LondonRetail2)*

Similarly he said that time-off for sickness was discouraged and going over the target of five per cent sickness might mean that workers' hours were reduced or that they were relocated to another store:

*'They don't really like you going off sick because they've got no staff. But they should understand really and truly, if you are sick and you give them a doctor's note'. (Roshane, LondonRetail2)*

In retail in Yorkshire Lisa said that there was pressure to take holiday during quiet periods so that there were more shifts to go round; *'They don't want us to quit but they want a little pool of staff, just in case we have a busy weekend.'* She also recalled that one weekend a lot of people had called in sick and there were insufficient staff to cover. Subsequently staff got an email stating that if they called in sick they would not be allowed to work for 48 hours afterwards; *'to stop us from calling in sick'*.

In security Stuart had paid holiday leave and he thought he was eligible for statutory sick pay in his agency employment at the supermarket. However, like Kerem he had no access to either in his 'casual employee' job at the nightclub – they got paid extra because the owner did not go through an agency, but this meant he could not get automatic replacements if either were sick or on holiday – Stuart and Kerem had to cover each other. Jason indicated that he had accrued entitlement to holiday according to days worked when on a ZHC in security. Pauline, as an agency worker, did not get sick pay and as previously reported was also liable for deductions for going sick. She said that one of her agencies paid her one day holiday pay for every nine days she worked, but the other company did not. In his second job on a MHC contract in retail Kevin said that he had been told that if he took sick leave it would count against his attendance record and so his manager had encouraged him to take holiday.

In hotels, in Yorkshire Andreas and Gemma accrued 1.8 hours holiday for every 40 hours they worked, but said that there was no sick pay. In London, Reka received statutory sick pay and five days holiday after three months, but in the previous hotel she had worked in staff did not get paid for holidays. Goncalo had no idea whether he was entitled to sick or holiday pay. In the South West Lidiya said she was not paid if she was sick and was unsure how holiday pay was calculated. Angela received paid holiday leave, but was unsure whether she would be paid for sick leave:

*'I can't afford to be ill. That sounds awful but I can't because it means that I would be getting less money and I can't manage'. (Angela, SWHotels1)*

While workers were sometimes unclear of their entitlements, overall, working on non-standard contracts appears to discourage the take up of any entitlement to sick leave and holidays, because of the loss of pay, but also the fear of being penalised in terms of work and hours. While the apparent flexibility of ZHCs

and MHCs might be assumed to allow employers to cover for periods of sick and holiday leave, in reality the interviews suggest that inadequate staffing means pressures on workers to take neither.

### 7. Key Findings: Unpaid Working Time

The complexity of pay in the context of fluctuations in working time meant that a number of workers perceived that they there were instances where they were underpaid or where pay was withheld. This chapter reports such instances, but also suggests that non-standard contracts can promote episodic working involving extended availability to the employer and, if this time is taken into account, can undermine payment of the NLW. In addition to a ‘culture of unpaid overtime’<sup>84</sup>, for a number of the respondents there is an element of unpaid labour built into their working day.

#### 7.1 Non-Payment of wages

A number of workers raised issues about the transparency of their pay and apparent non-payment. In hotels Angela referred to a new swipe card system for time-keeping, in place of time-sheets, and suggested it could affect the ability to achieve contracted hours and to claim payment for additional hours worked as instead of rounding off the nearest hour the new system regulated pay by minutes. She said she had swiped herself out and then been asked to check a room or complete some other task. Reka recalled that at a previous hotel where she had worked her contract had said she would be paid £7.20 an hour and when she got her payslip she had been paid £7.01; *‘they were playing with our pay they don’t pay us properly’*. In retail Romesh, using the same terminology, also related cases where he felt he had not been paid properly:

*‘They do play around with my pay and I’ve sorted it out. I had a huge argument a couple of weeks ago. They didn’t pay me a grand, because I needed to pay bills and stuff. And they stressed me out. So, I talked to the store manager and two other managers. I was angry. They underpaid me a lot, yes. They finally paid me’.* (Romesh, LondonRetail1)

Roshane worked for the same national retailer in London at a different store, but had the same complaints about his pay slip not reflecting extra hours he had worked over Christmas correctly, which he attributed to his manager, but he said other workers had the same experience:

*‘It’s that the hours you work, you don’t get paid your full money for it. Say if I do 30 hours a week, you are meant to get paid a certain amount of money, 30 hours need to get paid, let’s say £230. They might give you maybe £200 or maybe £180 for the week. That’s wrong isn’t it? They say that you didn’t have the hours, you didn’t clock in, stuff like that. They always try to put it on you like it’s your fault. Even clocking in. They can change it on the system themselves.’* (Roshane, LondonRetail2)

He made sure he wrote his hours down because even though workers clocked in and out the records could be wiped. In the restaurant where she worked Jade clocked in and out, but was paid to the nearest 15 minutes and recalled an instance where she had been reprimanded for getting changed for work after clocking in.

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<sup>84</sup> Taylor, (2017), *Op.Cit.*

Janice referred to the recent Christmas experience of having to press for payment for delivering ‘extras’ (parcels not recorded on the company’s list of the day’s order) as straining her commitment to her work. John reported that the payment structure was not transparent and that information on every delivery was input into the hand-held terminal on the day, but was lost to him once the device was switched off. Similarly in car rental Tom testified that he had been paid by delivery and information had to be recorded on a computer system, which could result in underpayment:

*‘Often it would be wiped off what you had done, but you kept a log of it and tried to discuss with the company but nine times out of ten, they just ignored you. It was disgusting’ (Tom, YorksLogistics1).*

Piece work had subsequently been replaced by an hourly rate based upon the NLW. While there were issues with the opaqueness of payment systems in the context of fluctuating hours, for workers on low pay underpayment or the withholding of pay led to real frustrations with their employers.

### 7.2 Unpaid availability

In addition to unpaid overtime, there are cases where workers are apparently available to employers, but not paid. In homecare it is recognised that pay can be on the basis of contact time only with travel time between clients, supervision training and staff meetings unpaid (Hayes and Moore, 2017<sup>85</sup>) and care workers may dip below the NLW when time and pay are averaged out. In the South West Mary was paid for travel time, but this was at the lower rate of £6.70 an hour:

*‘We’ve been told we’re lucky because some companies don’t pay travel time’. We’re working, that’s our working hour, so we should be paid £7.20 minimum wage’. (Mary, SWHomecare1)*

A lack of transparency over travel time had been raised by her trade union with the company on the basis that a new electronic ‘web roster’ system had been introduced with no itemisation of paid time on the pay slip. Excluding travel from home to her first client and from her last client back home (55 minutes), Mary worked seven hours on a Tuesday of which 5.45 were paid at the hourly rate of £7.83 (£45.02). She reckoned her travel between client’s amounts to an hour, maybe less, but was not sure how much of that in practice was paid. Adding an hour at the travel time rate (£6.70) brings her pay to £51.72. If she was paid the £7.20 National Living Wage for seven hours she would have £50.40. A further issue was pay for a ‘non-waking sleep-in’ and how this might differ from a ‘waking sleep-in’ at a client’s house, particularly when a non-waking sleep-in does not mean that workers do not respond to client demands as borne out in the ET decision in the case of Royal Mencap Society v Tomlinson-Blake. Mary had received £60.90 for a non-waking sleep-in (compared to £84.38 for a regular waking sleep-in) and commented: *‘they’re saying £7.20 an hour, well that’s 9 hours - you work that out, it’s £64.80’.*

In London Carol was not paid for travel time between visits, *‘I know it’s not good, but what can you do?’* Margaret said travel was not paid, but tended to be under five minutes as visits were back-to-back, although it could take longer depending upon traffic. Bob had 30 contact hours a week, but although the

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<sup>85</sup> Hayes, L.J.B. and Moore, S. (2016), *Op.Cit.*

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organisation added a sum of money on for travel this did not reflect his actual travel time which took his working time up to 40 hours:

*'Number one, it drags my wage below the minimum wage for one thing, and, number two, the law now stipulates that we have to be paid for travel time' (Bob, YorksHomecare2).*

Another aspect of homecare can be the episodic nature of work, where there is so-called 'down-time' or 'waiting time' during the day where workers may not be able to go home and have to wait between visits, effectively available to the employer. Mary reported that care workers used to be paid to go back home and come out again if there was a 'break' between clients above an hour, but with the change in ownership of the company the 'rules' were unclear. She suggested a consequence was care workers' reluctance to take 'breaks' between clients and also to respond to calls to see a further client after returning home at the end of the scheduled shift. Linda recalled that on the most recent Sunday she had worked she saw seven clients, the first at 8.00 a.m. and the last between 8.50 and 9.20 p.m. Her client contact time over that 13.5 hour period (excluding travel from home to first client and back home after last client) was 4.5 hours, with a gap (no contact hours) from 12.30 to 4.00. Her comment suggests some sense of availability:

*'That gap is perfect, I like that but some girls don't like gaps, they would like to work the whole day without a break. I can't go home and relax because I've got my working head on so I'm ready to go back out. I'll go home and cook the meal but I don't change out of my uniform'. (Linda, SWHomecare2)*

A further aspect of unpaid working time is discretionary labour which has long been a feature of care work. Margaret related that she would do extra duties in her own time for clients:

*'I do a little bit of shopping for one of them, things like that, it's all to do with my job, but I'm doing it from choice. I don't have to do it. At the moment, one of my ladies, her husband's just come out of hospital, so obviously he can't get about. He'll say do you think you could pop in the shop and get me this. I don't mind doing that, but it is choice. I don't have to do it. Probably a couple of hours a week picking up bits or doing things for people'. (Margaret, LondonHomecare2)*

The notion of unpaid availability is also germane in the hotel sector where in Yorkshire Andreas and Gemma could be sent home if the hotel was not busy. They were aware of colleagues working split shifts, including where one waited in the hotel between shifts doing university work; because the hotel was six miles outside the town it was too expensive and too far for her to go home and come back. In addition Andreas related that he often stayed 15-30 minutes at the end of his shift to tidy up his section and that he was not paid for it; he estimated that this could lead to about five hours of unpaid overtime a month. Goncalo also raised the issue of unpaid overtime in hotels where he could work three, four or five hours overtime in a week, amounting to 12 to 20 hours of unpaid overtime a month:

*'It's common because usually the guests, when the restaurant closes, they go over to the bar and if the bar is open they'll go to the smoking area to have a drink, to smoke and they stay until 3 a.m., 4 a.m., 5 a.m., and I should leave at 2 a.m.'* (Goncalo, LondonHotels1)

For self-employed workers there are clear aspects of working time that are not paid, but absorbed by the workers themselves. For Personal Trainers (PTs) this is the unpaid labour in gyms in lieu of rent, but also

speculative time spent in the gym attempting to recruit clients as well as time spent in administrative activities. Denis reflected upon the issue of rent:

*'You can look at it one of two ways. Basically, you can pay rent, so you get enough clients and go onto rent, which is £600 a month, but when you work out your hours[for the gym] and what you get paid for those hours, it's like rent. So you can see it as either you are working off the rent or you are paying the rent, one way or the other. So, that's how you look at it. It is unpaid work but at the same time, it's allowing you to do what those who pay rent do except you are using up your time rather than money. Those that are on rent are using their money so getting their time'. (Denis, LondonSports1)*

Jamal tried not to go over 36.5 to 38.5 hours per week, but of these hours ten were always unpaid fitness instructing. Stephen gave an example of a working day amounting to 15 hours (discounting travel to work and home again) of which three hours and 30 minutes were chosen or enforced breaks from hours in which he was earning. He usually worked 50 to 60 hours over a week, sometimes more, taking into account unremunerated or 'speculative' work (Harvey et al. 2016<sup>86</sup>).

In the logistics sector generally dependent self-employed workers are not paid for non-delivery, excising one of the key competitive costs for companies (Newsome & Moore, 2016<sup>87</sup>). This means that delivery workers absorb the costs of non-delivery, but also preparatory and route-planning work, sorting, scanning, loading and unloading parcels and administrative work connected with delivery, along with responding to customer queries. John started work at 6.15 a.m., going online to view the parcels allocated to him for that day. He completed his preparation in terms of paperwork by 7.45 a.m. when the lorry arrived. By 8.45 a.m. the parcels had been unloaded, sorted and scanned and loaded into the car and he made his first delivery at 8.55 a.m. He finished his round at 1.00 p.m., but had a further hour's work when he arrived home ('reworks', labels, clearing up the packaging). He worked four hours on parcel delivery and seven and three-quarter hours from the start to finish of his day.

In one Christmas month Janice was paid £1,060, which would average £265 a week. If to earn that she was working six hours (6.30 a.m. to 12.30 p.m.) on six days – i.e. counting in preparatory and planning work as well as 'on the road' travel and delivery - her hourly rate would be £7.36. If she was working a day extended by additional parcels and delays to nine hours and 30 minutes on each of her six days, her hourly pay would be around £4.80. In the 'average day' John's working hours – including preparatory work prior to the round and finishing off after it – were seven hours and 45 minutes in a day. If he received 90 parcels to deliver and achieved all his tasks within that time, his (gross) hourly pay would average £12.01. He did not, however, control the number of items he had to deliver and on the 'average day' discussed in the interview (which was outside the Christmas period) his parcel-load seemed short of 90. John did not take breaks and said he never stops once he's started the parcel delivery: *'It's constant driving, in and out of the car, up and down, right outside the door'*.

Workers testified to a variety of ways where elements of unpaid labour was introduced into their work and it is possible to argue that ZHCs in inducing availability and episodic work facilitate this, while self-employment that is based upon output necessarily means that workers 'non-productive' time is unpaid.

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<sup>86</sup> Harvey et.al. (2016), *Op.cit.*

<sup>87</sup> Newsome. K. and Moore, S. (2016), *Op.cit.*



In other cases unpaid overtime and non-payment or untimely payment of wages might seem marginal, but for essentially low paid workers can have significant implications for their financial survival.

### 8. Key Findings: Adjustment of Wage-Effort Bargain

The growth in non-standard contracts has increasingly shifted the balance of power in the employment relationship (Fudge, 2017<sup>88</sup>). This reported strengthening of the management prerogative has not only extended to the allocation of work and working hours, but also to the intensity of work. The research evidence highlights a shift in the wage-effort bargain, fortified by growing cost pressures, whereby employees are increasingly required to extend more 'effort' in a working day. Testimony from the case studies suggested that a number of workers were experiencing the intensification of work, often in the context of reduced staffing numbers and this, in combination with long or irregular hours, could lead to stress. The findings confirm existing research on responses to the NLW showing a proportion of firms (27%) making cuts in staffing, most commonly recruiting less staff, but also offering fewer hours<sup>89</sup>. Measures taken by employers to boost productivity may be counter-productive; a number of those interviewed were demotivated by their treatment at work and high turnovers of staff were reported. Moreover, there is also a suggestion that a perceived contraction of differentials had led to a reluctance to take on senior roles thus limiting career progression.

#### 8.1 Intensification

Lidiya reported that room attendants were supposed to clean a hotel room in 20 minutes and three rooms in an hour, but that work rate was not always achieved. She commented that it did not take into account room size, and Lidiya pointed out that a double room could be twice the work involved in cleaning a single. She suggested, moreover, that there was no incentive to beat the rate: *'no one cleans three rooms – because no one wants 4 hours' pay only!*' She had been supervisor for the past six months and noted that 'the girls' work at different speeds and that the 'reward' for faster workers was likely to be additional rooms to clean while slower workers work the hours. The 'productivity' report her manager received each day, from the agency in London recorded (paid) hours worked at the hotel and calculated *'how many hours we are minus'* – or, presumably, in excess of those the agency reckon is necessary to complete the housekeeping work, or the hotel (as client) was willing to pay the agency. Lidiya said that at the morning meetings her manager would say *'it's no good, I have a problem - the productivity is no good'*. She thought the 'minus hours problem' peaked on Sundays, the hotel's busiest day. Reka described how in the previous four star hotel where she had worked as a housekeeping supervisor she and her colleagues were required by the agency to spend a maximum of 28 minutes cleaning a room after a guest had departed and 24 minutes where guests were staying the next night:

*'They put your work per minutes, but it's not really possible because sometimes you have more things to do or less things to do. So, guests are supposed to leave at, for example, ten o'clock in the morning but the guests decide to leave at 12 o'clock. So there are two hours difference then and you cannot clean the room in time and you cannot do all the rooms in the same time because you are just one person. And I was so upset, you have to finish at four and they're not paying you a single minute more than four o'clock. They keep pushing the girls to finish the room as soon as*

<sup>88</sup> Fudge J. (2017), 'The future of the standard employment relationship: Labour law, new institutional economics and old power resource theory', *Journal of Industrial Relations* Volume: 59 issue: 3, page(s): 374-392.

<sup>89</sup> The Resolution Foundation (2016), *Industrial strategies? Exploring responses to the National Living Wage in low-paying sectors*.

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*possible, but it was like “give some time to finish my work properly or the room stays dirty, and your guest satisfaction will fall”. They treat us like slaves for real, you feel like you have no motivation to work with them’ (Reka,LondonHotels2)*

Reka refused to work for that hotel again. In her current hotel there had been reductions in staff and she was sometimes asked to do the job of a porter where she had to lift and carry heavy furniture around. In the South West Angela had been designated a ‘head housekeeper’, but now worked alone:

*‘They used to have one person helping me, this was in the first couple of years; I was classed as a head housekeeper then. I do all the laundry and everything so I manage things up here, all they do is tell me what rooms. I report all the repairs, if people come to do the repairs, I show them what repairs need doing. I fill in sheets and all sorts so really I look after all this myself, but I’m not on the wage – it’s like I’m doing everything that a head housekeeper would do in a big hotel except I haven’t got a team of people. I’m the team, if you know what I mean?’ (Angela,SWHotels1)*

In logistics workers discussed the intensity of work promoted by payment by results or piece work. Olsi cycles 45 hours a week, 80 miles per day and as he gets paid per delivery he takes few breaks: ‘It takes a lot from me, you know, it’s mostly like cycling, eating and sleeping and cycling eating sleeping’ (Olsi,LondonLogistics1). He would like to have worked less, but if he wanted to make ends meet he said that he needed to put those hours of cycling in.

Janice described how in parcel delivery the payment system encouraged her to neglect the aspects of the job that initially attracted her, e.g. meeting people on the round:

*‘You try to move on as quickly as possible because obviously once you’ve got to know what the job is, the faster you work, the quicker you get your job done, the more money you’ve earned. Every second counts, every parcel counts. And it actually gets to the point that you realise that when somebody takes a long time to answer the door, you’re kind of counting the seconds. There is an enormous amount of angst and stress within the job, to try and earn your money’.* (Janice,SWLogistics1)

John working for the same company discussed what he called *density*, or how the dispersal of customer destinations affected travel time, delivery rates and thus pay:

*‘The problem is the less parcels you have means you have a lower density. A lower density means you don’t actually deliver as many parcels per hour, if you understand what I’m saying, because you’re getting less parcels and they’re more spread out. Because they’re more spread out you don’t deliver as many parcels per hour, you’re chasing yourself and your hourly rate starts falling’.* (John,SWLogistics2)

John said that his hours had not changed in the time he had been in courier work with the company, but asserted that the volume of parcels delivered in aggregate by the company had increased by 20 per cent. Intensification on top of unpredictable work appeared to generate work-related stress.

## 8.2 Differentials

Research on employers has suggested alterations to grading structures in response to the introduction of the NLW<sup>90</sup>. In this research workers also indicated that the introduction of the NLW had an impact on differentials in some organisations. Angela was paid £7.50 until April 2016 and felt that she fulfilled a head housekeeper role. In April, staff in the bar and the restaurant downstairs from the hotel, generally students, had their pay raised to £7.50, or the 2017-18 NLW rate. However, Angela's pay was not increased, which made her *'quite angry'*. She complained about this in light of *'how hard I work in here'*, because with one exception she was the longest serving member of staff and because *'we have in actual fact one of the highest scores for cleanliness in the hotels in [this town] - we've got higher than most of the big hotels'*. A manager fought her cause, and in May Angela's hourly pay was raised by 25 pence. Lidiya, in her supervisory role, was paid an hourly rate of £7.65, 15 pence above the NLW. In a five hour day (10.00 a.m. to 3.00 p.m.) her gross pay would be £38.25 in comparison with £37.50 if paid at the NLW. There was no premium rate for working at the weekend and she was not paid for rest breaks during her working day. If she took a break and worked five hours and 20 minutes, she would in effect be losing £2.55 and her hourly rate would fall to around £7.14.

Jade and Kevin testified that in security supervisors earned only £2 an hour more than they did and they felt that it was not worth it: *'It's £2 more to be a supervisor but you have loads more responsibility. So I wouldn't do it just purely because it's a lot of responsibility on you'*. However they reported that they did take on supervisory duties in their current roles. In Yorkshire Dan was employed as manager of the gym, in addition to his self-employed status, and he earned £8 an hour in this role. This compared to £12 that Jane was paid to run group sessions in the same gym on a self-employed basis, presumably reflecting the absence of employment costs and benefits.

Roshane had worked for a major national retailer as a team leader, however he had withdrawn from this role and gone back to being a customer assistant as he felt that the hours were unreasonable because of an expectation of unpaid overtime (on top of a 36 hours contract) and because he was unable to take breaks amounting to one and a half hours daily:

*'It's like a pound extra, it's not worth it. More work, you don't get a break properly and you have to do a lot more work. It's a lot more work, that's what it is. They call it 36 hours a week, but it'll be 42 hours you do for a week as a team leader, before overtime. They take out the break'. (Roshane, LondonRetail2)*

Roshane also recounted that the express store where he worked had got rid of the deputy manager position so team leaders had to take on their role. At the same time the role of managers was being expanded to cover more than one store so that there might be only two workers in his store at one time and he might have to act up to team leader in the manager's absence. The layering of supervisory and managerial staff increased the work of all staff. Similarly Romesh's experience of the company had not encouraged him to pursue promotion:

*'I've got people in my retail saying become a manager. But I've seen them, how it was and they're stressed as well. By observing them, I can see how hard the job is. They don't have time for family or anything'. (Romesh, LondonRetail1)*

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<sup>90</sup> Incomes Data Research (2016), *Op.cit.*

The overall picture is one of intensification and there were few signs of organisational commitment, although homeworkers, Personal Trainers and security workers stated that they enjoyed their actual jobs (despite organisational issues); those in retail, logistics and hotels showed less enthusiasm. Contractual arrangements and episodic working appear to close down access to training and learning at work. There is evidence of the compression of grading and differentials and in tandem with intensive work this provided few incentives for workers to pursue career progression. This is of particular interest where a proportion of the respondents had degrees.

### 9. Key Findings: Standards of living

Just under half of the workers said that they struggled to survive on their income. Eight (just over one fifth) had more than one job, while in three cases older workers had taken their pensions and were thus supplementing this income. Six of those interviewed (under one quarter) owned their own home and home ownership was not even an aspiration for the remainder. Many lived in multi-unit (complex) households (Swaffield et al., 2016<sup>91</sup>) and other household members might be in similar contractual situations. Three claimed Working Tax Credits or Income Support and another's husband claimed Disability Living Allowance and all were conscious of the need to comply with required thresholds in terms of hours and the danger of sanctions. Three workers sent remittances to relatives in their countries of origin.

Angela had been widowed five years previously and the variability in her weekly hours and pay could cause problems with her mortgage repayments. She lived with her adult son who worked as a nurse and she was in receipt of working tax credits and had to be careful of the income thresholds:

*'It's only a small amount because I've got no young children, dependants or anything, you don't really get that much. I try to do 30 [hours] because I'm supposed to do 30 a week. I do anything between 24 and 30. You have to really do 30 hours a week, but you can't always guarantee 30. And then when they do pay you, they obviously look at the end of the year how much you've earned and if you've gone over the amount they take it all back. So sometimes I don't know if I am better off or worse off having it'. (Angela,SWHotels1)*

In Yorkshire Terri's partner was on disability living allowance and she had to be mindful of her working hours:

*'He is not very well and he's on benefits so in actual fact legally I'm only supposed to work 16 hours otherwise his benefits are affected, so that's like 64 hours a month, but this month I've done 80 hours because they're short staffed and he's done his nut. They will stop his money, they will take some of his money off him. He will send my wage slips. They will reckon on what we're allowed to live on and they'll stop some of his benefits because the more I earn, the less benefits you get. We rely on his benefits because we get a little bit of help with the rent. We get a little bit of help with poll tax and water rates and all that kind of things. Just a bit, just a bit but it helps'. (Terri,YorksHomecare1)*

Alexis was also concerned not to incur benefits penalties and said that she struggled on her income. She wanted to get her HGV license so she could move away from working in retail. She was in receipt of Income

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<sup>91</sup> Swaffield, J., Snell, C., Tunstall, R. and Bradshaw, J. (2017), 'An Evaluation of the Living Wage: Identifying Pathways out of In-Work Poverty' *Social Policy and Society*, ISSN 1475-3073 (In Press).

Support, Housing Benefit and Child Benefit and knew that she could work up to 16 hours, but worried that to work more hours may put her benefits at risk, she had council house arrears and could not afford to lose her current rented property:

*'I've been told I can't do more than 16 hours, not if I want to keep my benefits rolling with my house which I need to because it's a private property. I can't afford to mess it up, I really can't afford to. All I know is I've been told you can't go over the 16 hours, but then you've got to be careful because even if you do 14 hours but if you earn up to a certain amount, if it's a penny over too much than what they expect they can stop your wages. I'm trying to sort out my rent arrears and my HGV licence and it's a bit hard on 8 hours a week and then plus my money I get for my daughter. Prices in the shops these days - I probably could do a little better the way I manage my money but I've done without so long, I've bought myself about three pairs of trousers since I got pregnant'. (Alexa,SWRetail2)*

She knew Income Support was being displaced by Universal Credit and was very concerned because she had heard *'you're entitled to a lot less on Universal Credit on housing benefit than you are on income support'*. She was trying to find out what she could earn without losing benefits. Kerem had younger children and also claimed Child Tax Credits, while Stuart's partner received Working Tax Credits.

Janice, Margaret and Jim had taken their state pensions and Janice perceived that although she worked seven days a week she would struggle on her income were it not for her state pension. Her partner, John, said they had struggled to pay bills in the previous 12 months and had *'dipped into savings'* to finance items like replacing a boiler and car repairs.

Lidiya said she did not struggle on her income to pay for food or clothing, but lived in what she described as a 'charity house' or hostel with 20 other adults, mostly men from Bulgaria or Hungary. This was not a matter of choice, but because it was cheaper than private rented accommodation which she could not afford. She sent money to her parents, including for her daughter's upkeep. Olsi also rented a room in a house he shared with five other adults. His colleague Alan rented a room in a house he shared with four other adults, he had two children who lived with their mother. He said that he often struggled to pay the bills:

*'Once I've paid rent that's a third of my wage gone already and living in London, I can spend 50, 60 quid just hanging out with the kids on a Saturday and that leaves me maybe another 120 quid for the rest of the week until I get paid again'. (Alan,LondonLogistics1)*

Jane and Goncalo rented rooms in shared houses and Goncalo did some modelling work to supplement his income from hotel work. Gemma and Andreas lived together and rented the house from Gemma's uncle paying £470 per week in rent. They said that it would have been impossible to rent a house in the open market without an employment contract with guaranteed earnings, since all letting agencies asked for evidence of income and employment contract. Since they both had ZHCs, the letting agencies would not accept them. After paying bills they could not save any money. Gemma and Andreas had bought a car to make their commute to work easier as the hotel where they worked was six miles from the town and public transport was not frequent, but as they worked on different shifts this had incurred extra costs for petrol. They reported that a bus took staff from town to the hotel and back, but staff had to pay for it. The bus only ran only until 9 p.m. and not at all on Sundays, so staff would wait for colleagues to finish their shift so they could share a taxi, while some walked the six miles to work and back in order to save money.

Roshane had struggled when on a five hour contract; *'I couldn't pay rent properly on time. If I wasn't working properly then I told my roomie that I can't pay him right now - I have to make it up'*. He subsequently lived with his father. He supplemented his income by working in his aunt's catering business, but wanted to complete his plumbing course and work on a self-employed basis. In Yorkshire and Humberside Lisa rented a shared flat and said that she struggled financially and that she and her colleagues, working for a fast food retailer, depended on the meals that they were entitled to at work:

*'There's a lot of part-time people who sometimes they won't get any shifts in a week. So there's a lot of uncertainty about how much money we'll actually make. It's difficult to budget around that. I can be fine with paying my rent and my bills and stuff, but then it's money for food and whatever else. Like me lots of other people who work at the store will rely on the food we get at work to keep us going because it can be difficult to afford to buy food on top of rent and things with the level of pay. I think it would just be better if they paid us more. I know people who have picked up an extra shift at work because they've got no food in the house and they don't have much money, so they'll pick up an extra shift so that they'll get the meal on their break'. (Lisa,YorksRetail1)*

Reka remitted £300 per month to her mother in Hungary. Her mother had no income and lived with her grandmother. Reka rented a room in a house with three other adults and sometimes struggled to pay the bills, relying on friends to borrow £20 or £30 for the week. Most of the time she took two buses to go home from work in the hotel, which could take between one hour and one hour and half depending on the time of the day. If she took the train it was only 20 minutes but it was also more expensive: *'What I am earning now, you just pay your house, you have your food and you have your [bus] ticket and that's it – finished'*.

Like others, homecare worker, Carol, lived with family; she paid £1100 in rent in accommodation shared with her sister and said that she struggled to pay bills on a regular basis, particularly council tax and utility bills:

*'A long time I haven't shopped for myself. A long time I haven't shopped for clothes - basic uniform, you make sure you have your black trousers for work, or jeans or something like that. I didn't buy anything for summer. I am just saving up now'. (Carol,LondonHomecare1)*

She and her sister sent around £400 a month between them to her mother in Jamaica. Her colleague Margaret lived with her daughter, son-in-law and granddaughter. They rented and shared household costs and Margaret said that they could just about cover bills and basic costs although they could not afford to buy a house:

*'I manage. I think it's years of managing it, isn't it? You learn to rob Peter to pay Paul one month. It makes you angry because I see people that I know don't go out to work, and they go off on holidays two or three times a year, you know. And I think I'm going wrong somewhere'. (Margaret,LondonHomecare2)*

Since Margaret was retired and received her state pension she was in a higher tax bracket so the less hours she worked the less tax she paid, so as she says *'its swings and roundabouts'*.

Kevin lived with his parents, his mother worked, but his father had a long-term illness and could not. Kevin had bought a bicycle to get to work on credit, and he considered this purchase 'a luxury', although the

monthly payments were only just over the price of a monthly bus pass. Jade lived with her parents, who both worked, while she finished a four year degree course. She had £50,000 of student debt and did not enjoy her dependence upon her parents. Orla also lived with her family, whilst studying. Romesh, in his early 20s, lived with his mother, who had three jobs over seven days a week, his brother a graduate who also worked in retail and his sister, who was still in full-time education. He also had a second job accompanying school students on a school bus. Jamal in his late 20s also lived with his mother, who he cared for. Denis in his late 30s lived with his father, who was retired and on a pension and helped with the care of Denis's daughter. He said he could survive financially because he could be flexible when he paid his father rent, but had to budget carefully to meet fluctuations in income and to pay bills, including childcare, on time; he said his spending was 'minimal'.

### 10. Conclusions

This report contributes rich information on the experiences and perceptions of workers on non-standard contracts in the period after the introduction of the NLW. The Taylor Review of modern working practices states that key to the NMW is the calculation of working time and availability to work (in this case in relation to platform workers). While in the sectors under examination hourly rates at and above the NLW are paid, they do not necessarily fully reflect working time and time available to the employer. The testimonies of case study workers points to elements of unpaid labour and highlight the capacity of ZHCs and MHCs to induce availability to employers and to facilitate episodic working linked by periods of unpaid labour. There is limited evidence amongst this sample of beneficial flexibility: even where workers conceded that such contracts fitted around study or retirement or caring responsibilities, in only three cases did hours provide the regularity and predictability that workers desired. Overall both ZHCs and MHCs meant uncertainty and insecurity, particularly for those wholly dependent upon them or who had second, but similar, jobs. The key issue was unpredictability. Respondents suggested that these contracts had become normalised, as Roshane put it *'It shouldn't be normal, but it is normal'*.

The cases of apparently self-employed workers reported here appear to meet similar criteria to those who have successfully argued in recent EAT cases that they have worker status and in particular that self-employment should be defined in terms of the management and control of labour. While self-employment could be driven by worker preference, the desire for autonomy over work was generally not fully realised. Accounts of self-employment suggested tensions between aspiration and reality and that expectations of self-employment could be unrealistic. In logistics, in particular, the experience of self-employment was one of exploitation. Once the costs of self-employment and working time are taken into account pay is precarious and can be near or below statutory minimum rates.

The worker case studies confirm Taylor's 'culture of unpaid overtime' and the move away from any acknowledgement of unsocial hours through premia. This was generally not progressive in terms of work-life balance and if there was a 'trade-off', it provided little reward. Choices over working hours are constrained by the necessity for students to support themselves and absence of childcare or a need to provide care for family members and where workers or their families claimed benefits this placed limitations or pressures on working hours. Many workers in the sample could not live independently of families or other adults (multi-unit households) and could not aspire realistically to home ownership.

While a number of workers welcomed the increase in hourly rates that the NLW had given them, the increasing use of non-standard contracts allows employers to remove elements of the working day and working time, in particular what is deemed as 'non-productive' time, from its remit. It is of course not

possible to identify causality, but the report demonstrates some suggestion of formal adjustment to accommodate the introduction of the NLW, mainly concerning the payment of premia. A more informal accommodation is the greater use of non-standard contracts where the full costs of employment are transferred to the worker themselves. Historically standard contracts have offered protection from employer abuse of the employment relationship (Fudge, 2017<sup>92</sup>). Overall, most workers in the sample understood that their contractual situation increased their dependence upon employers and managers and whatever the choice over work that they might have in theory, the balance of power in the workplace was not in their favour. Their dependence upon employers to grant them hours made them vulnerable and removed their control over working lives with concrete implications for work-life balance. In respect to debates on flexibility and productivity in the UK context, a significant finding was the reluctance of workers to progress their careers, perceiving that supervisory or managerial roles were not worthwhile financially or in terms of work-life balance. The limitations on training and learning that appear to be inherent in non-standard work have wider implications for the labour market and workforce skills. Yet at the same time workers could demonstrate huge commitment to their work and often enjoyment of it. In particular, homecare workers demonstrated enormous dedication to their clients and gained job satisfaction despite the unpaid nature of elements of their work and discretionary nature of their labour. Finally, it is pertinent to restate that over half of the sample on which this research is based worked for multinationals or national chains, franchises or agencies; this questions suggestions that corporate responsibility is the answer to questions around good work.

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<sup>92</sup> Fudge, (2017), *Op.Cit.*



Appendix 1: The Worker Case Studies

Region	Sector	Contract	Organisation	Race/ethnicity	Age
<b>South West</b>					
Linda	Care	ZHC	Local	White British	50-59
Mary	Care	ZHC	Local	White British	50-59
Lidiya	Hotels	Agency	National contractor	White European	30-39
Angela	Hotels	ZHC	Local	White British	50-59
Janice	Logistics	DS-E	MNC	White British	60+
John	Logistics	DS-E	MNC	White British	60+
Hanna	Retail	MHC	MNC	White European	30-39
Alexis	Retail	MHC	MNC	White British	20-29
Jamal	Sports/leisure	D-SE	Local	Black British	20-29
Stephen	Sports/leisure	D-SE	MNC	White British	20-29
Stuart	Security	Agency	National contractor/Local	White British	30-39
Kerem	Security	Other	Local	White European	40-49
<b>London</b>					
Carol	Care	ZHC	Local	Black British	40-49
Margaret	Care	ZHC	Local	White British	60+
Goncalo	Hotels	Agency	National contractor	Black Other	20-29
Reka	Hotels	Agency	National contractor	White European	30-39
Olsi	Logistics	DS-E	National	White European	30-39
Alan	Logistics	DS-E	National	White British	40-49
Romesh	Retail	MHC	MNC	Black British	20-29
Roshane	Retail	MHC	MNC	Black British	20-29
Jordan	Sports/leisure	D-SE	National	Black British	30-39
Denis	Sports/leisure	DS-E	National	Black British	30-39
Pauline	Security	Agency	National contractor	White British	50-59
Jason	Security	DS-E	National	Black British	30-39
<b>Yorkshire &amp; Humberside</b>					
Terri	Care	ZHC	Local	White British	50-59
Bob	Care	ZHC	Local	White British	40-49
Gemma	Hotels	ZHC	Local	White British	20-29
Andreas	Hotels	ZHC	Local	White European	20-29
Jim	Logistics	ZHC	MNC	White British	50-59
Tom	Logistics	ZHC	MNC	White British	50-59
Lisa	Retail	ZHC	MNC	White British	20-29
Orla	Retail	ZHC	MNC	White British	20-29
Jane	Sports/leisure	DS-E	Local	White British	20-29
Dan	Sports/leisure	DS-E	Local	White British	30-39
Jade	Security	ZHC	Local	White British	20-29
Kevin	Security	ZHC	Local	Black British	20-29

**Appendix 2 - Semi-structured topic guide**

- Work history (educational qualifications);
- Recruitment and history in the current organisation or history of self-employment;
- Current contractual status and factors influencing this;
- Pay – hourly and weekly pay, fluctuations, preferences and under-employment; changes to pay over previous two years;
- Costs of self-employment (petrol, insurance etc.) or work (uniforms, mobile phones etc.);
- Household income and dependents;
- Benefits and impact of pay and hours on benefits;
- Hours and working time – elements of unpaid working time, changes to hours in previous two years;
- Changes in recruitment patterns and work organisation in previous two years;
- Understanding and perceived impact of NMW, NLW (and Living Wage) on individual;
- Understanding and perceived impact of NMW, NLW (and Living Wage) on the workforce, including recruitment, grading, contracts and hours;
- Anticipated future at work, prospects for mobility and progression.