Labour Law for the Worker? An Examination of the Effectiveness of Post-War and Contemporary Labour Law in Protecting Hospitality Workers.

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Abstract

This thesis examines and compares the protection afforded to hospitality workers by labour law in the years following the Second World War and today. The primary issue addressed throughout the thesis is the effectiveness of labour law in these two time periods in providing hospitality workers with decent terms and conditions of employment. When compared to other industries and sectors, work in hospitality has traditionally been unstable and unpredictable, due in part to fluctuating demand across working weeks and seasons, and reliance on customers for tips. Today, the high prevalence of precarious employment relationships, such as zero-hours contracts, compound these problems, placing many workers in a vulnerable position and making it especially difficult for them to access and enforce employment rights.

The investigation of the effectiveness of labour law proceeds in four stages. First, the general organisation of labour law in the two periods is discussed. Second, the legal implications of work on a zero-hours contract, as well as some wider implications for workers, are examined. Third, labour law specifically relating to hospitality workers in the two periods is examined, as well as the way in which the nature of work in hospitality can exacerbate precarious employment. Finally, there is an examination of data and literature relating to employer non-compliance with employment law in the two periods. The thesis concludes that the catering wages boards that existed in the post-war years provided hospitality workers with a more effective model for ensuring employer compliance with employment law, and worker involvement in setting terms and conditions of employment. It is suggested that for labour law today to effectively provide hospitality workers with decent terms and conditions of employment, a similar model to the wages boards could be adopted.

Contents

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Author's Declaration

I declare that, except where explicit reference is made to the contribution of others, that this dissertation is the result of my own work and has not been submitted for any other degree at the University of Glasgow or any other institution.

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Chapter One
Introduction

1.1 Post-War and Contemporary Labour Law

The effectiveness of labour law in the post-war period and labour law today in providing hospitality workers with decent terms and conditions of employment is the primary issue addressed in this thesis.[1] The organisation of labour law in both time periods is very different, but despite the differences, both periods contained important legislative measures intended to protect workers. The examination of the post-war years focusses predominately on the Catering Wages Act 1943 (CWA), which introduced minimum wage setting machinery for hospitality and catering workers. The examination of contemporary labour law focusses on individual employment rights introduced from the late 1990s, particularly the National Minimum Wage (NMW) and protections contained in the Working Time Regulations 1998 (WTR). The nature of work in the hospitality industry, the presence of precarious forms of employment within the industry, and worker experiences are also examined in relation to the effectiveness of labour law in providing hospitality workers with decent terms and conditions of employment.

The manner in which labour law has regulated employment relations and provided workers with various protections has changed several times since the mid-1940s. The post-war years can be characterised by collective organisation and bargaining as the primary regulators of the labour market, with the law providing rules and standards in areas where additional support was needed to ensure all workers had decent terms and conditions of employment. Ernest Bevin, as Minister of Labour, was the primary advocate for the introduction of the CWA. Bayliss, writing in 1962, examined the political environment surrounding the introduction of the CWA and described it as 'the only occasion in the whole history of statutory wage regulation when the House of Commons ha[d] been seriously divided.'[2] During the Second World War there was political acceptance of increased regulation of the

[1] In what follows, I sometimes refer to 'hospitality' workers of the 'hospitality' sector and sometimes to 'catering' workers of the 'catering' sector'. Both of these terms are intended as synonymous with 'hospitality and catering'.
[2] FJ Bayliss, *British Wages Councils* (Blackwell 1962) 49

private sphere in order to aid the war effort, however the CWA was seen as a 'permanent interference' and so did not hold the same political support.[3] Despite opposition Bevin succeeded in his aim of bringing statutory wage regulation to the catering industry.

> 'To his opponents the Catering Wages Act looked like part of the price which had to be paid for having [Bevin] as wartime Minister of Labour, but to Bevin there could be no separation of labour problems into wartime and post-war categories. The guarantee of certain minimum conditions of employment to all workers was for him an elementary right of all citizens. Workers in the catering industry could only get that basic protection through the law and Bevin was uninhibited in insisting that they got it.'[4]

The importance placed on workers' access to 'basic protection' as a main policy motivator for the CWA, as well as the 'tripartite' approach in the Catering Wages Commission,[5] and the subsequent wages boards, demonstrates the importance placed on bargaining as part of the regulation of wages, and other terms and conditions of employment, as well as the ideological perspective that all workers should have access to 'basic protections'.

Conservative Governments between 1979-1997 saw policy priorities change in relation to labour law, and an increased market-based approach to employment relations emerged. This saw trade union powers limited and protections which had been put in place for workers restricted and removed. The approach to labour law changed again with the Labour Party election victory in 1997. Although the Labour Government introduced basic protections for workers in the late 1990s, it is important to recognise the change which had taken place in the Labour Party since its previous time in Government.[6] The Labour Governments from 1997-2010 did not return to the trade union and collective bargaining model for labour market regulation which had been present in the post-war years. Instead the Blair Governments maintained a strong focus on Britain's economic success.[7] Worker access to basic

[3] Ibid 48-50
[4] Ibid 49-50
[5] The Commission was introduced by the CWA to make recommendations to the Minister regarding the establishment of catering wages boards and to oversee the catering industry. The Commission consisted of independent members and an equal number of representatives for employers and workers. The Commission is examined in greater detail in chapters four and five.
[6] Prior to their victory in the 1997 election, the Labour Party had not been in Government since 1974-1979.
[7] Department of Trade and Industry, *Fairness at Work* (White Paper, Cm 3968, 1998) 1.1

employment rights was seen as necessary to achieve that economic success, as there was 'a belief that fairness at work and competitiveness go hand in hand, and that one must reinforce the other.'[8] Davies and Freedland argue the NMW and the WTR:

> 'represented the high-water mark of New Labour progressiveness in the partial re-regulation of personal work regulations, but in each case that progressiveness was tempered by cautiousness in the close texture of the legislation.'[9]

While the NMW and the WTR have, since their introduction, provided workers with important protections, Davies and Freedland's argument can be seen in both, and will be examined in greater detail in later chapters.

Policy priorities surrounding employment law, as well as the nature of legislation, are quite different in the two periods examined, but despite these differences both periods have seen hospitality workers provided with legally enforceable employment rights. However, the existence of rights in law is not of itself sufficient to ensure all workers are adequately protected. Labour law, like any other area of law, cannot be fully effective without proper enforcement. Therefore, worker experiences are crucial to the analysis of the effectiveness of labour law in providing workers with decent terms and conditions of employment.

In the majority of employment relationships there is an inherent power imbalance between the worker and employer. This power imbalance will vary in different situations and there are some exceptions, such as where a person has certain expertise or where labour is in short supply. However, these cases are not the norm. The majority of the time the worker needs employment to earn a wage, and therefore, the employer is automatically placed higher in the power dynamic as it holds the power to hire and fire.

In discussing power relations in the workplace it is important to highlight the employment contract from a legal perspective. The law views the two individuals party to the contract of employment as equals. Davies and Freedland describe this as the 'fictitious equality which

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[8] Ibid 1.11
[9] P Davies and M Freedland, *Towards a Flexible Labour Market: Labour Legislation and Regulations since the 1990s* (OUP 2007) 46-47

the common law assumed'.[10] While the law sees the two individuals as equal, the worker and the employer are not equals in the contract of employment. This becomes particularly apparent when the various economic and social pressures facing workers are considered. The worker goes to work to earn a wage and as the employer is the one providing that wage it sits in a position of power over the worker.

It is important to also recognise that the power imbalance between worker and employer exists before any employment relationship is established. From a legal perspective, freedom of contract means there is no obligation for a worker or an employer to enter into a contract of employment, however, this does not accurately portray the economic or social situation of a worker (or a person seeking work). More often than not, the search for work is driven by financial pressures which mean individuals likely have little or no choice but to accept terms of employment put before them, with little or no bargaining power or ability. The freedom to choose who to work for 'is often set at nought by economic facts.'[11]

It is because of the inequality of bargaining power in the employment relationship that labour law is of crucial importance in ensuring workers have decent terms and conditions of employment, and in ensuring that worker experiences reflect employment law. As Otto Kahn-Freund famously put it:

> 'The main object of labour law has always been, and we venture to say always will be, to be a countervailing force to counteract the inequality of bargaining power which is inherent and must be inherent in the employment relationship.'[12]

1.2 Research Methods and Aims

This thesis examines the effectiveness of labour law in providing hospitality workers with decent terms and conditions of employment today and in the post-war period. At all stages

[10] P Davies and M Freedland, *Labour Legislation and Public Policy* (Clarendon 1993) 24
[11] O Kahn-Freund, 'Legal Framework' in A Flanders and HA Clegg (eds), *The System of Industrial Relations in Great Britain: Its History, Law and Institutions* (Blackwell 1954) 47
[12] P Davies and M Freedland, *Kahn-Freund's Labour and the Law* (3rd edn, Stevens & Sons 1983) 18

throughout the thesis it is remembered that the worker is at the heart of labour law. Labour law has the potential to ensure all workers have basic employment rights, however, it is recognised that although in law workers may have certain rights, the reality for many may be that they do not experience these rights. The lived experience of workers should be the evidence of whether or not labour law effectively protects workers, not solely the existence of legislation.

In addressing the question of the effectiveness of labour law, a socio-legal approach was adopted. An examination of literature, governmental and non-governmental publications, statistical data, legislation and case law was undertaken. Empirical research was planned, in the form of qualitative interviews with hospitality workers in Glasgow, to examine the experiences of hospitality workers, and specifically experiences of employer compliance or non-compliance with employment law. The necessary preparatory work for the interviews was carried out, an application for ethical approval submitted and administrative documents for the interviews prepared, however the Covid-19 pandemic, and subsequent Government restrictions, meant that the research was no longer viable. A new desk-based approach was therefore developed, involving the analysis of existing published research based on qualitative interviews with hospitality and other workers.

The thesis aims to analyse the effectiveness of post-war and contemporary labour law in providing hospitality workers with decent terms and conditions of employment. This analysis is conducted in four main stages. First, there is an examination of the general organisation of labour law in the two time periods; second, there is an examination of legal implications that employment on a 'zero-hours' contract (ZHC) can have for workers in relation to their employment rights; third, labour law in the two periods is specifically examined in relation to hospitality, as well as an analysis of the nature of work in hospitality; and fourth, there is an examination of employer compliance with employment laws. The period between post-war and contemporary labour law is not examined in this thesis, rather a 'snap-shot' view is taken of the two periods under consideration. Further, although policy priorities in the two periods are briefly mentioned, political and policy motivations for legal change are not a key point of focus for the thesis. In other words, the aim is to understand the effectiveness of the law and not to explain why the law is as it is.

While the thesis examines the effectiveness of labour law in the two periods in providing hospitality workers with decent terms and conditions of employment, the nature of the methods adopted means that it cannot claim to be an authoritative analysis applicable to the entire hospitality industry within the UK. It can however provide an indication of some of the more general trends within the industry regarding labour law and the effectiveness of employment law. For a more comprehensive view, additional research would be required.

1.2.1 Terminology

The analysis of the 'post-war period' primarily relates to the lifespan of the CWA (1943-1959). While the CWA was introduced in 1943, two years prior to the end of the Second World War, the protective effects of the Act did not come into force until after the war, with the first wages regulation order not introduced until 26 November 1945.[13]

The phrases 'contemporary labour law', 'modern day labour law', or 'labour law today' refer to the period between the Labour Party election victory in 1997, and March 2020. There are two main reasons why this particular period is examined. First, the Labour election victory in 1997 signalled a change in labour law in relation to worker protections and provided a fitting starting point for the contemporary examination. Second, the decision to end the contemporary examination at March 2020 is primarily due to the Covid-19 pandemic and the subsequent restrictions introduced by the British Government to tackle the virus. On 16th March 2020 the Prime Minister advised the public to 'avoid' hospitality venues, with the closure of the industry taking place a few days later on 20th March.[14] The impact of the pandemic and Government restrictions on the hospitality industry have been significant. For the majority of the period between March 2020 and the final date of writing, much of the hospitality industry has been required to remain closed or operate under restricted conditions. The effects of events since March 2020 have been enormous and unprecedented for hospitality workers and businesses, however an examination of this is outwith the scope of the current research.

[13] Catering Wages Commission, *Sixth Annual Report 1948-1949* (HM Stationary Office 1949) 4
[14] BBC, *Coronavirus: PM says everyone should avoid office, pubs and* travelling (16th March 2020) <https://www.bbc.co.uk/news/uk-51917562> Accessed 08.02.2021; BBC, *UK pubs and restaurants told to shut in virus fight* (20th March 2020) <https://www.bbc.co.uk/news/uk-51981653> Accessed 08.02.2021

1.2.2 Thesis Outline

The main argument of the thesis is that the catering wages boards of the post-war years were more effective in ensuring compliance with employment laws, and in involving workers in setting terms and conditions of employment through the bargaining machinery established with the boards. In order for labour law to ensure hospitality workers today are provided with 'basic protections', are able to bargain for better terms and conditions of employment, and experience rights entitled to, it is proposed that a model similar to that of the catering wages boards could be introduced.

The thesis is organised into four substantive chapters, each of which address a specific research question developed to guide the analysis of the thesis as a whole. **Chapter two** provides a general analysis of labour law in both periods, examining the collective *laissez-faire* and collective organisation approach of the post-war years and contemporary labour law's individualisation of labour law. It addresses the question:

> *How has post-war and contemporary labour law in Britain addressed the power imbalance within the employment relationship for the worker?*

The chapter first examines post-war labour law, referring to Kahn-Freund's principle of collective *laissez-faire* to understand the role that law played in the regulation of labour relations. There is then a brief discussion of the period between post-war and contemporary labour law, followed by an examination of labour law today, with a particular focus on the individual employment rights introduced by 'New Labour'.

While ZHCs are not new to the labour market, their presence, along with other forms of precarious work, has increased in recent years. The nature of a ZHC means workers have access to limited protections, and can experience unstable work and unpredictable income. **Chapter three** examines ZHCs, addressing the question:

> *How does this type of employment relationship affect workers and their access to statutory worker rights and protections?*

The prominence of ZHCs within hospitality makes the analysis in chapter three particularly relevant in addressing the wider theme of the thesis. The chapter begins with a discussion of definitions for ZHCs and their presence in the labour market. There is then an examination of the hospitality industry; the presence of ZHCs, trade union membership and collective bargaining within the industry. The focus then shifts to the legal implications of precarious employment relationships, specifically employment status and employment rights. Finally, there is a comparison drawn between the nature ZHCs and 'on-call' work.

Throughout the history of the hospitality industry tips have played a very influential role in the employment relationship. **Chapter four** examines labour law in the two periods specifically in relation to hospitality workers, tips, and the customer, addressing the question:

> *How does labour law then and now compare in relation to worker protections and in its treatment of tips?*

The chapter explores the CWA and its associated machinery in the regulation of wages (and other terms of employment) in the post-war years. This is followed by an examination of employment rights available for hospitality workers in contemporary labour law. There is then a discussion of the manner in which the law relating to tips has changed, the role of the customer in the employment relationship, and how the customer can affect the precarity of the employment relationship.

In both the post-war period and today the law has provided basic protections for workers in the hospitality industry. **Chapter five** reviews data published in the post-war period and in recent years to examine the extent of employer non-compliance with employment law, addressing in particular the following questions:

> *What do Annual Reports published by the Catering Wages Commission between 1944 and 1956, and the the Ministry of Labour and National Service between 1947 and 1958, demonstrate about the effectiveness of the CWA for workers within the industry?*
> *What does an examination of recent research reveal about the experiences of hospitality workers today in relation to employment law?*

The first half of the chapter examines data published in the post-war period to discuss the effectiveness of the CWA in providing all hospitality and catering workers with statutory wage regulation, and the extent of employer compliance with wages regulation orders. The examination of the effectiveness of contemporary labour law includes a review of Government data as well as existing research based on qualitative interviews with hospitality workers.

Chapter six, on the basis of the findings from chapters two to five, presents the main argument of the thesis: that the catering wages boards provided a more effective model for ensuring compliance with employment law, and worker participation in establishing terms and conditions of employment, than the statutory rights and individualised system of enforcement which exists today.

Chapter Two
Collective *laissez-faire* and Collective Organisation or the Individualisation of Labour Law

2.1 Introduction

Labour law and employment relations in the post-war period looked quite different from what we know and see today. The post-war period can be characterised by the manner in which the law supported and encouraged collective bargaining, while today the dominant theme has become legal regulation and the individualisation of labour law. Both approaches to labour law are examined in relation to how they achieve, or have the potential to achieve, a more equal distribution of power for the worker, and how the potential for the employer to exploit the worker is addressed. Although employers have a significant interest in how the system is organised – how much power and control they have and how much influence workers and the State can have over the workplace and the employment relationship – at the heart of labour law is the worker. It is first and foremost the worker who benefits or suffers as a result of the organisation of the system. Labour law affects more than just the law and legal discourse – its effects are widespread throughout society, and there are few untouched by it. Work is central to our society and economy, it allows people to sustain a decent standard of living for themselves and their family. This point is central to this chapter, and to the whole thesis; labour law can help or hinder peoples' attempts to provide for themselves and their families.

At the end of the Second World War notions of society, community and cooperation were quite prevalent in policy discourse concerning labour law.[1] In the 1980s a political shift away from this approach took place. In an interview in 1987, Margaret Thatcher even said; 'there's no such thing as society.'[2] Under the Conservative Governments from 1979-1997 there was a move away from collective organisation and trade unions being regulators of the labour market. From 1997-2010 the Labour party held power, however, there was not a move back towards the collective approach to labour relations that was central to the rise of

[1] The Labour Party, *Let us Face the Future* (Manifesto, 1945)
[2] The Guardian, *Margaret Thatcher: a life in quotes* (2013) <https://www.theguardian.com/politics/2013/apr/08/margaret-thatcher-quotes> Accessed 01.04.2020. Margaret Thatcher was the leader of the Conservative Party (1975-1990) and Prime Minister (1979-1990).

the Labour movement and previous Labour Governments. Instead the emergence of 'New Labour' sustained the labour-market-focused goals of the previous Conservative Governments, and saw an increased individualisation of labour law.[3]

This chapter focuses on the organisation of labour law in the two time periods, providing a basis for subsequent chapters to develop in the overall examination of the effectiveness of labour law in providing hospitality workers with decent terms and conditions of employment. The chapter first focuses on labour law in the post-war years, examining Kahn-Freund's notion of collective *laissez-faire*, the manner in which labour law supported and encouraged collective bargaining and the legal enforceability of collective agreements. The focus then shifts to the political and labour market changes that took place between the post-war years and 'today' and the affect these changes have had on modern-day labour law. Finally, there is an examination of the organisation of labour law today, highlighting the changed role of trade unions, the increase of individual employment rights and employer compliance with, and worker enforcement of, employment rights.

2.2 Post-War Britain

Writing in 1954, Kahn-Freund noted the peculiarity of British labour law and industrial relations:

> 'There is, perhaps, no major country in the world in which the law has played a less significant role in the shaping of these relations than in Great Britain and in which today the law and the legal profession have less to do with labour relations.'[4]

[3] H Collins, 'Is There a Third Way in Labour Law?' in J Conaghan et al (eds), *Labour Law in an Era of Globalization: Transformative Practices and Possibilities* (OUP 2004) 451; P Davies and M Freedland, *Towards a Flexible Labour Market: Labour Legislation and Regulation since the 1990s* (OUP 2007) 5, 229; L Dickens, 'Introduction' in L Dickens (ed), *Making Employment Rights Effective: Issues of Enforcement and Compliance* (Hart 2012) 1

[4] O Kahn-Freund, 'Legal Framework' in A Flanders and HA Clegg (eds), *The System of Industrial Relations in Great Britain: Its History, Law and Institutions* (Blackwell 1954) 44

According to Kahn-Freund this meant labour relations at the time were 'fundamentally healthy'.[5] The procedures and mechanisms that governed industrial relations came about as a result of the organisation of workers into trade unions and employers into employers' associations, and through these bodies they bargained collectively.[6] It was as a result of this collective bargaining that the field of labour relations was primarily regulated. While, on the most part, the law did not play as much of a regulatory role in the post-war period, this did not mean that labour relations were not regulated by rules, it just meant that the 'rules had a social rather than legal character.'[7]

Kahn-Freund coined the term 'collective *laissez-faire*'[8] to express the idea that legal involvement was limited so as to allow collective forces to organise and regulate labour relations themselves. According to collective *laissez-faire* the government put certain laws or institutions in place to support what were regarded as healthy industrial relations, but for the most part, they allowed the employers (and employers' associations) and the workers (and trade unions) to resolve disputes amongst themselves. Kahn-Freund argues this was the preferred way of organising the system, there was not a desire for legal involvement or intervention. He highlights the power held by trade unions and the political influence they had, through their affiliation with the Labour Party, arguing that if legislative backing or intervention was wanted then it would have likely have been achieved.[9]

2.2.1 Labour Law and Collective Bargaining

Viewed from a comparative perspective, the British approach to labour law and industrial relations in the post-war period was one of minimal legal intervention.[10] However, to say the law was not present at all would be misleading. As Kahn-Freund well recognised, law played an important role in industrial relations, stipulating the 'rules of the game'.[11] Negative laws were one example of this, as without them 'the autonomous functioning of the industrial

[5] Ibid
[6] P Davies and M Freedland, *Labour Legislation and Public Policy* (Clarendon 1993) 9
[7] Ibid
[8] O Kahn-Freund, 'Labour Law' in M Ginsberg (ed), *Law and Opinion in England in the 20th Century* (Stevens & Sons 1959) 216-218
[9] Ibid 229-230
[10] Kahn-Freund, 'Legal Framework' (n 4) 44-45; R Dukes, *The Labour Constitution: The Enduring Idea of Labour Law* (OUP 2014) 72-79
[11] Dukes, *The Labour Constitution* (n 10) 78

relations system would be impeded.'[12] The purpose of negative laws was to remove obstacles that stood in the way of effective collective bargaining, setting the stage for it to take the lead.[13] Law was also used in a variety of ways to encourage the spread of collective bargaining. There was an understanding from both sides of the system that the role of the law was to 'assist, but not to replace' collective bargaining,[14] thus allowing collective bargaining to take the front seat in the regulation of labour relations. Finally, in areas where trade unions were weak, or in matters that were not easily addressed by collective bargaining, law was used to stipulate substantive rules. A key example here would be the Factory Acts, as the legislative interventions reflected the 'weakness of the factory-based unions… and their inability to achieve agreements though collective bargaining'.[15]

For collective bargaining to operate, the employer, in the first instance, must recognise the trade union as a 'bargaining partner.'[16] In the post-war period employers were under no legal obligation to recognise trade unions. The exception was public bodies, as they were

> 'under a duty 'to enter into' or 'to seek' consultation with organisations appearing to them to be appropriate with a view to establishing machinery for collective bargaining and for joint consultation.'[17]

The existence of fair wages clauses meant any outside body that contracted with a public authority had to adhere to industry standards of working terms and conditions and, with the introduction of the Fair Wages Resolution of 1946, had to observe collective agreements.[18] While fair wages clauses offered employers the incentive of government contracts for engaging in collective bargaining and observing collective agreements, they did not offer workers a legally enforceable route to a collective agreement.[19]

There were situations, however, where the terms of collective agreements could acquire legal enforceability. Where the terms of collective agreements were 'applied in the industry and

[12] Davies and Freedland, *Labour Legislation and Public Policy* (n 6) 11
[13] Ibid 11-12; Kahn-Freund 'Legal Framework' (n 4) 44
[14] O Kahn-Freund, 'Minimum wage legislation in Great Britain' (1949) 97 UPaLRev 779, 778-779
[15] S Deakin and G Morris, *Labour Law* (6th edn, Hart 2012) 14-15
[16] Kahn-Freund, 'Legal Framework' (n 4) 52
[17] Ibid 54
[18] Ibid 75-77
[19] Ibid 76-78

district' the contents could become "'crystallized custom'" and when this happened 'they will be considered as tacitly embodied in the relevant contracts of employment.'[20] Kahn-Freund uses Tillyard's example of a foreman choosing a worker from a crowd of men waiting at the factory gates looking for a job.[21] When the foreman picks a man he enters the workplace and begins work. However there is no discussion relating to the terms and conditions of his employment. In this example, the worker would look to the relevant collective agreements, and other relevant decisions, for the terms and conditions of his employment.[22] It is these terms and conditions that would be legally enforceable for the worker. As Kahn-Freund explains:

> 'This is not because these agreements, awards, or decisions have any legally binding force as such, but because their terms must be presumed to be implied terms of the contract of employment. What a court enforces is that contract and nothing else, but the substance of the contract is determined through the set of rules laid down in the collective agreements… rules which the individual employer and employee have, by their silence, chosen to make their own and to embody in their contract.'[23]

While collective agreements became embodied in employment contracts as implied terms, this did not negate freedom of contract. Where a worker and employer agreed an alternative term to one in a collective agreement, such as a lower wage, it was the agreed term that stood.[24] There were exceptions to this rule, one example being the cotton-weaving industry. During the 1930s the cotton-weaving industry faced difficulty enforcing collective agreements. As a result, the Cotton Manufacturing Industry (Temporary Provisions) Act 1934 was introduced, which allowed the Minister of Labour to issue an order making agreements relating to wages compulsory and legally enforceable.[25]

The Trade Boards Acts of 1909 and 1918 also allowed minimum wages to be set in certain industries. The intention of the trade boards was to prevent the 'sweating' of workers and so

[20] Ibid 58
[21] Ibid 48, 58-59
[22] Ibid 48, 58
[23] Ibid 58-59
[24] Ibid 60-61
[25] Kahn-Freund, 'Minimum Wage Legislation' (n 14) 781-783; Kahn-Freund, 'Legal Framework' (n 4) 62

the 1909 Act only applied where it could be determined that wages were 'exceptionally low, as compared with that in other employments.'[26] With the 1918 Act this was extended to also include areas where there wasn't sufficient bargaining machinery to set wage rates.[27] The introduction of the Catering Wages Act 1943 (CWA) and the Wages Councils Act 1945 (WCA) saw the ability to set minimum wages extended even further to include industries previously not covered by trade boards.[28] Unlike fair wages clauses, agreements reached in the wages councils were legally enforceable.[29] The 1943 and 1945 Acts were introduced as it was recognised that there were areas of the labour market where collective bargaining could not reach, and were an attempt to mitigate the risk that collective bargaining would wane in the post-war years. Their intention was 'to serve as a substitute for collective bargaining and also as an incentive to bargain collectively and to observe collective agreements.'[30]

When post-war and contemporary employment relations are compared it is perhaps easier to support the argument that labour relations were 'fundamentally healthy'.[31] Trade unions had sufficient membership, presence and power to successfully bargain for workers. There was also widespread use of the collective approach. Workers together with their collective organisations were able to shift workplace power dynamics towards a more equal footing. With collective organisation and bargaining as the prominent force in labour relations, where workers experienced problems at work trade union support would have been available. However, for collective bargaining to be successful, the collective organisation must possess sufficient power, not only in the workplace, but also in the labour market.

The employment rate can have a significant effect on trade union membership levels and successful collective bargaining. In times of lower unemployment, workers and trade unions have more bargaining power as employers do not have the same pool of potential applicants to draw on when replacing staff. In times of higher unemployment, however, workers are less likely to challenge their employer, for example by taking industrial action, as, during periods of higher unemployment workers are more likely to accept their work situation and are less willing to jeopardise their position.[32] The argument has been made that collective

[26] Trade Boards Act 1909, s.1(2); Kahn-Freund, 'Legal Framework' (n 4) 68
[27] Trade Boards Act 1918, s.1(2); Kahn-Freund, 'Legal Framework' (n 4) 68
[28] Kahn-Freund, 'Legal Framework' (n 4) 66-67
[29] Ibid 69, 78
[30] Ibid 69
[31] Ibid 44
[32] ACL Davis, *Perspectives on Labour Law* (CUP 2004) 13

bargaining was particularly successful at regulating labour law and industrial relations in the post-war period as a result of low unemployment. [33] This argument has also been used to explain the decline in striking in the 1980s, a time of high unemployment,[34] suggesting a problem with labour law is that in times of higher unemployment, when legal or collective protections are needed most, they are harder to access.[35]

One of the reasons behind the introduction of the WCA was the expectation that there would be high unemployment after the war and that the voluntary institutions previously put in place would be disbanded. The WCA was meant to meet the challenge this would present. However, this was not what happened, in the post-war period they were

> 'suffering from a shortage of labour, not from unemployment, and, in a labour market in which frequently the demand exceeds the supply, minimum standards of labour conditions were not as much in need of legal protection as they were expected to be when the Act was passed.'[36]

Although collective bargaining was widespread in the post-war period, it is important to highlight that it could not reach some sections of the working population.[37] The introduction of the CWA and the WCA saw areas of the labour market where collective bargaining was not as prominent receive increased protection, demonstrating that a purpose of the legislation was to 'supplement collective bargaining.'[38] However, this was not fully successful as is demonstrated in chapter five's examination of the CWA.

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[33] Kahn-Freund, 'Minimum Wage Legislation' (n 14) 810; Davies and Freedland, *Labour Legislation and Public Policy* (n 6) 33
[34] Davis (n 32) 13
[35] This happened in the 1980s, a period of high unemployment, and following the more recent financial crisis in 2008 when unemployment rose again. Figures at: Office for National Statistics (ONS), *An overview of the UK labour market* (2015) <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/articles/anoverviewoftheuklabourmarket/2015-02-27> Accessed 22.09.2020
[36] Kahn-Freund, 'Minimum Wage Legislation' (n 14) 810
[37] S Deakin and F Wilkinson, *The Law of the Labour Market: Industrialization, Employment and Legal Evolution* (OUP 2005)
[38] Kahn-Freund, 'Labour Law' (n 8) 247-250

2.3 From Post-War to Contemporary Labour Law

The era of allowing industrial relations to self-regulate came under fire in the 1960s and early 1970s as the Government introduced a number of statutory income policies.[39] Collins describes these measures as 'directly [contradicting]'[40] legal abstentionism and as having 'rode a coach and horses through the system of industrial relations.'[41] In the 1980s, a series of statutes placed restrictions on trade unions' and workers' freedom of association. As Collins put it:

> 'The Employment Acts of the 1980s… could not be ignored in the same way as income policies. They struck at the heart of the system of collective *laissez-faire* by disabling unions in the pursuit of recognition and effective collective bargaining.'[42]

Davies and Freedland observe two policy objectives behind the labour legislation introduced between the 1960s and the 1980s. The first was to 'moderate the collective bargaining power of trade unions, while supplementing the protections of individual workers'.[43] The other was 're-balancing the equilibrium in employment relations in favour of management.'[44] Conservative Governments in the early 1970s and the 1980s were in favour of increasing the power held by management, while the approach taken by Labour Governments of the time was more worker orientated.[45] In part, these differences can be explained by the different political ideologies of the Labour and Conservative parties. However, the stance of the Thatcher Governments in the 1980s indicate that a shift towards a market orientated approach took place, and this is one that has continued, although perhaps not always as strongly.

Davies and Freedland argue that it was not necessarily a shift away from collective *laissez-faire*, or legal abstention, that took place but one towards increased legal regulation. There were elements of legal regulation in the collective *laissez-faire* period, and there were elements of collective *laisse-faire* in the period that moved towards intensified legal

[39] H Collins, 'The Productive Disintegration of Labour Law' (1997) 26 ILJ 295, 302
[40] Ibid
[41] Ibid
[42] Ibid 303
[43] Davies and Freedland, *Towards a Flexible Labour Market* (n 3) 5
[44] Ibid
[45] Ibid

regulation. The change was where the emphasis was placed.[46] As well as the manner in which labour law was organised, whether collective bargaining or legal regulation take centre stage, the labour market itself has also changed. Traditional 'working-class' jobs such as mining, shipbuilding and factory work are no longer as prevalent today. Instead, there has been an increase in the 'service sector',[47] with the hospitality industry alone responsible for approximately 15% of total employment growth from 2009-2017.[48] Further, 2017 figures show that hospitality accounted for 3.2 million jobs, just under 10% of the working population at the time.[49] With the increase in service sector jobs there has also been an increase in a-typical and precarious work and the non-unionised section of the working population has increased.[50]

The changes that took place in labour law during the Conservative governments of 1979-1997 have had lasting effects for trade unions. The legislation that was introduced during this time saw trade union powers limited, the ability to strike restricted, the encouragement of the individualisation of terms of employment, and protections, such as minimum wage setting bodies, abolished.[51] From 1980-1998 the number of workers covered by a collective agreement more than halved from 83% to 35%.[52] In this time the focus of labour law moved from collective agreements to statutory regulation and individual rights. Employers increasingly took decisions relating to terms and conditions of employment without consultation with workers.[53] Also, although some wages councils remained in place until the Trade Union Reform and Employment Rights Act 1993 abolished them completely,[54] the Wages Councils Act 1986 limited their powers and scope. The ability to set wages was restricted, as was the ability to regulate holidays and other terms and conditions of employment which had previously been within their remit.[55] There is an argument to be made that the decline in trade union membership, the limitations placed on wages councils

[46] Ibid 3
[47] E Albin, 'Labour Law in a Service World' (2010) 73 MLR 959, 959-961
[48] Ignite Economics, *The Economic Contribution of the UK Hospitality Industry* (UK Hospitality 2018) 10
[49] Ibid 4, 17
[50] A Pollert, 'The Unorganised Worker: The Decline in Collectivism and New Hurdles to Individual Employment Rights' (2005) 34 ILJ 217, 217-238; Albin (n 47)
[51] Deakin and Wilkinson (n 37) 266-271, 275-276; Deakin and Morris (n 15) 30-35; S McKay and S Moore, 'Collective Labour Law Explored' in A Ludlow and A Blackham (eds), *New Frontiers in Empirical Labour Law Research* (Hart 2015) 109-110
[52] W Brown et al, 'The Employment Contract: From Collective Procedures to Individual Rights' (2000) 38 BJIR 611, 612
[53] Ibid
[54] s.35. With the exception of the agricultural wages boards.
[55] Deakin and Morris, (n 15) 35-36, 306-307

and the decline in the proportion of workers covered by collective agreements undermined collective opposition, making it easier for employers to act unilaterally.

2.4 Modern Day

With New Labour and its election victory in 1997 there was no return to collective bargaining, which had been the defining feature of the post-war years. Instead, there was a focus on regulating employment relations so as to increase the 'competitiveness of business.'[56] With the introduction of the Employment Relations Act 1999 trade unions could apply for legal recognition, in order to bargain with employers. However, the majority of collective bargaining still takes place 'voluntarily', that is without recourse to the statutory procedure.[57] Deakin and Morris highlight the contradiction of 'legislating for union recognition while doing little or nothing to restore the collective rights formerly guaranteed by wide statutory immunities in relation to industrial action.'[58]

The right to freedom of association is protected by multiple international bodies, however, the diminished power and presence of trade unions in the labour market today poses its own problems for effective trade union operation and bargaining.[59] The role played by trade unions has changed in the last seventy years; there has been a move away from trade unions being the body through which workers negotiate better terms and conditions.[60] Instead, trade unions tend to be the body through which workers attempt to enforce the obligations their employer owes them, whether these obligations originate from legal regulation or terms and conditions of employment contracts.[61] The role of the trade unions and the power that they have has 'become more narrow and consultative.'[62]

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[56] Ibid 43-44; Collins, 'Is There a Third Way in Labour Law?' (n 3) 451
[57] H Collins et al, *Labour Law* (CUP 2012) 550
[58] Deakin and Morris (n 15) 44
[59] European Convention on Human Rights, Article 11; International Labour Organisation (ILO) Convention 87 (Freedom of Association and Protection of the Right to Organise Convention, 1948); ILO Convention 98 (Right to Organise and Collective Bargaining Convention, 1949); Collins et al (n 57) 448-449
[60] While this is the case for many trade unions and workplaces, there are still some influential unions able to negotiate better terms and conditions for workers, for example the Educational Institute of Scotland.
[61] Brown et al (n 52) 619
[62] Ibid 626

There has been an increase of statutory protections for workers since 1997 including; the National Minimum Wage (NMW), protections included in the Working Time Regulations (WTR), holiday pay and protection against discrimination on the basis of age, religion and sexual orientation. Following the introduction of the NMW in 1998, in 2016 the Government introduced the National Living Wage (NLW) as a policy response to low wages.[63] While it was branded the 'National Living Wage' by the Government, campaigns from the Living Wage Foundation argue it is not a true representation of the 'real Living Wage'. Instead, it was based on a Government target 'to reach 60% of median earnings by 2020'.[64] Further, only workers over 25 are entitled to the NLW, leaving younger workers and apprentices earning significantly less than what is already deemed not a real living wage. Minimum wage rates for the other age categories are based on what is affordable for employers.[65] As a result, workers often receive a wage below, what the Living Wage Foundation states: 'employees and their families need to live.'[66] Table 1.1 shows the hourly wage difference between the real living wage and the NLW.

[63] A Walmsley et al, 'Reactions to the National Living Wage in Hospitality' (2019) 41 ER 253, 254 <https://www.emerald.com/insight/publication/issn/0142-5455> Accessed 13.02.2021
[64] Living Wage Foundation, *Explaining UK Wage Rates* <https://www.livingwage.org.uk/what-real-living-wage> Accessed 01.05.2020
[65] Ibid
[66] Ibid

Table 2.1: The Real Living Wage and the National Living Wage.[67]

Year	National Living Wage	Real Living Wage	Difference between the real Living Wage and National Living Wage (per hour)
2011/12	£6.08	£7.20	£1.12
2012/13	£6.19	£7.45	£1.26
2013/14	£6.31	£7.65	£1.34
2014/15	£6.50	£7.85	£1.35
2015/16	£6.70	£8.25	£1.55
2016/17	£7.20	£8.45	£1.25
2017/18	£7.50	£8.75	£1.25
2018/19	£7.83	£9.00	£1.17
2019/20	£8.21	£9.30	£1.09

The introduction of the WTR also saw workers receive statutory protections regarding their weekly working time and rest breaks. The Regulations state that workers are entitled to a twenty-minute rest break where a shift lasts longer than six hours and to an eleven-hour rest period between shifts. The Regulations also specify that workers are entitled to weekly rest, which can be either; at least one day off per week or two days off over two weeks. In addition, the Regulations stipulate that workers are entitled to four weeks annual leave.[68] Another of the key feature of the WTR is the 48-hour maximum working week.[69] However, it is important to note the inclusion of an opt-out option.[70] On the face of it, this may not seem a problem. However, as is highlighted previously, people seeking work often don't have any option other than to accept terms put before them. Polly Toynbee highlights this issue when describing an automatic opt-out clause in a contract given to her when seeking agency work. While legally she did not have to sign the contract 'no sign' would have meant 'no job'.[71]

[67] Table created using figures from: Living Wage Foundation (n 64)
[68] WTR, regs.10-13
[69] WTR, reg.4(1); Collins et al (n 57) 281-282
[70] WTR, regs.4(1), 5
[71] P Toynbee, *Hard Work: Life in Low-Pay Britain* (Bloomsbury 2003) 32-33

2.4.1 Employer Compliance with, and Worker Enforcement of, Employment Law

Employer compliance with employment law is a concern in today's labour market, particularly for those in low-wage jobs.[72] Unfairness is still prevalent in workplaces, and compliance with, and enforcement of, worker rights is a big challenge facing labour law and employment relations today. Someone looking to improve labour law might consider what already exists in the law for workers and propose further legislative intervention to improve worker experiences. This, however, would be missing the problem that compliance with, and enforcement of, workers' rights already poses. One of the reasons to highlight this is that, despite the 'proliferation of statutory employment rights',[73] there has not been the introduction of effective and accessible enforcement machinery for workers to accompany these rights.

Employment Tribunals (ET) exist for workers to secure a remedy when issues occur regarding employer breach of employment law.[74] However, many workers do not have the knowledge, time or resources to take issues to an ET, and many would be reluctant to for fear of the consequences.[75] Even where a person raises a claim in an ET and is successful, there is a good chance it will make no discernible difference to that person's life. In 2009 research showed that, of 1002 claimants who had been awarded monetary awards between January 2007 and April 2008; only 53% had been paid in full, 8% in part and 39% had received nothing.[76] Only a minority of those who had received awards but not the compensation had started proceedings to recover the damages. Those who did not act to recover the compensation gave reasons similar to those given when rights go unenforced in the first place; lack of knowledge, lack of money and the difficulty of enforcement, highlighting the ineffectiveness of the enforcement machinery.[77]

There are many issues relating to workers' own financial, social and employment situations that can affect the ability, or the likelihood that they would attempt, to enforce employment

[72] See chapter five discussion.
[73] Dickens (n 3) 1
[74] G Morris, 'The Development of Statutory Employment Rights in Britain and Enforcement Mechanisms' in L Dickens (ed), *Making Employment Rights Effective: Issues of Enforcement and Compliance* (Hart 2012) 15; Collins et al (n 57) 28-29
[75] Pollert (n 50) 229; Dickens (n 3) 3
[76] Morris (n 74) 21
[77] Ibid

rights. However, there are also factors included in the statutes themselves which can be difficult for workers to navigate. Morris highlights two examples of this. The first is the complex nature of many of the rights themselves, as this could cause difficulties for workers attempting to enforce rights without specialist help and advice.[78] The second is the difficulty a worker could have in navigating the question of whether or not they are entitled to a right.[79]

Regarding the second example, Morris highlights the different legal implications that employment status can have on entitlement to employment rights. Although a lay person might assume that where there is an employment right it will apply to all those employed, this is not the case. There are three categories under which a person engaged in work can be classified; an employee, a so-called 'limb b' worker and self-employed. Employees, in law, have the most extensive employment rights and protections. Limb b workers, although less protected in employment law than employees, also have access to some employment rights and protections, and self-employed individuals are not entitled to the majority of employment rights.

The term 'worker' is relatively new to employment legislation. Previously there were only two categories under which a person engaged in work could be classified, an employee and self-employed, however, it was recognised that this was no longer sufficient for the changing labour market. The term 'worker' was therefore introduced to ensure all workers were legally entitled to rights that were intended to be universally applicable and enforceable.[80] Despite this, the increase in precarious work and the growth of the gig-economy today poses increasing challenges for many workers regarding their employment status,[81] and the result of limb b workers not having the same legal protections as employees 'has the effect of excluding those in precarious work relationships who may be in most need of protection.'[82] Navigating employment status is very complex and can act as a barrier to many workers understanding the full extent of their entitlements under the law.

[78] Morris also highlights this poses a difficulty for employers that want to better understand obligations owed to workers.
[79] Morris (n 74) 10
[80] National Minimum Wage Act 1998, ss.1, 54; Morris (n 74) 11
[81] Chapter three further explores legal issues surrounding employment status.
[82] Morris (n 74) 11

Hepple and Morris argue, when discussing potential alternatives to the Employment Act 2002 which the Government could have adopted to ensure compliance with individual employment rights, that the most important step to take would have been to set up new collective procedures capable of dealing with individual disputes.[83] One of the biggest issues in labour law today is worker ability to enforce rights and Hepple and Morris touch on this issue perfectly when they say:

> '[a]lthough the formalisation of contracts is widespread, the extent to which employers are complying with their contractual and statutory obligations depends significantly on the presence of active trade unions and collective organisations.'[84]

Labour law today offers employees and limb b workers a greater number of legal rights, especially when compared to individual legal protections in the post-war period. However, when we examine employer compliance with these rights the success of labour law in providing workers with decent terms and conditions of employment can be questioned. Without adequate enforcement machinery it is hard to say that the potential of labour law to balance the inequality of bargaining power in the employment relationship and to protect workers, is met. As Brown et al highlight:

> '… the extent to which employers are complying with their legal obligations depends significantly on the presence of active trade unions at workplace and organization level… collective procedures are the custodians of individual rights. Building an effective framework of employment regulation around the individual employment relationship will require statutory support for collective representation.'[85]

[83] B Hepple and G Morris, 'The Employment Act 2002 and the Crisis of Individual Employment Rights' (2002) 31 ILJ 245, 268
[84] Ibid; Brown et al (n 52) 627
[85] Brown et al (n 52) 627

2.5 Conclusion

The post-war years saw the law utilised to support and encourage collective bargaining and to provide increased support for workers in industries where collective organisation and bargaining was not strong. Although for much of the labour market this was successful, there were some areas that collective bargaining and labour protections still could not reach, leaving some workers without bargaining machinery. This issue is further discussed in relation to catering workers in the post-war years in chapter five.

Today there has been an increased individualisation of labour law. This has meant workers have been provided with individual, legally enforceable, employment rights. The introduction of the term 'worker' has also meant the extension of statutory employment rights to a greater portion of the workforce. However, as chapter three goes on to demonstrate, the growth in precarious forms of employment relationships means that many workers face difficulties navigating employment status and accessing employment rights. Further, many workers also experience employer non-compliance with these rights, as is shown in chapter five. The following chapters go on to propose that an option for labour law, in order to ensure that it effectively provides workers with decent terms and conditions of employment today, is that sectoral collective bargaining, similar to the wages councils mentioned above, could be introduced.

Chapter Three
Labour Law, the Worker and the 'Zero-Hours' Contract

3.1 Introduction

Over the last few decades the nature of work, the labour market and labour law have all changed. Influenced by political and economic factors, there has been a shift away from the 'traditional' form of employment, particularly in low-wage jobs.[1] Today only around half of the working population are in what would be described as 'traditional' employment relationships, with the use of 'precarious' forms of employment on the rise.[2] These precarious forms of employment, such as zero-hours contracts (ZHC), are very common within hospitality today.[3] Recent figures show hospitality as one of the worst offenders for the utilisation of ZHCs, especially in low-wage jobs within the industry.[4]

Precarious employment encompasses many forms of work, but the underlying theme present in all is that it is unstable, unpredictable and unreliable in nature. The Oxford English Dictionary uses terms such as 'uncertain', 'exposed to risk', 'hazardous', 'insecure' and 'unstable' in defining 'precarious' that is 'dependent on chance or circumstance'.[5] Precarious work increases the inequality of bargaining power present in employment relationships even further in favour of the employer. Workers are left uncertain regarding employment status and employer obligations. As well as this, working hours are often uncertain, shifts can be allocated and changed at late notice and likely differ from week to week, meaning income may also be uncertain and inconsistent.

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[1] A 'traditional', or 'standard', employment relationship would generally be characterised as full time and permanent with a regular working week. See: M Freedland, *The Personal Contract of Employment* (OUP 2003) 17; ACL Davies, ''Half a Person' A Legal Perspective on Organizing and Representing 'Non-Standard' Workers', in A Bogg and T Novitz (eds), *Voices at Work: Continuity and Change in the Common Law World* (OUP 2014) 123

[2] H Collins et al, *Labour Law* (2nd edn, CUP 2019) 170

[3] Office for National Statistics (ONS), *Contracts that do not guarantee a minimum number of hours*, (April 2018); E Farina et al, 'Zero Hours Contracts and their Growth' (2019) 58 BJIR 508; M Koumenta and M Williams, 'An Anatomy of Zero-Hour Contracts in the UK' (2019) 50 IRJ 20

[4] ONS, *Analysis of Employee Contracts that do not Guarantee a Minimum Number of Hours* (2014) 11-12; Incomes Data Research, *Minimum and zero hours contracts and low-paid staff* (2018) 18; ONS, *Contracts that do not guarantee a minimum number of hours* (2018), 13-14

[5] Oxford English Dictionary, 'precarious' (3rd edn, 2007) < https://www-oed-com.ezproxy.lib.gla.ac.uk/view/Entry/149548?redirectedFrom=precarious#eid> Accessed 13.07.2020

This chapter builds on chapter two's discussion of post-war and contemporary labour law, and provides a more specific analysis of labour law and work today in relation to ZHCs. Consideration of precarious work is essential for any current analysis of labour law. In respect of the hospitality industry, it is of fundamental importance. The chapter first looks at the ZHC itself; how it is defined and its presence in the labour market. The focus then shifts to the legal issues surrounding ZHCs; how being employed on a ZHC can affect a worker's employment status and access to various employment protections. Finally, there is an analysis of how a comparison between ZHC work and on-call work can be made. The main argument of the chapter is that workers on ZHCs may find it especially difficult, or near impossible, to access to employment rights and employment law.

3.2 Zero-Hours Contracts: Definitions and Growth

Not all precarious work will necessarily be a ZHC, however, in a legal analysis, a ZHC will always be precarious in nature. While it can be the case that ZHC workers (ZHCWs) work regular hours, and may even view their job as full-time and permanent, this does not accurately reflect the legal position of their employment.[6] Adams and Deakin describe ZHCs as, 'the most extreme form of a process of casualisation of terms and conditions of employment which has been allowed to take hold in the British economy since the 1980s.'[7]

The term 'zero-hours contract' is used to describe employment relationships where the employer does not guarantee the worker any hours and the worker is only paid for the hours that they work.[8] The Small Business Enterprise and Employment Act 2015 inserted a section into the Employment Rights Act 1996 (ERA), prohibiting exclusivity clauses in ZHCs, and offered a legislative definition:

> **'…** a contract of employment or other worker's contract under which –

[6] Z Adams and S Deakin, *'Re-Regulating Zero Hours Contracts'* (Institute of Employment Rights 2014) 9; Koumenta and Williams (n 3) 23
[7] Adams and Deakin (n 6) 3
[8] Ibid 6; D Pyper and F McGuiness, *Zero-hours contracts* (House of Commons Library, 2018) 4; N Pickavance, *Zeroed Out: The place of zero-hours contracts in a fair and productive economy* (2014) 3

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

(b) there is no certainty that any such work or services will be made available to the worker.'[9]

The Chartered Institute of Personnel and Development (CIPD) and the Department for Business, Energy and Industrial Strategy (DBEIS) have both offered definitions of ZHCs in recent years where they highlight that, in a ZHC, workers have the option to refuse work where it is offered.[10] Although this is true from a purely legal perspective, it does not accurately reflect reality for many ZHCW as they are likely reliant on the income. This means that although, legally, a ZHCW could refuse work where it is offered, economic and social pressures can prevent workers feeling able to. Further, some employers have stated there is an expectation that work is accepted where it is offered, with some also admitting that workers are punished if work offered is not accepted, leaving workers with little choice.[11] Also, although some ZHCW have reported viewing their job as full-time and permanent,[12] a defining characteristic of work on a ZHC can be its irregular and unpredictable nature. For example, Office for National Statistics (ONS) data illustrates that between October and December 2017 only 37.5% of ZHCWs worked 'usual hours'. The data also shows that, in the same period, 33.5% of ZHCWs worked less than their usual hours, and 20.1% worked more than their usual hours.[13]

Statistics show that there has been an increase in the use of ZHCs in the UK over the last two decades. ONS figures in 2019 showed that 896,000 workers (2.7% of the working population) reported being employed on a ZHC. This was an increase of 671,000 (298%) of ZHCs reported in 2000. Figure 3.1 shows the general increasing trend of the number of

[9] ERA, s.27A (1), as amended by the Small Enterprise and Employment Act 2015
[10] DBEIS, *Zero hours contracts: guidance for employers* (2015) <https://www.gov.uk/government/publications/zero-hours-contracts-guidance-for-employers/zero-hours-contracts-guidance-for-employers> Accessed 25.06.2020; CIDP and Lewis Silkin, *Zero-hours Contracts: Understanding the Law* (2019) 2-4
[11] 21% of employers said that although the contracts meant workers had the right to refuse work, 'in practice, they are always or sometimes expected to accept all work offered to them.' See: CIPD, *Zero-hours and short-hours contracts in the UK: Employer and employee perspectives* (Policy report 2015) 22. See also: Adams and Deakin (n 6) 9; Citizens Advice, *How can job security exist in the modern world of work?* (2017) 7; Farina et al (n 3) 3
[12] Adams and Deakin (n 6) 9
[13] ONS, *Contracts that do not guarantee a minimum number of hours* (2018) 15

ZHCs in the labour market since 2000. There are several explanations for this rise, such as changes to the benefits system,[14] changes to (or issues with) data reporting,[15] and a push for lower labour costs by employers.[16] Koumenta and Williams also highlight the change in the organisation of the labour market as a contributing factor, 'the incidence (and growth) of ZHCs is symptomatic of the erosion of institutional structures of labour protection, increased employer power and the diminished union role in the governance of employment contracts'.[17]

Figure 3.1[18]

Source: Office for National Statistics - Labour Force Survey

[14] Adams and Deakin argue that '[a] major factor in the recent growth of precarious forms of work, including ZHCs, is the removal of the floor to terms and conditions of employment which was previously supplied by the social security system.' For example changes introduced with Social Security Act 1989 and the onerous requirements the Jobseekers Act 1995 (see for example ss.6, 6B, 6C, 6D and 6E) has placed on claimants, and that Universal Credit places on claimants today. See: Adams and Deakin (n 6) 19, also 19-24. See also: J Kenner, 'Inverting the Flexicurity Paradigm: The United Kingdom and Zero Hours Contracts' in E Ales et al (eds), *Core and Contingent Work in the European Union: A Comparative Analysis* (Hart 2017) 156-157

[15] ONS, *Contracts that do not guarantee a minimum number of hours* (2018) 2-6

[16] Koumenta and Williams (n 3) 24

[17] Ibid 24, 36

[18] ONS, *Employment in the UK: August 2019. Figure 3: Number of people on zero-hour contracts increased sharply from 2010 to 2015* (2019) <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/bulletins/employmentintheuk/august2019#:~:text=There%20were%20an%20estimated%20896%2C000,for%20April%20to%20June%202019.> Accessed 01.10.2020

3.2.1 ZHCs, Trade Unions and Collective Bargaining in Hospitality

ZHCs tend to be concentrated in low-wage and low-skilled jobs and are more likely to be found in agency and shift work. This means that the industry a worker is employed in, and the nature of the job, can affect the likelihood of being employed on a ZHC.[19] The hospitality industry is one of the worst offenders for utilising ZHCs.[20] Through their analysis of the Labour Force Survey, Koumenta and Williams found that '[f]ood and beverage service activities' accounted for 14.5%, and 'accommodation' accounted for 4.1%, of all ZHC jobs.[21] Although similar, 2018 ONS data differs slightly, estimating that 22.6% of those employed on a ZHC worked in the 'accommodation and food industry'.[22] Farina et al also examined the growth of ZHCs and, using Quarterly Labour Force Survey data from 2017-2018, estimated that 43% of ZHC jobs were found between two sectors: 'distribution, hotels and restaurants and other services'.[23]

Further, a survey conducted by Incomes Data Research demonstrates that ZHCs within hospitality tend to be concentrate in lower-paid jobs. Of the survey respondents within 'hotels, restaurants, arts and leisure' it was noted that 48% of all staff within the industry were employed on a ZHC. This was compared to the 68% of low-paid staff employed on a ZHC within the same industry.[24] Put simply, the research demonstrated that ZHCs were very common within 'hotels, restaurants, arts and leisure', and that they were particularly prevalent in lower-paid jobs within the industry. Figures examined by Koumenta and Williams relating to the of percentage ZHCs by occupation also highlights this trend.[25] Table 3.1 below shows figures relating to ZHCs in hospitality by occupation.

[19] Koumenta and Williams (n 3) 30
[20] ONS, *Analysis of Employee Contracts that do not Guarantee a Minimum Number of Hours* (2014) 11-12; ONS, *Contracts that do not guarantee a minimum number of hours* (2018) 13-14
[21] Koumenta and Williams (n 3) 31
[22] ONS, *Contracts that do not guarantee a minimum number of hours* (2018) 9-14
[23] Farina et al (n 3) 518
[24] Incomes Data Research, *Minimum and zero hours contracts and low-paid staff* (October 2018) 18
[25] Koumenta and Williams (n 3) 31

Table 3.1: Percentage of ZHCs in Hospitality by Occupation[26]

Occupation	Percentage of all ZHC jobs	Percentage of ZHC jobs within the occupation
Kitchen and catering assistants	5.9	9.1
Bar staff	4.1	17.9
Waiters, waitresses	3.6	13.5
Chefs, cooks	2.5	4.7

As these figures demonstrate, the proportion of ZHC jobs within these lower-paid hospitality occupations was significantly higher than each of their overall share of all ZHC jobs. This further indicates the increased likelihood of ZHC employment within these lower-paid jobs in hospitality.

Recent Government figures relating to trade union membership do not give an estimate for the number of ZHCW who are members of a trade union. However, trends relating to 'non-standard' employment, such as part-time or temporary, can be used to give an indication of trade union membership for ZHCWs.[27] Statistics produced in 2019 demonstrate that both part-time and temporary workers were less likely to be members of a trade union, with part-time workers 3 percentage points less likely to be trade union members and temporary workers 8.9 percentage points less likely.[28] Part-time workers were also 2.9 percentage points less likely to be covered by a collective agreement, with temporary workers 6.6 percentage points less likely.[29]

Trade union membership in hospitality is also low compared to other sectors. 2019 figures show that trade union membership in the labour market as a whole was 23.5%,[30] while trade union membership in 'accommodation and food service activities' was much lower at 2.3%.[31]

[26] Table created using figures at: Ibid
[27] Davies, 'Half a Person' (n 1) 127
[28] DBEIS, *Trade union membership 2019: tables* (2020) Table 1.4
[29] Ibid Table 1.11
[30] DBEIS, *Trade union membership 2019: statistical bulletin* (2020) 5
[31] DBEIS, *Trade union membership 2019: tables* (2020) Table 1.8; DBEIS, *Trade union membership 2019: statistical bulletin* (2020) 12

This trend is also reflected in figures relating to the proportion of workers covered by a collective agreement, which is estimated at 26.9% for all workers, but only 4.4% of workers in 'accommodation and food service activities'.[32]

The introduction of individual employment rights has, in theory, conferred these rights onto all workers. In practice, however, many workers in precarious employment do not experience the full extent of these individual rights.[33] This means that not only do ZHCWs in hospitality find it difficult to access individual employment rights, but also as the above figures demonstrate, are unlikely to have the support of a trade union.

3.2.2 Can ZHCs be Justified?

The Government describes instances where the use of ZHCs would be justifiable as, 'where work demands are irregular or where there is not a constant demand for staff'.[34] When looking at precarious employment from a purely worker and trade union perspective it is easy to argue that all workers should have stable and reliable work. However, it is important to recognise that there are situations where an employer needs flexible labour, and so forms of precarious employment are utilised for the success of the business. Where work is genuinely casual, seasonal or changeable the use of ZHCs could, to some extent, potentially be justified. However, there are other ways in which employers could address these fluctuations, such as; part-time contracts of employment, offering workers overtime when the demand arises, and employing seasonal staff to manage busier periods. These alternatives could offer workers more protection and stability while meeting the needs of business.

The Government also recognises instances where the use of ZHCs would be inappropriate, stating:

> 'they should not be considered as an alternative to proper business planning and should not be used as a permanent arrangement if it is not justifiable…

[32] DBEIS, *Trade union membership 2019: tables* (2020) Table 1.11
[33] Koumenta and Williams (n 3) 24-25
[34] DBEIS, *Zero hours contracts* (n 10)

> Zero hours contracts might not be appropriate if the job offered will mean the individual will work regular hours over a continuous period of time.'[35]

Where there is, and for the foreseeable future will be, the existence of regular work, the use of ZHCs is no longer necessary to deal with 'irregular demands' and so it is no longer justifiable from an economic perspective. While the Government explains where the use of ZHCs would be inappropriate they have not introduced any legal barriers for employers who utilise ZHCs in these situations. For example, large supermarket chain Tesco and international fast-food restaurant McDonald's are well-known for their use of ZHCs.[36] It is reasonable to assume these businesses will have a steady and reliable stream of income, and therefore a constant and predictable need for work.[37]

One of the effects, and arguably a motivation for the use, of ZHCs is that it transfers the economic risk of quieter business periods from the employer onto the worker.[38] The law assumes the risk of unavailability of work, which is shouldered by the worker in a ZHC, is matched by the employer's risk of unavailability of labour, for example where a worker declines work offered. This, however does not reflect the reality of the employment relationship. By utilising ZHCs the employer is relieving itself of the economic risk associated with quieter business periods, and placing that risk onto the ZHCW in the form of the risk of the unavailability of work.[39] Despite arguments from advocates of ZHCs that the 'flexibility' accompanying ZHCs suits workers, data and worker testimonies do not fully support this.[40] The Resolution Foundation identifies several problems facing ZHCW; financial difficulty, issues relating to family commitments and childcare, access to (and ability to raise issues relating to) employment rights, relationship with managers influencing shift allocation, high workforce turnover influencing job quality, and variable income causing

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[35] Ibid
[36] Adams and Deakin (n 6) 10
[37] In 2019 Tesco reported their revenue as £63.6bn with about £2.15bn in operating profit. McDonald's reported its systemwide sales as $100bn and its consolidated revenues as $21.1bn. Tesco, *Preliminary Results* (2018/19) <https://www.tescoplc.com/news/2019/preliminary-results-201819/> Accessed 06.08.2020; McDonalds, *McDonald's Reports Fourth Quarter and Full Year 2019 Results And Quarterly Cash Dividend* (2020) < https://mcdonaldscorporation.gcs-web.com/news-releases/news-release-details/mcdonalds-reports-fourth-quarter-and-full-year-2019-results-and> Accessed 06.08.2020
[38] M Pennycook et al, *A Matter of Time: The rise of zero-hours contracts* (Resolution Foundation 2013) 13; Kenner (n 14) 158-160; H Collins, 'Employment Rights of Casual Workers' (2000) 29 ILJ 73
[39] Collins (n 38) 73, 76
[40] ONS, *Contracts that do not guarantee a minimum number of hours* (2018); Pennycook et al (n 38)

difficulties accessing benefits.[41] Not only do workers shoulder the risk that there will be no work, or enough work, available for them, but other issues associated with ZHCs can make their working lives difficult. A further effect of ZHCs is that employers do not face the same risk of the unavailability of labour because workers feel unable to refuse work or to raise concerns for fear of the consequences. Some workers describe a concern that raising issues could mean they will not be offered sufficient work in the future.[42] This precarity, caused by ZHCs, strengthens the argument that their use, except where genuinely necessary, should be prohibited.[43]

3.3 Employment Status

Precarious forms of employment, in particular ZHCs, have significant implications for the employment status of workers and the employment rights they are entitled to. There is a fundamental difference in employment law between an employed person and a self-employed person. Employment is a form of dependent labour meaning:

> 'Employees are subject to the employer's common law powers of direction and control… In return, employees come under the scope of employment protection and social security legislation'.[44]

The law has two categories under which an employed person can be classified; an employee and a worker. In law, the category 'worker' includes all employees and some who previously would have been defined as self-employed (or as independent contractors),[45] namely those who are in a dependant relationship with an employer similar to employment: so-called 'limb b' workers'.[46] Employees have the greatest protection in labour law, followed by limb b

[41] Pennycook et al (n 38) 17-20
[42] Ibid 18
[43] The Labour Party included banning of ZHCs as a policy objective in its 2017 and 2019 election Manifestos: The Labour Party, *For the Many, Not the Few* (Manifesto 2017) 47; The Labour Party, *It's Time for Real Change: The Labour Party Manifesto 2019* (Manifesto 2019) 61
[44] S Deakin and G Morris, *Labour Law* (6th edn, Hart 2012) 145
[45] Collins et al argue that the waiters in the case of *O'Kelly*, discussed below (n 80), who were classified as independent contractors in 1983, would today be 'classified as 'workers' during their particular engagements at banquets.' See: Collins et al (n 2) 216-217
[46] See for example the ERA, s.230(3)

workers and then the self-employed.[47] The rationale for this is that self-employed workers are not subject to the same control from employers and as such do not need the same protection. Determining employment status is crucial to establishing what employment rights someone is entitled to. While, for a large portion of the labour market, the question of employment status is easily ascertained, for many workers the answer is more complicated. This is especially the case for precarious workers, and in particular, ZHCW.

Prior to the introduction of the term 'worker' into labour legislation there were only two categories under which someone engaged in work could be classified: employee and self-employed.[48] Changes that took place during the latter part of the twentieth century regarding the nature of work posed significant problems for labour legislation as those who did not meet the tests to be classified as an employee were left outside the scope of employment law.[49] As such the category of worker was introduced to lie between employees and the self-employed and has had the effect of bringing some workers who do not qualify as employees under the protection of certain pieces of labour legislation.[50] A worker is defined in the ERA as:

> '… an individual who has entered into or works under (or, where the employment has ceased, worked under)—
> (a) a contract of employment, or
> (b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual'[51]

Limb b workers are not entitled to the same protections as employees but do have basic rights in labour law. All employees and dependent contractors are included under the 'worker' category and as such are entitled to these same basic protections.

[47] A self-employed person, or an independent contractor, is a form of independent labour.
[48] Freedland (n 1) 18-22
[49] Ibid 22
[50] Kenner (n 14) 168
[51] s.230(3)

The Health and Safety at Work Act 1974 (HSWA) recognised the importance of encompassing more than just employees under its protections and brought those who were self-employed under the reach of the Act, a measure that is still in force today.[52] More recently, the National Minimum Wage Act 1998 (NMWA) and the Working Time Regulations 1998 (WTR) are two examples of the worker category being utilised to ensure basic protections enshrined in legislation are not solely reserved for those who can demonstrate that they are an 'employee'.[53] The view was taken that workers should be able to access basic protections – not qualifying as an employee should not act as a barrier to protections that 'do not depend, for their effective functioning, upon the employment relationship in question being regular or long-term.'[54] Table 3.2 below provides an overview of the employment rights and protections that a worker, an employee and a self-employed person are entitled to.

[52] Deakin and Morris (n 44) 175; HSWA, s.3
[53] NMWA, ss.1, 54(3); The term 'worker' is used throughout the WTRs.
[54] Deakin and Morris (n 44) 175

Table 3.2 [55]

Right/Protection	Employee	Limb b worker	Self-employed
Protected under Health and Safety legislation[56]	Yes	Yes	Yes
National Minimum Wage (NMW)[57]	Yes	Yes	No
Protected from unauthorised deduction from wages[58]	Yes	Yes	No
Itemised pay statement[59]	Yes	Yes	No
Maximum working week[60]	Yes	Yes	No
Daily rest (at least eleven-hours between shifts)[61]	Yes	Yes	No
Weekly rest (at least twenty-four hours off each week)[62]	Yes	Yes	No
Rest breaks (at least a twenty-minute break when work more than six hours)[63]	Yes	Yes	No
Annual Leave[64]			No
Holiday pay[65]	Yes	Yes	No
Written statement of particulars of employment[66]	Yes	Yes	No

[55] CIDP et al (n 10) 7; G Morris, 'The Development of Statutory Employment Rights in Britain and Enforcement Mechanisms' in L Dickens (ed), *Making Employment Rights Effective: Issues of Enforcement and Compliance* (Hart 2012) 9
[56] HSWA, ss.2-3
[57] NMWA, s.1
[58] ERA, s.13
[59] ERA, s.8
[60] WTR, reg.4
[61] WTR, reg.10
[62] WTR, reg.11
[63] WTR, reg.12
[64] WTR, reg.13
[65] WTR, reg.16
[66] ERA, s.1

Table 3.2 continued…

Right/Protection	Employee	Limb b worker	Self-employed
Protection against unlawful discrimination[67]	Yes	Yes	Maybe
Minimum notice period if employment is ending[68]	Yes	No	No
Protection against unfair dismissal[69]	Yes	No	No
Right to request flexible working[70]	Yes	No	No
Time off for issues relating to dependants[71]	Yes	No	No
Redundancy Pay[72]	Yes	No	No

These tables help demonstrate the different levels of legal protection a person is entitled to depending on employment status. Employees are the most protected, followed by limb b workers, with the self-employed having very few protections. Although workers are entitled to basic protections, an increasing challenge for workers, especially with the growth of the gig-economy, is that employers will attempt to classify them as self-employed, despite the reality of their situation being that of a worker.

The primary difference between an employee and a limb b worker is that an employee is employed under a contract of employment.[73] Davies identifies three tests for establishing the existence of a contract of employment. First, the risk or control test;

[67] Equality Act 2010, s.83(2)(a) defines 'employment' as 'employment under a contract of employment, a contract of apprenticeship or a contract personally to do work' which would include workers and possibly the self-employed.
[68] ERA, s.86
[69] ERA, s.94
[70] ERA, s.80F
[71] ERA, s.57A
[72] ERA, s.135
[73] ERA, s.230

the employer would need to carry the financial risk of profit and loss or have an element of control over the employee's actions for a contract of employment to exist. Second, the terms must be in line with a contract of employment; where there is an inconsistent term, such as allowing for someone to perform work in the employee's place, there is not a contract of employment. Third, mutuality of obligation; where it is understood that the employer is under an obligation to provide future work and the employee is under an obligation to perform that work.[74] Any of these tests alone will not necessarily determine whether or not a contract of employment exists and so the courts have taken to examining multiple tests when addressing the question of whether or not there is a contract of employment between parties.[75]

Davies distinguishes between two claims a worker might make in relation to employment rights. The first relates to individual working periods, during which the worker is at work, or is engaged in work. A claim of this type could involve questions regarding entitlement to the NMW and provisions included in the WTR. The second relates to protections that require 'continuity of employment' – where it can be demonstrated that there has been the existence of a continuous employment relationship over a period of time. For example, unfair dismissal requires two years of continuous employment.[76] The first issue is easier to address as the status of the worker during the required period is easier to determine. It is clear that there is a contractual relationship between the worker and employer in the form of a 'wage-work bargain' whilst the worker is engaged in work.[77] However addressing the second type of claim is more complicated for limb b workers, in particular those employed on a ZHC. In this case it needs to be established that an 'umbrella' or 'global' contract exists, which would mean the worker is still engaged in a contract with their employer even when not at, or engaged in, work. Where the existence of an umbrella contract cannot be established the worker would only be employed on a series of 'spot contracts'. This means that an employment contract exists while a worker is at, or engaged in, work but there is no contractual relationship between work engagements.[78]

[74] Davies, 'Half a Person' (n 1) 124; ACL Davies, 'The Contract for Intermittent Employment' (2007) 36 ILJ 102, 103
[75] Deakin and Morris (n 44) 169-171
[76] ERA, s.108(1); Davies, 'Half a Person' (n 1) 124
[77] Davies, 'The Contract for Intermittent Employment' (n 74) 103; Adams and Deakin (n 6) 11
[78] Adams and Deakin (n 6) 11-12

The most complicated issue for ZHCWs to navigate when attempting to argue the existence of an umbrella contract is the mutuality of obligations test. This test has been used increasingly since the 1980s regarding the employment status of casual workers.[79] To satisfy the test, there needs to be the mutual agreement of the promise to provide and perform future work. The very nature of a ZHC is that there is no guarantee of future work, and that work is only offered if it becomes available. The two prominent cases of *O'Kelly v Trusthouse Forte plc*[80] and *Carmichael v National Power plc*[81] are examples of where casual employment relationships, that would most likely be described as ZHCs today, were examined.[82] The Courts in both cases found that there was no mutuality between the parties between the individual wage-work bargains.

In *O'Kelly* a group of waiters claimed they had been unfairly dismissed. The waiters were employed on a casual basis, despite being members of staff the company relied on to work regularly. The Court had to address the question of whether or not the waiters were employees. It was found that there was no relationship between the parties outwith the individual wage-work bargains, meaning the employment status of the waiters was that of independent contractors.[83]

Carmichael revolved around a group of tour guides who worked at a power station. The tour guides claimed they were employees and as such were entitled to a written statement of the terms of their employment. The Court recognised that there was a contract of employment between the parties during the individual wage-work bargains. However, these individual periods of work were not joined to create an umbrella contract. This had the effect of excluding the workers from employment protections that required continuity of employment, which in this case was the right to a written statement of the terms of employment.[84]

The more recent case of *Pulse Healthcare Ltd v Carewatch Care Services Ltd*[85] is potentially more helpful for ZHCWs. The case involved a group of carers employed on ZHCs who claimed employee status. The underlying dispute in the case was whether or not employment

[79] Deakin and Morris (n 44) 165; Kenner (n 14) 161-162
[80] [1983] ICR 728
[81] [1999] 1 WLR 2042
[82] Kenner (n 14) 162
[83] *O'Kelly* (n 80)
[84] *Carmichael* (n 81)
[85] [2012] UKEAT/0123/12/BA

of the carers transferred from one care company to another under the Transfer of Undertakings (Protection of Employment) Regulation 2006. For this to be the case the claimants had to demonstrate they were employees and employed on an umbrella contract of employment. The carers worked regular hours, were expected to accept work where it was offered and had accepted employment on the basis that they would work a certain number of hours. Pulse Healthcare attempted to argue that, as the carers worked rostered hours and could object to those hours, they were not employed on an umbrella contract. However, the Court did not agree, stating that:

> '[i]t is very common for employees under ordinary – global – contracts of employment to work rostered hours… The mere fact that an employee can object to rostered hours if there is a problem does not mean there is no mutuality of employment.'[86]

The Court held that the claimants were employees and were employed on umbrella contracts, not individual spot contracts. Further, the Court highlighted that the ZHCs they were employed on 'did not reflect the true agreement between the parties.'[87] In other words, although the employer said the carers were employed on ZHCs, the reality of their working arrangement was not one of a ZHC, and as such this was not the nature of their employment relationship.

Another difficulty facing workers in relation to access to, or enforcement of, employment rights is where employers claim workers are self-employed, and as such not entitled to employment rights such as the NMW. This has often been the case with the emergence of the gig-economy, which has 'rebranded' work as 'entrepreneurship'.[88] Many gig-economy platforms operate by classifying workers as self-employed, thereby placing them outside the scope of employment law.[89] In the recent case of *Uber BV v Aslam,*[90] several Uber drivers argued that they were not, in fact, self-employed, but that they were workers and as such entitled to protections contained in the NMWA and the WTR. The Court agreed following

[86] Ibid at 38
[87] Ibid at 35
[88] J Prassl, *Humans as a Service: The Promise and Perils of Work in the Gig Economy* (OUP 2018) 4
[89] Ibid
[90] [2019] ICR 845

the judgement in *Autoclenz v Belcher*[91] where importance had been placed on the reality of the employment situation and what the 'actual legal obligations of the parties'[92] are:

> '… the relative bargaining power of the parties must be taken into account in deciding whether the terms of any written agreement in truth represent what was agreed and the true agreement will often have to be gleaned from all the circumstances of the case, of which the written agreement in only a part.'[93]

Although some of the recent cases discussed above may seem to present an optimistic outlook for the future of labour law in relation to casual and ZHCWs, it is important to remember that these are individual cases. They may offer future claimants a stronger basis for presenting an argument that they are, in fact, a limb b worker or an employee despite employer claims to the contrary. However, there has been no wider change to the law to prevent employers exploiting vulnerable workers by classifying them under an employment status that the reality of their situation does not reflect. Further, workers often are not, for many reasons, able to challenge their employer. Collins highlights the difficulty facing many ZHCWs as, although workers are under no contractual obligations to accept work that is offered, '… the real sanction is that the employer will simply not ask the worker again, which is a far more coercive sanction.'[94] This supports Kenner's argument that the 'present system in the UK no longer fits the reality of the employment relationship.'[95]

3.4 ZHC Workers 'On-call'

A lack of clarity on the part of both the employer and the worker regarding the legal status, entitlement to statutory protections and access to enforcement machinery can contribute to the precarious position of ZHCWs. If neither worker nor employer is confident regarding the obligations the employer owes the worker, then there is a danger employment law will not be complied with and will go unenforced.[96] Even if workers are aware of their entitlements,

[91] [2011] ICR 1157
[92] Ibid at 32
[93] Ibid at 35
[94] Collins (n 38) 77
[95] Kenner (n 14) 181
[96] Adams and Deakin (n 6) 15

ZHCs themselves do not create an environment conducive to enforcement (or in some cases even discussion) of those protections. As ZHCs do not guarantee a worker any hours, there is a risk, or perhaps even the sense of a risk, that 'rocking the boat' could result in the loss or decrease of hours. The testimony of a care worker can be used to illustrate this point:

> 'In reality there is not much flexibility because if you ever turn down hours or complain to the supervisor you simply stop getting offered work.'[97]

Also, arguably, some ZHCWs have an 'on-call' aspect to their life. Late notice and alteration of shifts as well as employer expectation that workers be available for work, despite not offering any guaranteed hours in return for this expectation, are common in ZHCs.[98] These characteristics could potentially mean workers feel they have to constantly be available in case called on for work. On-call can be described as where a worker is 'liable to be called upon to work at short notice'.[99] This means that a worker who is on-call can expect to be called to work at any point during that period. Under these circumstances a worker's behaviour whilst on-call is limited. For example, while on-call workers would not be able to participate in activities that they might while off-duty, and which could make them unfit for work. They should also keep themselves available, for example, they should not travel any distance or have sole childcare responsibilities whilst on-call.[100] While ZHCWs are not 'on-call', the late notice of shifts can affect the behaviour of workers and what they are able to do with time that is supposed to be their own. Here a comparison can be made to an on-call doctor – while on call, the behaviour of the doctor is restricted but they are well remunerated for this time. In the case of a ZHCW, behaviour is restricted while waiting for notice of shifts, but there is no remuneration for this time. For ZHCWs there is also the possibility that they will not be offered any work, and therefore not receive any wages.

Citizens Advice published survey figures which stated that: 22% of employers said staff were not able to refuse shifts; 19% said workers were not able to give 'times or days' when they

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[97] Pennycook et al (n 38) 18
[98] Pennycook et al (n 38) 4; Adams and Deakin (n 6) 9; Citizens Advice, *How can job security exist in the modern world of work?* (2017) 7
[99] ACL Davies, 'Getting More than You Bargained for? Rethinking the Meaning of 'Work' in Employment Law' (2017) 46 ILJ 477, 496
[100] Davies uses the example of a worker drinking alcohol; "A rough-and-ready test for genuine time off is whether it is open to the individual to get drunk (and thus be unfit for work) during the time in question." See: Ibid 480

were unavailable; 19% said workers 'didn't tend to receive more than 48 hours' notice of their shift times'; 10% said workers were not able to refuse shifts or say when they were unavailable; and 7% said they gave workers 'less than 48 hours' notice of shifts' and workers were not able to refuse shifts.[101] CIPD data supports these findings as it was found that 17% of employees were sometimes penalised, and 3% were always penalised, for refusing work.[102] The legal position might be that workers are under no obligation to accept work, but this does not accurately reflect the economic and social implications of a worker turning down work. The worry that refusing work could have an adverse effect on their employment situation and future offers of work could prevent workers feeling able to decline work.

The combination of not being able to refuse a shift, not being able to set (or even state) availability, and late notice of shifts means that workers in this situation are extremely limited in how they can organise their time outside work. While their actions on a specific night when they are not working are not as limited as an on-call worker, their ability to plan past the next few days is severely limited. In this way, it can be reasonably argued that workers in this kind of employment live in a state similar to being 'on-call' – they are waiting on a call to tell them when to work, their behaviour is restricted during this time and they are limited in their ability to refuse. Both the Citizens Advice and the Living Wage Foundation advocate that workers should be given sufficient notice of shifts, with the Living Wage Foundation arguing for 'at least four weeks' notice of shifts.'[103] Davies, in exploring the meaning of 'availability' in the NMWA and the WTRs makes a similar point.

> 'The "on call" at home scenario is not dissimilar, in purely factual terms, to the scenario in which an individual is engaged in so-called casual or "zero hours" work and is waiting at home to be offered an assignment. In these situations, the 'available' time tends to be regarded in law as nothing more than a gap between employment relationships. On this view, the individual is not an

[101] The survey had over 1100 participants, including "line managers, senior managers and HR managers". Citizens Advice, *Workers given just 48 hours notice of shifts starting, changing or being cancelled, says citizens advice* (2017) <https://www.citizensadvice.org.uk/about-us/how-citizens-advice-works/media/press-releases/workers-given-48-hours-notice-of-shifts/> Accessed 30.06.2020; Citizens Advice, *How can job security exist in the modern world of work?* (2017) 7

[102] CIPD, *Zero-hours contracts: Myth and reality* (2013) 18

[103] Living Wage Foundation, *Living Hours Campaign Launched to Tackle Work Insecurity* <https://www.livingwage.org.uk/news/living-hours-campaign-launched-tackle-work-insecurity> Accessed 30.06.2020; Citizens Advice, *Workers given just 48 hours notice of shifts* (n 101); Citizens Advice, *How can job security exist in the modern world of work?* (2017) 7

> employee or worker during that time, so the alleged employer cannot owe him or her any obligations, and of course, the many gaps in the individual's employment history may serve to deny him or her access to employment rights requiring a period of continuity of employment.'[104]

Therefore, not only do ZHCWs have to navigate the legal setting Davies highlights (as discussed above) but they also live with extreme uncertainty regarding when they will be working, what they will be earning and often have to tolerate an 'on-call' or last-minute aspect to their working life.

3.5 Conclusion

This chapter has examined the complicated set of rules workers must navigate to understand their employment status and to determine what protections they are entitled to. The figures discussed in the first half of the chapter demonstrate that the presence of ZHCs in the labour market is increasing and their presence within hospitality is particularly high. Not only are employment relationships themselves precarious as a result of the high proportion of ZHCs but trade union presence is also notably low in the industry. This means workers are often left to navigate the complex legal field themselves, or perhaps more likely, tolerate poor working conditions. Workers are left shouldering all of the economic risk so that employers can minimise labour costs and maximise profits. In a sense, ZHCs bring to mind the well-known image of dock workers waiting at the gates hoping to be picked for work and a day's wages. Today, many ZHCWs wait at home for a call telling them whether or not they have been picked for work, and the wages for that work. For many workers, ZHCs, and other forms of precarious work, mean that labour law has not successfully provided them with decent terms and conditions of employment.

[104] Davies, 'Getting More than You Bargained for?' (n 99) 500-501

Chapter Four
Labour Law and Hospitality

4.1 Introduction

Hospitality is one of the biggest employers in, and one of the biggest contributors to, the economy today. Figures published in 2017 showed that the hospitality industry accounted for 3.2 million jobs directly, and almost 6 million indirectly, making it the third biggest employer in the UK labour market.[1] Although the hospitality industry plays an important role in the UK economy, it is still the lowest paid sector, with hospitality workers earning well below the national average.[2] For example, in February 2020 average weekly earnings across the labour market was £631, while average weekly earnings within the 'accommodation and food service activities' sector was £260.[3] As well as this, the industry is one of the worst offenders for the utilisation of ZHCs and other forms of precarious employment relationships, as was highlighted in chapter three.

Historically, employment in hospitality has deviated from the more traditional manner in which work has been organised within the labour market.[4] For example, until the early part of the 20th century it was common for a waiter's income to consist solely of customer tips.[5] The reliance on customers for work has made employment in the industry often seasonal in nature and reliance on customer tips for wages has made income unpredictable and unstable.[6] Today, all workers are entitled to the National Minimum Wage (NMW) and as such the reliance on customer tips for income is, perhaps, not as strong as it was in the past. Despite

[1] Ignite Economics, *The Economic Contribution of the UK Hospitality Industry* (UK Hospitality 2018) 4, 9
[2] S Partington, 'Hospitality Employment' in C Lashley (ed), *The Routledge Handbook of Hospitality Studies* (Routledge 2016) 210; Office for National Statistics (ONS), *'EARN03: Average weekly earnings by industry'* (September 2020) Table 1: Average weekly earnings, bonuses and arrears. Here it is demonstrated that between 2000 and 2020 the 'Accommodation and Food Service Activities' industry has consistently been the lowest paid in the labour market based on average weekly earnings within the industry.
[3] ONS, *EARN03* (n 2) Table 1
[4] See chapter three, footnote one, for discussion of 'traditional' employment.
[5] E Albin, 'A Worker-Employer-Customer Triangle: The Case of Tips' (2011) 40 ILJ 181, 191-193; P Eeckhout, 'Waiters, Waitresses, and their Tips in Western Europe before World War I' (2015) 60 IRSH 349 <https://www.cambridge.org/core/journals/international-review-of-social-history/article/waiters-waitresses-and-their-tips-in-western-europe-before-world-war-i/4DD8000692B6373705C52B94156F8D44> Accessed 15.02.2021
[6] Eeckhout (n 5)

this, the hospitality industry is known for not providing many of its workers with stable and reliable work or income. The prevalence of ZHCs and other forms of precarious work within the industry contribute to this, as discussed in chapter three, as well as the role played by the customer in the employment relationship.

This chapter builds on chapter two's discussion of post-war and contemporary labour law and chapter three's analysis of zero-hours contracts (ZHCs). It compares the legal regulation of employment relations in hospitality and catering in the immediate post-war era and today, illustrating the very different approaches embodied in the Catering Wages Act 1943 (CWA), in the first instance, and by modern employment law in the second. The chapter argues that the often-vulnerable situation of workers in the sector can be exacerbated by a reliance on tips to supplement income and on the effect that customers can have on the employment relationship.

4.2 The Catering Wages Act 1943

For the majority of the 20th century minimum wage rates were set for each industry, either by sectoral collective bargaining or by the trade boards and later, the wages councils. Minimum wage setting bodies in the UK can be traced back to the Trade Boards Act 1909 which was introduced as a means to tackle the 'sweating' of workers in industries where pay was known to be very low and trade unions weak. This was then replaced by the Trade Boards Act 1918 which increased the industries in which trade boards could be set up, and provided that in some situations these would act as a supplement to existing bargaining machinery.[7] In 1930 there was an attempt to establish a trade board for the catering industry but opposition resulted in the attempt being defeated. It was not until the 1940s, when there was a desire to set up wage regulating bodies for those who worked in canteens for industrial workers, that catering workers were paid specific attention by the law and the CWA was introduced. The Act saw roughly 750,000 workers covered by the wage regulating legislation.[8]

[7] O Kahn-Freund, 'Minimum wage legislation in Great Britain' (1949) 97 UPaLRev 779, 787
[8] AJF Wrottesley, 'The Catering Wages Act' (1952) 6 ILR 187, 187-188; FJ Bayliss, 'British Wages Councils and Full Employment' (1959) 80 Int'lLabRev 410, 412-413

The CWA set up the Catering Wages Commission (the Commission) which was responsible for making recommendations to the Minister of Labour regarding the creation of catering wages boards.[9] The Commission consisted of a chairman, two independent members, two members who represented employers and two members who represented workers.[10] A catering wages board could be established where there was either no bargaining machinery in place, or where the machinery that was in place could not have been improved so as to make it capable of regulating wages and working conditions.[11] When examining bargaining machinery that was already in place, the Commission also questioned whether employers were adhering to resulting agreements,[12] which Kahn-Freund described as 'a deliberate and decisive new departure in legislative policy'.[13] Where the Commission believed that improvements could be made to existing bargaining machinery, so as to make it capable of regulating wages and working conditions, it could recommend that these changes be made.[14] If this failed the Commission was still able to recommend that a catering wages board be established.[15] As a result of the Commission's recommendations five boards were set up: industrial and staff canteens; unlicensed non-residential establishments; licensed hotels and licensed restaurants; unlicensed hotels and boarding houses; and public houses and non-residential clubs.[16] The Commission could also investigate and make recommendations to the Minister regarding the pay, working conditions, and 'health or welfare' of the workers to whom the Act applied.[17] It also played a role in the economic functioning of the industry as a whole.[18] Kahn-Freund highlights the significance of this as a

> '… new departure in English Law. One body deals with social reform and encourages commercial development. Parliament has recognised and proclaimed that the welfare of the employees and the satisfactory organisation and working of the industry hang together.'[19]

[9] CWA, s.4(1)
[10] CWA, Schedule 1 paras.1-3
[11] CWA, s.4(1)
[12] CWA, s.3(1)
[13] Kahn-Freund, 'Minimum Wage Legislation' (n 7) 789
[14] CWA, s.3(1)
[15] CWA, s.4(1)
[16] Catering Wages Commission, *Second Annual Report 1944-1945* (HM Stationary Office 1945) 2
[17] CWA, ss.2(1)(a), 2(1)(c)
[18] CWA, s.2(1)(b)
[19] Kahn-Freund, 'Minimum Wage Legislation' (n 7) 796

The wages boards themselves consisted of a chairman, two further independent members, and an equal number of representatives for employers and workers.[20] The boards could submit a proposal to the Minister for the creation of a 'wages regulation order' in three primary areas for the workers to whom that board applied. First, wages, or 'remuneration', second, periods when workers could have a meal or break, and third, holidays.[21] The CWA defined the workers to whom it applied as:

> '… all persons employed in any undertaking, or any part of an undertaking, which consists wholly or mainly in the carrying on (whether for profit or not) of one or more of the following activities, that is to say, the supply of food or drink for immediate consumption, the provision of living accommodation for guests or lodgers or for persons employed in the undertaking and any other activity so far as it is incidental or ancillary to any such activity as aforesaid of the undertaking.'[22]

The creation of a wages regulation order meant that agreements reached by the boards were 're-cast in the shape of a statutory wages regulation order and thus… given the force of contractual terms as between employer and employee.'[23] Further, where the Minister issued a wages regulation order, any terms in the employment contracts of workers to whom the order applied that stipulated something contrary, for example a lower wage, were substituted for the 'statutory minimum remuneration' contained in the order.[24] Where an employer breached the terms of an order, it was 'liable on summary conviction to a fine not exceeding twenty pounds for each offence.'[25] Also, under the CWA the Minister was able to appoint enforcement officers who investigated compliance with wages regulation orders and, where appropriate, began proceedings for an offence under the CWA.[26]

Kahn-Freund distinguished between the social and legal nature of the collective agreement and an order issued by the Minister under either the CWA or the Wages Councils Act 1945

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[20] CWA, Schedule 2, paras 1-3
[21] CWA, ss.8(1)(a), (b) and (c) respectively. Under s.6(3) a wages board had the ability to 'consider any matter affecting the remuneration, conditions of employment, health or welfare of all or any of the workers in relation to whom the board operates' and submit a report on any issue that arose to the Commission.
[22] CWA, s.1(2)
[23] Kahn-Freund, 'Minimum Wage Legislation' (n 7) 789
[24] CWA, s.9(1)
[25] CWA, s.9(2)
[26] CWA, s.13

(WCA) arguing that, '… if we look at the social picture and not its legal 'framework', a wage regulation order may often be indistinguishable from a negotiated agreement, indistinguishable both in the manner of its making and in its substance.'[27]

While, in industries or work environments where bargaining is strong this analysis holds, unionisation levels across the hospitality industry have never been very high.[28] Writing in 1959 Bayliss argued that, as the original purpose for the WCA, and the subsequent wages councils, was to tackle high levels of unemployment and lower levels of unionisation expected following the Second World War, there was a case for their abolition due to the higher levels of employment and union membership than anticipated.[29] Despite this, there was recognition that catering workers were particularly vulnerable to exploitation and as such the wage regulating machinery, introduced by the CWA, should remain.[30] The CWA demonstrates the specific attention paid to vulnerable workers in the post-war period, and the attempt to ensure those workers had access to sufficient pay and decent terms and conditions of employment.

The CWA remained in force from 1943 until the introduction of the Terms and Conditions of Employment Act 1959, which saw the catering wages boards transformed into wages councils under the jurisdiction of that Act and the WCA.[31] The 1980s saw political attitudes towards the wages councils change and it was argued that they contributed to the high unemployment rate. This change saw the powers of the wages councils limited by the Wages Act 1986,[32] followed by their complete abolition in 1993.[33] The abolition of the councils had the effect of removing employment protections from roughly 2.5million workers,[34] and also meant that from 1993 to 1998, when the National Minimum Wage Act 1998 (NMWA) was introduced, hospitality workers had no legally enforceable minimum wage rates.

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[27] O Kahn-Freund, 'Legal Framework' in A Flanders and HA Clegg (eds), *The System of Industrial Relations in Great Britain: Its History, Law and Institutions* (Blackwell 1954) 73
[28] Wrottesley (n 8) 187
[29] Bayliss (n 8)
[30] Ibid 428
[31] Terms and Conditions of Employment Act 1959, s.1; O Kahn-Freund, 'Terms and Conditions of Employment Act, 1959' (1959) 22 MLR 408, 408
[32] Part II
[33] Trade Union Reform and Employment Rights Act 1993, s.35
[34] S Deakin and G Morris, *Labour Law* (6th edn, Hart 2012) 306-307

4.3 Hospitality Today

The NMWA and the Working Time Regulations 1998 (WTR) are two of the main pieces of legislation hospitality workers rely on today for their employment rights. As discussed in chapters two and three, both apply to workers, not only to employees, and provide workers with a basic, legally enforceable, floor of rights. As ZHCs and other forms of precarious working arrangements are common in the hospitality industry, the extended scope of the NMWA and the WTR to workers offers many hospitality workers important protections.

The NMWA and the WTR were both introduced by the Labour Government shortly after they won the 1997 election. The stance of the Labour Party changed somewhat between its time in power in the post-war years and its more recent period in Government from 1997-2010. Although the Party would still be described as representing the left of politics in Westminster, their re-branding as 'New Labour' in the 1997 election saw the focus for the Party move towards a more centrist-left position. The approach of the Blair Governments from 1997 has been described as a 'Third Way' in politics, which saw the focus shift from the traditional industrial relations model whereby trade unions and collective bargaining acted as the main regulators in the labour market, and 'as instruments for achieving greater equality in society.'[35] There was a greater importance placed on 'a flexible and efficient labour market'[36] and the need to encourage competitiveness of business in both British and global markets.[37] Despite this, fairness at work was still prioritised, which can be seen through the introduction of the NMWA and the WTR, with the Government arguing that 'fairness at work and competitiveness go hand in hand, and that one must reinforce the other.'[38]

Was the introduction of the NMWA a positive step in modern labour law in relation to worker protection? The Third Way perspective can be seen in how the Blair Government argued for its introduction, in that it would:

[35] H Collins, 'Is There a Third Way in Labour Law?' in J Conaghan et al (eds), *Labour Law in an Era of Globalization: Transformative Practices and Possibilities* (OUP 2004) 453-455
[36] Department of Trade and Industry (DTI), *Fairness at Work* (White Paper, Cm 3968, 1998) 2.10-2.15
[37] Ibid 1.1
[38] Ibid 1.11; Collins (n 35) 455

> '… help to promote incentives for individuals to find and make the most of jobs. It will ensure greater fairness at work and remove the worst exploitation. It will promote competitiveness by encouraging firms to compete on quality rather than simply on labour cost and price.'[39]

Despite the significance of the Act, it has been argued that the NMW introduced at the time was perhaps not as significant. Davies and Freedland argue that:

> '… the level at which the National Minimum Wage legislation intervened in the whole wage-setting process was such a low one as to demonstrate that the government's concern in introducing this mechanism was, not so much to make an onslaught on a problem perceived as one of unconscionably low pay at the lowest existing grades of personal work relations, as rather to encourage the development of a more inclusive labour market without thereby enormously increasing the cost…'[40]

The rate at which the NMW is set has continued to be a point of contention with it being argued that the NMW is not sufficient to allow for a decent standard of living. In 2016 the National Living Wage (NLW) was introduced by the Conservative Government, however, as chapter two discussed, it is argued this is still not sufficient, with the 'real Living Wage' having been consistently higher.[41]

Research undertaken by Walmsley et al examined the reaction in the hospitality industry to the introduction of the NLW and helps to demonstrate the attitudes of some hospitality employers towards workers today.[42] The research focussed on a group of hotels and explored the impacts of the introduction of the NLW, measures taken by the employers, and the effect the NLW had on the employment relationship. The research findings relating to impacts and measures included issues relating to; staff morale, the possibility of redundancies as a result of raised labour costs, labour productivity, a decrease in staffing and the increasing use of

[39] DTI (n 36) 3.2
[40] P Davies and M Freedland, *Towards a Flexible Labour Market: Labour Legislation and Regulation since the 1990s* (OUP 2007) 48
[41] The NLW is the category of the NMW applicable to workers over the age of 25.
[42] A Walmsley et al, 'Reactions to the National Living Wage in Hospitality' (2019) 41 ER 253, 253-268 <https://www.emerald.com/insight/publication/issn/0142-5455> Accessed 13.02.2021

casual contracts.[43] Responses from managers overwhelmingly indicated an awareness that certain obligations were owed to workers but views on what this entailed varied. However, when questions regarding what workers owed their employers arose, answers were much more certain and onerous: 'commitment, dedication… passion, a drive… the very best service'; 'giving 100%'; 'work hard… be loyal and do your best every day.'[44]

The hospitality industry is known for its low pay and poor working conditions but as the third biggest employer in the UK, its reach is significant.[45] While the research produced by Walmsley et al cannot provide a generalisation across the hospitality industry in the UK,[46] it does give an indication of attitudes and cultures that exist within the sector – onerous work and expectations for minimal, and arguably insufficient, reward and a precarious working life. Further, the hotels examined as part of the research ranged in size, with one employing 45 workers, another approximately 200, and another 750, suggesting findings relating to cultures in the industry are not necessarily concentrated within businesses of a certain size.[47]

While the NMWA provides workers with a legally enforceable minimum wage, the WTR offer workers important legal protections relating to their working week, rest breaks and holiday pay. The Regulations were introduced to:

> '… tackle excessively long working hours… There is no advantage to employers in exhausted employees. On the contrary, the need to work within fair, maximum hours is likely to promote more efficient working practices and innovation.'[48]

Despite this, the option for a worker to agree with their employer to 'opt-out' of one of the primary features of the Regulations – the 48-hour working week – has limited the real impact that this protection can have.[49] According to the LFS, in 2002, 16% of full-time employees

[43] Ibid 258-261
[44] Ibid 262
[45] Ibid 254
[46] This is stated by the authors at: Ibid 256, 264
[47] Ibid 257
[48] DTI (n 36) 5.6
[49] C Barnard et al, 'Opting Out of the 48-Hour Week: Employer Necessity or Individual Choice? An Empirical Study of the Operation of Article 18(1)(b) of the Working Time Directive in the UK' (2003) 32 ILJ 223; Davies and Freedland (n 40) 49-50

typically worked over 48 hours per week.[50] ONS data from the end of 2019 shows that, for 18.3% of workers, usual weekly working-hours exceeded 45.[51] Although this is less that the 48-hour working week, it does suggest there is a proportion of workers for whom the opt-out clause is habitually utilised and whose working week will exceed 48 hours. Further, Barnard et al demonstrate the opt-out option is utilised across industries and, more specifically, findings relating to its use in 'hotel and catering' demonstrated that while it was not often used for, what was described as, 'general staff' its use for 'supervisory and managerial staff' was 'almost 100%'.[52]

Davies and Freedland argue that when the WTR were introduced the Government was perhaps less focused on re-regulating the labour market, and instead on maintaining 'managerial flexibility' – where employers have increased power in the employment relationship and are able to take unilateral decisions regarding employment relationships as well as job and institutional structural decisions.[53] Barnard et al also argue that the inclusion and preservation of the opt-out was due to the Government's desire for 'much-needed labour flexibility.'[54]

Although the 48-hour working week contains an opt-out option, other important protections contained in the WTR do not carry such an option, providing hospitality workers with important legally enforceable protections regarding their working time. This includes; a twenty-minute rest break where shifts lasts longer than six hours,[55] an eleven-hour rest period between shifts,[56] weekly rest (which can include an 'uninterrupted rest period' of 24-hours per week, two 'uninterrupted rest periods' of 24-hours during a two-week period, or 'one uninterrupted rest period' of 48-hours during a two-week period),[57] and four-weeks' paid annual leave.[58] While all workers are entitled to these protections, many hospitality workers experience employer non-compliance with aspects of the WTR and, as chapter three discussed, many workers' employment situation makes access to, and enforcement of, these protections difficult.

[50] Barnard et al (n 49) 232
[51] ONS, *HOU02 NSA: Usual weekly hours worked (not seasonally adjusted)* (September 2020)
[52] Barnard et al (n 49) 234-237
[53] Davies and Freedland (n 40) 21-22, 48-49
[54] Barnard et al (n 49) 252
[55] WTR, reg.12
[56] WTR, reg.10
[57] WTR, reg.11
[58] WTR, regs.13, 16

Although the arguments above suggest that the NMWA and the WTR are not as protective as they could be, they are two of the main pillars of employment protections for hospitality workers today. They have provided workers with important legislative protections which have remained in place throughout consecutive Conservative Governments since 2010. Employer compliance with these protections, however, remains an issue. Although employer adherence to collective agreements is not the biggest issue today, primarily due to the lack of hospitality workers covered by collective agreements, employer compliance with basic employment rights and protections is a major concern. Chapter five explores in more detail the contrasting approaches within the two periods regarding compliance with, and enforcement of, employment law.

4.4 The Law and Customer Tips

Historically it was common for hospitality and catering workers to work only for tips, waiters being a common example discussed in the literature. This meant that, instead of being paid a wage for hours worked, a worker's entire income would come from customer tips.[59] It was also common for workers to pay an establishment, for example a restaurant, a fee for the opportunity to work.[60] This ceased to be the manner in which the industry was organised in the early part of the 20th century, however, workers still relied, and do to this day, on tips for part of their income.[61] As Albin highlights; 'reliance on customers, rather than employers, for earnings was one aspect of the general picture, which led to waiters being seen as 'casual in nature'.'[62]

A significant question in law has been whether or not an employer is able to use tips to meet its minimum wage obligations.[63] On this point the law has changed several times since the period surrounding the CWA. The distinction between the terms 'wage' and 'remuneration',

[59] Albin, 'A Worker-Employer-Customer Triangle' (n 5) 190-196; Eeckhout (n 5) 349-378
[60] Ibid
[61] Albin, 'A Worker-Employer-Customer Triangle' (n 5) 191-196; Eeckhout (n 5) 349-378; T Wright and A Pollert, *The experience of ethnic minority workers in the hotel and catering industry: Routes to support and advice on workplace problems* (Acas 2006)15-16
[62] Albin, 'A Worker-Employer-Customer Triangle' (n 5) 192-193
[63] *Wrottesley v Regent Street Florida Restaurant* [1951] 2 KB 277; *Nerva and others v RL & G Ltd* [1997] ICR 11; *Nerva and others v United Kingdom* (Application no. 42295/98) ECHR September 2002

and their use in the legislation, was one issue addressed.[64] The Court in *Penn v Spiers & Pond Ltd*[65] differentiated between the two terms: wages are paid by the employer, for example salaries or hourly pay; and remuneration is 'earnings in the employment',[66] meaning what workers receive in total as part of their employment, which includes tips and gratuities.[67] Conflict between the terms was again seen in *Wrottesley.*[68] Here, the employer argued that the use of the term 'remuneration' in the CWA meant that it could supplement workers' pay with tips, so long as the total pay was above the minimum wage obligation owed to the worker. The King's Bench Division, however, recognised that this was not the intention of CWA:

> 'Not only the short title but the structure of the Act – setting up a wages commission, permitting the establishment of wages boards, and providing for wage regulation orders – clearly indicates that it is with wages that the Act is intended to deal.'[69]

Albin argues that the CWA and its regulations 'formalised the custom of giving tip receivers in the hospitality industry legislative protection' and ensured, contrary to what was common practice in hospitality at the time, that employers were not able to use tips to top up workers' pay, that employers were solely responsible for meeting minimum wage obligations.[70]

This approach changed slightly with the case of *Nerva*,[71] which involved a group of waiters who claimed their employer was not able to use tips to contribute towards the minimum wage obligations it owed the workers under the Wages Councils Act 1979, and later, the Wages Councils Act 1986. For the waiters in *Nerva,* where a customer had given a tip by credit card or cheque, the equivalent amount was taken out of the till in cash and put into the workplace tronc, where the cash tips were kept. However, after an inspection from the tax authorities the employer was obligated to put tips paid by credit card or cheque through 'Pay-As-You-Earn', which led to the employer using tips paid in this way to contribute towards its

[64] Albin, 'A Worker-Employer-Customer Triangle' (n 5) 193-196
[65] [1908] 1 KB 766
[66] Ibid at 769
[67] Ibid at 769-770
[68] *Wrottesley* (n 63)
[69] Ibid at 282-283
[70] Albin, 'A Worker-Employer-Customer Triangle' (n 5) 195
[71] *Nerva v RL & G Ltd* (n 63); *Nerva v United Kingdom* (n 63)

minimum wage obligations. The Court of Appeal and the European Court of Human Rights both held that, as these tips were paid into the employer's bank account, they became the property of the employer and as such could be used towards its minimum wage obligations. The *Nerva* decision was reflected in the National Minimum Wage Regulations 1999,[72] as, although tips paid in cash were still treated according to *Wrottesley* and could not be used by employers towards its minimum wage obligations, tips paid by credit card or cheque could.

In his dissenting judgement in *Nerva*, Lord Justice Aldous paid particular attention to customer intentions stating:

> 'tips given by the customer are not given to increase the bank account of the employers nor are they accepted upon that basis. The tips are given and accepted to be transferred to the tronc or dealt with along the same lines. The tips are not given to discharge any liability of the employers to pay a minimum wage. They are paid to the employers who act as the agent of the customer in their distribution. Thus, even though the property in the money may pass to the employers, their propriety right is that of an agent.'[73]

A change made to the law in 2009, which stated that employers could no longer 'top-up' wages with tips,[74] echoes Lord Justice Aldous' opinion. The National Minimum Wage Regulations 2015 maintained this position stating, 'payments paid by the employer to the worker representing amounts paid by customers by way of a service charge, tip, gratuity or cover charge' are excluded from contributing to minimum wages.[75] Although on the face of it this is a positive change, the law says nothing about scenarios where employers simply pay workers the minimum wage and keep all tips paid by credit card for itself.[76] In 2018 the Government committed to legislating to prevent employers deducting money from tips as it was recognised that the practice of employers keeping tips 'is contrary to basic fairness at

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[72] reg.31(1)(e), as originally enacted; S Williams et al, 'Remuneration Practices in the UK Hospitality Industry in the Age of the National Minimum Wage' (2004) 24 The Service Industries Journal 171, 182-183 <https://www.tandfonline.com/doi/abs/10.1080/0264206041233130119 2> Accessed 15.02.2021; Albin, 'A Worker-Employer-Customer Triangle' (n 5) 197-198

[73] *Nerva v RL & G Ltd* (n 63) at 24

[74] National Minimum Wage Regulations 1999, reg. 31(1)(e), as amended in 2009; Department for Business, Enterprise and Regulatory Reform, *The National Minimum Wage. Government response to consultation on: Service Charges, Tips, Gratuities and Cover Charges* (May 2009) 3, 7

[75] National Minimum Wage Regulations 2015, reg.10(m)

[76] H Collins et al, *Labour Law* (2nd edn, CUP 2019) 82

work' and is contrary to what a customer intends when they leave a tip.[77] Despite this commitment, there has been no such legislation and the practice of workers not receiving tips has continued.[78]

4.5 The Three-Party Employment Relationship

The significance of the law relating to tips is twofold: first, the precarious and unstable nature of employment in hospitality itself which is exacerbated by worker reliance on tips to supplement income; and second, the increased precariousness which is caused when a third party, in this case the customer, is brought into the employment relationship through the giving of a tip. Although seemingly two issues, both contribute to the worker's precarity.

Albin highlights the contrasting legislative approaches of the CWA and the NMWA in terms of customer tips and role of the customer as follows.

> '… [T]he NMW regulations diverged from the approach adopted in the Catering Wages Act, stating clearly that the employing function of paying minimum wages could be shared by customers… The policy of the 1990s signals a legal agreement that consumers share the employers' paying role, reflecting a conception, and an acceptance of that conception, that tip receivers are dependent on customers for their earnings.'[79]

In analysing the role of the customer in the employment relationship, Albin draws on Freedland's four employing functions, which are:

> '(1) engaging workers for employment and terminating their employment; (2) remunerating workers and providing them with other benefits of employment;

[77] HM Government, *Good Work Plan* (December 2018) 8, 20-22
[78] Unite the Union, *Carluccio's waiting staff pushed over tipping point, as governments fail to legislate* (October 2019) <https://unitetheunion.org/news-events/news/2019/october/carluccio-s-waiting-staff-pushed-over-tipping-point-as-government-s-fails-to-legislate/> Accessed 16.08.2020; N Christie, *Glasgow politicians urge bosses to return more than £5,000 in TRNSMT staff tips* (Glasgow Evening Times, July 2019) <https://www.glasgowtimes.co.uk/news/17787339.glasgow-politicians-urge-bosses-return-5-000-trnsmt-staff-tips/> Accessed 16.08.2020
[79] Albin, 'A Worker-Employer-Customer Triangle' (n 5) 198

(3) managing the employment relation and the process of work; and (4) using the worker's services in a process of production or service provision.'[80]

Where multiple parties are present in the employment relationship, the 'working functions of the worker and/or the employing functions of the employer are distributed among several people or entities.'[81]

The non-traditional employment relationships that are common in hospitality, such as ZHCs, place workers in an already precarious position due to their unstable nature. With the introduction of the customer into the employment relationship, there is further divergence from the traditional bilateral employment relationship upon which labour law is based.[82] Although customers may contribute to workers' income, and workers may rely on this contribution, the law does not see the customer as involved in the employment relationship itself. From a legal perspective the employer and the worker are the only parties in the employment relationship. Despite this, the customer's role is significant. Albin argues that, through giving tips, customers take on employing functions and as such are introduced into the employment relationship.[83]

Where the customer takes on employing functions they become another entity to whom the worker is accountable and has to satisfy as part of their employment. The well-known phrases 'the customer is always right' and 'service with a smile' can have the effect of altering worker behaviour to please customers.[84] This could be due to pressure from the employer to ensure a 'happy customer', but it can also be motivated by the assumption that if a customer has a good experience, they are more likely to leave a tip, or a more generous tip. In this case the worker becomes reliant on the customer for part of their income and, as a result, their loyalty in the employment relationship shifts from resting solely with the employer, to being split between the employer and the customer.[85]

[80] M Freedland, *The Personal Contract of Employment* (OUP 2003) 40
[81] Albin, 'A Worker-Employer-Customer Triangle' (n 5) 183
[82] Ibid 182
[83] Ibid 188-190
[84] E Albin, 'Customer Domination at Work: A New Paradigm for the Sexual Harassment of Employees by Customers' (2017) 24 Mich J Gender & L 167, 208
[85] Albin, 'A Worker-Employer-Customer Triangle' (n 5) 184

Customer influence on the employment relationship is not restricted to giving tips. A customer has the ability to affect an employer's opinion of a worker, and in an extreme case, could even play a part in a worker either keeping or losing their job. For example, a customer leaving a review online, or making a complaint, about their experience could influence a worker's employment.[86] A clear example of this can be seen on some gig-economy platforms, such as Uber, where customer ratings can have a significant impact on a driver's employment situation, because lower ratings can mean that a driver is no longer able to work on the platform.[87] Also, customer demand can affect working hours and work available, especially for those in precarious employment such as ZHCs, as where there is insufficient business there will be fewer hours available for workers.

The appearance and behaviour of a worker could also influence the hiring process. Research suggests those who are 'better' presented, for example well-dressed, outgoing and, in more extreme cases, people who are perceived to be better looking, are more likely to be offered a job by employers in hospitality.[88] The expectation that workers look or behave in certain ways can have a more sinister side. This can be seen when there is an expectation that workers appear 'sexy or good looking'[89] or adopt more flirtatious behaviours to satisfy customers and ensure good service.[90] This attitude is not new to work in hospitality – Eeckhout highlights that, in late nineteenth century Berlin, there was an expectation that barmaids should drink with customers.[91] This desire to ensure customer satisfaction can also limit employer response where a customer behaves inappropriately, and in extreme cases where there is racial, sexual or other forms of harassment.[92] This puts workers in a particularly vulnerable position as there may be a concern that reacting to harassment could affect the worker's job.[93] Albin uses the term 'customer domination at work' to describe the

[86] Ibid 189; Albin, 'Customer Domination at Work' (n 84) 208
[87] *Uber BV v Aslam* [2019] ICR 845; J Prassl, *Humans as a Service: The Promise and Perils of Work in the Gig Economy* (OUP 2018) 61-63
[88] C Warhurst and D Nickson, 'Employee Experience of Aesthetic Labour in Retail and Hospitality' (2007) 21 Work, Employment and Society 103, 111-115
[89] Albin, 'A Worker-Employer-Customer Triangle' (n 5) 189
[90] Ibid 184; Albin, 'Labour Law in a Service World' (2010) 73 MLR 959, 970
[91] Eeckhout (n 5) 353
[92] Y Guerrier and AS Adib, 'No, we Don't Provide that Service: The Harassment of Hotel Employees by Customers' (2000) 14 Work, Employment and Society 689; Albin, 'Customer Domination at Work' (n 84)
[93] For example, it was reported that a chambermaid who slapped a customer who sexually harassed her lost her job as a result: Guerrier and Adib (n 92) 698-699

power that customers have over the employment relationship and the lack of legal recourse for workers who experience sexual harassment from customers at work.[94]

It can be argued that the introduction of the NMW has alleviated some of the precariousness that reliance on customers created because tips are no longer the only source of worker income. Nevertheless, the importance placed on pleasing customers – and customer ability to influence employer opinion of workers – certainly brings an increased element of precarity into the employment relationship. To use hospitality workers employed on a ZHC as an example, the employment relationship itself is already precarious as work is likely unstable and unreliable. Where the worker is then also reliant on customers for a portion of their income, and their continued employment, the precariousness of their position significantly increases. Arguments developed in chapter two relating to the real living wage can be drawn upon here, as it was argued that the NMW is not sufficient to provide workers with a decent standard of living. Workers have reported being unable to use holiday entitlement as this would mean the loss of tips which would have been received during the period not working,[95] further demonstrating the significant role tips can have in a worker's income. Albin highlights a major problem with precarious work in labour law.

> 'In all its multilayered forms, precarious work challenges labour law, either due to the divergence of work patterns from the traditional model, or because of the low degree of protection provided to those in precarious employment, which hampers one of labour law's central goals – the provision of protection to workers.'[96]

The reliance on tips for income and the role of the customer in the employment relationship further exacerbates this for hospitality workers.

[94] Albin, 'Customer Domination at Work' (n 84) 202
[95] Wright and Pollert (n 61) 16
[96] Albin, 'A Worker-Employer-Customer Triangle' (n 5) 182-183

4.6 Conclusion

Approaches adopted by policy makers in the post-war period and today are vastly different in relation to protections specifically introduced for hospitality workers. The post-war years saw targeted legislative attention placed on catering workers. The introduction of the CWA, which provided for the establishment of catering wages boards and resulting wages regulation orders, saw workers provided with legally enforceable labour protections that had been collectively agreed. Today the majority of hospitality workers draw their employment protections from legislation applicable to all workers.

Work in hospitality is particularly precarious; the high usage of precarious employment arrangements such as ZHCs is intensified by a reliance on tips to supplement income and the role of the customer in the employment relationship. These aspects of work in hospitality make labour law's role in providing workers with adequate labour protections of crucial importance. Despite the existence of protections for hospitality workers in both periods, employer compliance with these protections has continued to be an issue, and is examined in more detail in chapter five.

Chapter Five
Employer Compliance with Employment Law

5.1 Introduction

Today, and in the post-war period, labour law has provided basic employment rights for the majority of workers in hospitality. However, the manner in which this has been organised in both time periods has been quite different. The Catering Wages Act 1943 (CWA), as administered by the Catering Wages Commission (the Commission) and the catering wages boards provided hospitality workers with employment protections. Although the CWA, and associated bodies, brought new focus and protection to hospitality and catering workers, some worker experiences did not reflect the primary aim of the CWA, to provide catering workers with minimum wages. Today, as discussed in previous chapters, labour law has established a basic statutory floor of rights for all workers. It is these rights hospitality workers rely on today for legal protection. Despite this, there are areas of the hospitality industry where worker experiences do not reflect the rights and protections contained in employment law.

Chapters two, three and four provide a legal and theoretical context for the focus in this chapter on worker experiences. This chapter builds on the analyses of the previous chapters, and examines the gap between the law and hospitality worker experiences in both periods to consider whether labour law has been effective in providing hospitality workers with decent terms and conditions of employment. The post-war analysis examines annual reports published by the Commission between 1944 and 1956, focussing on the wage regulating machinery that was put in place and whether this machinery was successful in establishing minimum wage rates for all catering workers.[1] Data published by the Ministry of Labour and

[1] Catering Wages Commission (CWC), *First Annual Report 1943-1944* (HM Stationary Office 1944); CWC, *Second Annual Report 1944-1945* (HM Stationary Office 1945); CWC, *Third Annual Report 1945-1946* (HM Stationary Office 1946); CWC, *Fourth Annual Report 1946-1947* (HM Stationary Office 1947); CWC, *Fifth Annual Report 1947-1948* (HM Stationary Office 1948); CWC, *Sixth Annual Report 1948-1949* (HM Stationary Office 1949); CWC, *Seventh Annual Report 1949-1950* (HM Stationary Office 1951); CWC, *Eighth Annual Report 1951* (HM Stationary Office 1952); CWC, *Ninth Annual Report 1952* (HM Stationary Office 1953); CWC, *Tenth Annual Report 1953* (HM Stationary Office 1954); CWC, *Eleventh Annual Report 1954* (HM Stationary Office 1955); CWC, *Twelfth Annual Report 1955* (HM Stationary Office 1956); CWC, *Thirteenth Annual Report 1956* (HM Stationary Office 1957)

National Service (MLNS) in annual reports relating to the inspection and enforcement of minimum wages between 1946 and 1958 is then discussed in order to examine the effectiveness of the regulatory machinery during that time.[2] The focus then turns to hospitality worker experiences of contemporary employment rights. As part of this analysis Government data and empirical studies are analysed to look specifically at employer compliance with the National Minimum Wage Act 1998 (NMWA) and the Working Time Regulations 1998 (WTR).[3]

5.2 The Catering Wages Act 1943

In the post-war years the catering industry had notably low levels of trade union membership and collective bargaining.[4] It was recognised that legal intervention was necessary for catering workers to access basic labour protections, and ensuring workers had access to these protections was the main intention behind the introduction of the CWA, which provided the industry with statutory wage regulating machinery.[5] Although the law was the instrument through which workers received labour protections, collective bargaining in determining wages was prioritised as can be seen from the tripartite membership of the Commission and the catering wages boards.[6] Five catering wages boards were established as a result of Commission recommendations: industrial and staff canteens; unlicensed non-residential

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[2] Ministry of Labour and National Service (MLNS), *Report for the Year 1947* (HM Stationary Office 1948); MLNS, *Report for the Year 1948* (HM Stationary Office 1949); MLNS, *Report for the Year 1949* (HM Stationary Office 1950); MLNS, *Report for the Year 1950* (HM Stationary Office 1951); MLNS, *Report for the Year 1951* (HM Stationary Office 1952); MLNS, *Report for the Year 1952* (HM Stationary Office 1953); MLNS, *Report for the Year 1953* (HM Stationary Office 1954); MLNS, *Report for the Year 1954* (HM Stationary Office 1955); MLNS, *Report for the Year 1955* (HM Stationary Office 1956); MLNS, *Report for the Year 1956* (HM Stationary Office 1957); MLNS, *Report for the Year 1957* (HM Stationary Office 1958); MLNS, *Report for the Year 1958* (HM Stationary Office 1959)

[3] Y Evans et al, *Making the City Work: Low Paid Employment in London* (Queen Mary University of London 2005); T Wright and A Pollert, *The experience of ethnic minority workers in the hotel and catering industry: Routes to support and advice on workplace problems*, (Acas 2006); G Kik et al, *How has the UK Restaurant sector been affected by the fissuring of the worker-employer relationship in the last 10 years?* (IFF Research, Director of Labour Market Enforcement, 2019); M López-Andreu et al, *How has the UK Hotels sector been affected by the fissuring of the worker-employer relationship in the last 10 years?* (University of Leicester, Keele University, Director of Labour Market Enforcement, 2019); D Metcalf, *United Kingdom Labour Market Enforcement Strategy 2018/19* (HM Government 2018); Department for Business, Energy & Industrial Strategy (DBEIS), *Employers named for NMW underpayment*, spreadsheet at <https://www.gov.uk/government/news/nearly-200-employers-named-and-shamed-for-underpaying-thousands-of-minimum-wage-workers> Accessed 26.08.2020

[4] AJF Wrottesley, 'The Catering Wages Act' (1952) 6 ILR 187, 187

[5] FJ Bayliss, *British Wages Councils* (Blackwell 1962) 48-50

[6] See chapter four discussion at 4.2

establishments; licensed hotels and licensed restaurants; unlicensed hotels and boarding houses (also referred to as unlicensed residential establishments); public houses and non-residential clubs.[7] As well as setting and regulating minimum wages, the boards also regulated other employment terms and conditions, such as holidays, working hours and breaks.[8]

Annual reports published by the Commission between 1944 and 1956 provide an overview of the work of the Commission and some of the successes of the wages boards. The reports also outline problems which occurred regarding the effective implementation of the primary aim of the CWA, to set minimum wages for catering workers. Although four of the five wages boards produced a wages regulation order by 1948, the unlicensed residential establishment board never produced an order.[9] In a report on the operation of the CWA in the hotel industry published in 1950, the Commission examined the activity of the unlicensed residential establishment board from 1946-1949, and highlighted the ineffective bargaining ability of the board and its resulting failure to produce a wages regulation order.[10] Following 1949 the board was never reconstituted.[11] The board's failure to regulate wages was repeatedly raised in the Commission's annual reports as problematic and was the main reason behind the Commission's eventual 'deadlock' in 1953.[12] This occurred because the Commission's powers did not extend to making recommendations that altered existing, or created new, boards where the workers to whom these boards would apply were already under the jurisdiction of an existing board.[13] This meant the Commission was unable to alter the boards and bring workers in the unlicensed residential sector under the jurisdiction of effective wage regulation, and that these workers went without minimum wage rates for the

[7] CWC, *Second Annual Report* (n 1) 2
[8] CWA, ss.6(3), 8
[9] CWC, *Sixth Annual Report* (n 1) 4
[10] CWC, *Report on an Inquiry into the Operation of the Catering Wages Act, 1943, in the Hotel Industry* (HM Stationary Office 1950) 13-17, 40-41
[11] HC Deb 9 July 1958, vol 591, cols 377-80
[12] CWC, *Fifth Annual Report* (n 1) 3; CWC, *Sixth Annual Report* (n 1) 4; CWC, *Seventh Annual Report* (n 1) 4; CWC, *Eighth Annual Report* (n 1) 3-4; CWC, *Ninth Annual Report* (n 1); CWC, *Tenth Annual Report* (n 1); CWC, *Eleventh Annual Report* (n 1); CWC, *Twelfth Annual Report* (n 1); CWC, *Thirteenth Annual Report* (n 1)
[13] CWC, *Ninth Annual Report* (n 1) 2-3

entire lifespan of the CWA,[14] which is particularly significant as they accounted for almost 13% of the catering industry.[15]

The other four boards successfully produced wages regulation orders establishing minimum wages and regulating other aspects of work for the majority of the catering industry.[16] The Wages Inspectorate investigated inquiries and complaints made regarding wages regulation orders, conducted 'routine inspections' of establishments and enforced minimum rates.[17] The resulting data was published by the MLNS in annual reports and provides a fuller picture of the inspection and enforcement of minimum rates between 1946 and 1958. Table 5.1 illustrates the range of data gathered annually.

[14] The CWA remained in force from 1943 until the introduction of the Terms and Conditions of Employment Act 1959, which saw the catering wages boards transformed into wages councils under the jurisdiction of that Act and the Wages Council Act 1945. The introduction of this legislation was partly motivated by the attempt to rectify the problems caused by the inability of the unlicensed residential establishment board to regulate wages and the inability of the Commission to respond to the problem. See: HC Deb 9 July 1958, vol 591, cols 377-80; Terms and Conditions of Employment Act 1959, s.1; O Kahn-Freund, 'Terms and Conditions of Employment Act, 1959' (1959) 22 MLR 408, 408

[15] Estimate determined using figures in; Catering Wages Commission, *Second Annual Report* (n 1) 10

[16] See for example: CWC, *Sixth Annual Report* (n 1) 4

[17] MLNS, *1949* (n 2) 121; MLNS, *1950* (n 2) 133; MLNS, *1951* (n 2) 129-130; MLNS, *1952* (n 2) 120; MLNS, *1953* (n 2) 114-115; MLNS, *1954* (n 2) 116-117; MLNS, *1955* (n 2) 117; MLNS, *1956* (n 2) 114; MLNS, *1957* (n 2) 101-102; MLNS, *1958* (n 2) 100-101

Table 5.1: Inspection and Enforcement of Wages Regulation Orders 1946-1952[18]

	1946[19]	**1947[20]**	**1948**	**1949**	**1950**	**1951**	**1952**
Number of establishments on lists at end of year	24,379	123,476	132,959	134,763	138,025	139,546	139,566
Number of complaints received	174	574	2,144	3,057	3,138	3,072	3,318
Number of inspections	5,538	22,899	25,965	22,312	11,663	11,926	13,062
Number of establishments by which arrears of remuneration (including holiday remuneration) were paid	662	3,496	6,048	5,706	2,957	2,777	3,341
Amount of arrears paid	£5,098	£25,240	£74,033	£105,864	£58,352	£44,546	£50,743
Number of workers whose wages were examined	25,008	94,468	145,398	124,134	63,213	59,909	68,620
Number of workers to whom arrears were paid	2,133	7,925	17,030	14,492	6,750	5,711	7,372

[18] Unless otherwise stated figures contained in the table reflect the inspection and enforcement of the wages regulation orders from; the Industrial and Staff Canteen Undertakings Wages Board, the Licensed Non-Residential Establishment Wages Board, the Unlicensed Place of Refreshment Wages Board, and the Licensed Residential Establishment and Licensed Restaurant Wages Board. Table created using data from: MLNS, *1947* (n 2) 138; MLNS, *1948* (n 2) 123; MLNS, *1949* (n 2) 121, 148; MLNS, *1950* (n 2) 133, 159; MLNS, *1951* (n 2) 129-130, 161; MLNS, *1952* (n 2) 120; MLNS, *1953* (n 2) 114-115, 147; MLNS, *1954* (n 2) 116-117, 149; MLNS, *1955* (n 2) 117, 146; MLNS, *1956* (n 2) 114, 148; MLNS, *1957* (n 2) 101-102, 135; MLNS *1958* (n 2) 100-101, 134

[19] Figures only reflect the inspection and enforcement of wages regulation orders from the Industrial and Staff Canteen Undertakings Wages Board: MLNS, *1947* (n 2) 138

[20] Figures only reflect the inspection and enforcement of wages regulation orders from; the Industrial and Staff Canteen Undertakings Wages Board, the Licensed Non-Residential Establishment Wages Board, and the Unlicensed Place of Refreshment Wages Board: MLNS, *1947* (n 2) 138

Table 5.1 continued…[21]

	1953	1954	1955	1956	1957	1958
Number of establishments on lists at end of year	138,776	136,404	134,695	132,610	130,804	129,004
Number of complaints received	4,400	3,990	3,951	3,677	3,625	3,451
Number of inspections	13,302	14,301	10,580	14,078	13,653	12,422
Number of establishments by which arrears of remuneration (including holiday remuneration) were paid	3,346	3,318	2,555	3,083	2,804	2,292
Amount of arrears paid	£47,375	£50,172	£38,704	£45,530	£41,534	£32,310
Number of workers whose wages were examined	70,677	75,897	57,708	77,286	78,221	70,182
Number of workers to whom arrears were paid	7,182	7,064	5,299	6,453	5,381	4,223

[21] See: n 18

This data demonstrates that, despite the minimum wages introduced, a substantial number of catering workers were paid below these rates. Between 1946 and 1958, although just 2.6% of all establishments under the jurisdiction of the four boards paid wages arrears, a significantly higher proportion (22.6%) of establishments inspected paid arrears. Further, 9.6% of workers whose wages were examined, were paid arrears from 1946-1958. This shows, although workers under the jurisdiction of the four boards were legally entitled to the minimum wages established, a substantial number continued to be paid below these minimum rates.

However, the significance of the Wages Inspectorate should be highlighted. An average of 14,746 inspections were conducted each year, representing an average of 11.7% of establishments under the jurisdiction of the four boards. Although a significant number of catering workers were paid wages below minimum rates, the Wages Inspectorate acted as an effective inspection and enforcement body, providing catering workers with an external regulatory body which worked to ensure wages were enforced. As Bayliss highlights, there was a significant decrease in the number of establishments that paid arrears and workers to whom arrears were paid from 1948-1949, and figures remained at roughly half of 1948-1949 numbers from 1950 onwards. Despite this significant decrease, the Inspectorate remained an important regulatory body due to the still high levels of workers experiencing breaches.[22]

The analysis of annual reports from both the Commission and the MLNS provide an overview of the general successes and failures of the CWA for catering workers. The failure of the unlicensed residential establishment board to provide minimum wages for workers within its jurisdiction left a significant minority of the catering industry without any minimum wages. Despite this, the remaining four catering wages boards established legally enforceable minimum wages for workers within their jurisdictions. The data contained in the MLNS reports demonstrates the extent to which the Wages Inspectorate inspected and enforced these minimum wages. Although there was a proportion of workers paid below these minimum rates, an effective regulatory body that conduced inspections and enforced minimum rates existed. This is particularly important for the catering industry as the low trade union membership levels meant trade unions were unlikely to act as a support and enforcing body for workers in a way they perhaps would have in other industries.

[22] Bayliss, *British Wages Councils* (n 5) 119

5.3 Contemporary Employment Rights

Today there is no statutory machinery similar to that introduced under the CWA to specifically support hospitality workers. Instead, legislation introduced since the late 1990s, such as the NMWA and the WTR, was intended to provide all workers with legally enforceable employment rights, and it these rights hospitality workers rely on today. These pieces of legislation introduced important protections for workers, however, the argument that the 'progressiveness [of the legislation] was tempered by cautiousness' can be seen through the notably low minimum wage introduced with the NMWA and the option to opt-out of the maximum working week contained in the WTR.[23]

The precarious nature of work and low trade union membership levels within hospitality means that many workers rely on their employer choosing to comply with employment law.[24] This section examines instances of employer non-compliance with protections contained in the NMWA and the WTR. Over the last two decades there have been a limited number of small-scale studies looking at various aspects of the employment relationship, employment practices, working conditions and employer non-compliance with the NMWA and WTR within the hospitality industry. There has been little large-scale research investigating employer non-compliance with employment rights within hospitality, and very little research dealing specifically with the efficacy of employment law. On the basis of studies examined, hypotheses can be developed about the nature of work in hospitality and employer compliance with employment law, but a more definite picture cannot be established without further investigation.[25]

When this Masters research project was embarked upon, it was planned that a number of qualitative interviews with hospitality workers in Glasgow would be conducted. The purpose of these planned interviews was to examine worker experiences of hospitality work and of employer compliance, or non-compliance, with employment law. Due to the Covid-19 pandemic and subsequent restrictions put in place in March 2020, this research was no longer

[23] P Davies and M Freedland, *Towards a Flexible Labour Market: Labour Legislation and Regulation since the 1990s* (OUP 2007) 46-50

[24] See chapters three and four for an examination of the precarity of employment relationships within hospitality and the difficulty this poses for many workers regarding access to employment rights.

[25] Evans et al (n 3); Wright and Pollert (n 3); Kik et al (n 3); López-Andreu et al (n 3); Metcalf (n 3); DBEIS (n 3)

viable. As an alternative, the following analysis draws primarily on existing research, including empirical studies based on interviews with hospitality workers,[26] and Government produced data relating to employer non-compliance with the NMWA.[27] The empirical studies were selected as a focus for this analysis because they met two criteria: first, they focussed on worker experiences and discussed employer non-compliance with employment law; and second, they were based on qualitative interviews with workers, including hospitality workers. The other literature drawn on in this section, including Government data, was selected to supplement the examination of employer non-compliance with employment law.

5.3.1 National Minimum Wage

The introduction of the NMWA established one of the most significant statutory rights for workers – the right to a minimum wage. Despite this legally enforceable right for all workers, evidence demonstrates that some workers experience employer non-compliance. Between 2013 and 2018 the Government 'named and shamed' 180 employers who paid their workers below the NMW.[28] Hospitality employers made up 24% of those identified. The majority of these hospitality employers were small businesses but there were also some larger businesses included in the list, such as the well-known restaurant and hotel chains Wagamama, TGI Fridays, Starbucks and Marriot.[29] Although hospitality employers only accounted for 24% of the businesses, they accounted for 42% of the total arrears owed by all businesses combined, indicating the extent of non-compliance was greater amongst hospitality employers compared to employers from other industries. Further, 62% of all workers identified as being paid below the NMW worked in hospitality, again demonstrating the extent of employer non-compliance within hospitality compared to other sections of the labour market.

[26] Evans et al (n 3); Wright and Pollert (n 3); Kik et al (n 3); López-Andreu et al (n 3)
[27] DBEIS (n 3); Metcalf (n 3)
[28] DBEIS (n 3)
[29] Ibid

Table 5.2: UK Hospitality Employers 'Named and Shamed' for Underpayment of the NMW[30]

	Total	**Hospitality**	**Percentage of total that are hospitality**
Employers	180	43	24%
Arrears owed by employer	£1,096,240	£460,459	42%
Workers paid below the NMW	9213	5726	62%

The Government's 'naming and shaming' data is certainly helpful in illustrating the level of non-compliance with the NMWA. However, other data suggests the issue is perhaps more widespread that the 43 hospitality employers identified by the Government. For example, data produced by Evans et al regarding underpayment of the NMW supports the above arguments regarding the high instance of employer non-compliance with the NMW within hospitality compared to other industries.[31] Evans et al interviewed 12 workers who reported being paid below the NMW, 10 of whom worked in the hospitality industry. Although these numbers are low, it is important to note that hospitality workers accounted for 17% of those interviewed, but 83% of those paid below the NMW. More recently, the Government's Labour Market Enforcement Strategy 2018-2019 highlighted that hospitality workers were at risk of exploitation and that 'many workers' within the industry were paid below the NMW.[32]

In common with Evans et al, a proportion of Wright and Pollert's interviewees indicated that they were paid below the NMW.[33] Of the 50 interviewees, roughly 40% were either paid below the NMW or were paid a 'flat rate', either for an individual shift or for a week, which

[30] Table 1 created using figures from: Ibid
[31] Evans et al focussed on low paid workers in London, most of whom experienced low wages and poor working conditions and were described as 'London's 'working poor'.' The data was gathered during 341 interviews with workers across London's low paid sectors. Of the 341 interviewees, 58 worked in the hotel and hospitality sector in a variety of roles. See: Evans et al (n 3) 6, 8
[32] Metcalf (n 3) 15, 73-74
[33] Wright and Pollert's examination of the experience of ethnic minority workers focussed on the hotel and catering sector. The research explored: working conditions; worker experience of problems in the workplace and worker perception of these problems; worker awareness of employment rights; worker attempts to enforce employment rights; and worker knowledge and use of outside bodies that offer advice and support regarding problems at work. The data produced was based on 50 qualitative interviews with ethnic minority workers in the hotel and catering industry. See: Wright and Pollert (n 3) 7, 11

for several of the respondents had the effect of bringing wages below the NMW. For example, one interviewee described being paid a flat rate of £200 for a 50-60 hour working week, meaning they earned approximately £50-£100 less per week than entitled to under the NMW.[34] Further examples can be drawn on from Wright and Pollert's data to demonstrate the difference some workers experienced between what they were paid compared to entitlements under the NMWA. One interviewee described earning just £70 for a 26-30 hour working week, with their employer paying other workers just £200 for a 70-80 hour working week. The two tables below highlight the difference between these wages and the NMW.

Table 5.3: Estimated difference between wage and NMW[35]

Hours per week	Pay per hour	Level of underpayment according to the NMW (per hour)	Level of underpayment according to the NMW (per week)
26	£2.69	£2.36	£61.30
30	£2.33	£2.72	£81.50

Table 5.4: Estimated difference between wage and NMW[36]

Hours per week	Pay per hour	Level of underpayment according to the NMW (per hour)	Level of underpayment according to the NMW (per week)
70	£2.85	£2.20	£153.50
80	£2.50	£2.55	£204.00

These tables demonstrate some workers received roughly half of what they were entitled to under the NMW. The authors highlight that, of the workers interviewed who were paid below the NMW, most were employed on an informal basis and received 'cash-in-hand'.[37] Despite this, these workers were still entitled to the NMW and as such their employer was breaching its minimum wage obligations.

[34] Wright and Pollert mention NMW rates for both 2004 and 2005. The estimate figures were arrived at using the NMW for those over 22 in 2005 which was £5.05 per hour. See: Wright and Pollert (n 3) 14-15
[35] Ibid
[36] Ibid
[37] Ibid 15

Evans et al stated that workers being "paid per cleaned room" was the main reason why hospitality workers interviewed were paid below the NMW.[38] The National Minimum Wage Regulations 2015 (NMWR) state that, in determining its minimum wage obligations, an employer can measure 'output work'.[39] This means employers can calculate an average hourly output rate, based on tests laid out in the Regulations,[40] which becomes the rate according to which its workers are paid for tasks they perform. This makes unclear the assumption that where a worker is paid per clean room, which consequently brings their wage below the NMW according to the number of hours worked, the employer is breaching its obligations under the NMWA. This issue is also highlighted by López-Andreu et al as one of the reasons why workers were paid below the NMW in relation to hours worked.[41] Further, López-Andreu et al highlighted employers expecting a certain number of rooms cleaned during a shift was one of the reasons workers experienced unpaid overtime. One worker described being told that it was their fault it took longer to clean the rooms than the time assigned, while another said that whether or not they were paid for the extra time was dependant on the manager's mood.[42]

The most prominent issue relating to wages identified by Kik et al was workers reporting not being paid for all hours worked.[43] Although in this situation a worker's pay will not always fall below the NMW, where the rate of pay is the NMW (or close to the NMW) an effect can be that overall pay falls below the NMW.[44] Kik et al reported that unpaid overtime varied, ranging from 15 minutes to several hours. Reasons for this included technical issues, employers not having clock-in systems and workers being required to set up before, or clean

[38] Evans et al (n 3) 24
[39] NMWR 2015, regs.17, 36-43
[40] NMWR 2015, regs.41-43
[41] López-Andreu et al (n 3) 27, 31-32. In 2019 López-Andreu et al published research on the effect of the fissuring of the employment relationship on the hotel sector. The research involved 32 qualitative interviews with hotel workers which explored worker awareness of employment rights and experiences of employer compliance or non-compliance with employment rights. López-Andreu et al conducted wider research but it is the use of qualitative interview data that the current analysis predominately draws on. See: Lopez-Andreu et al (n3) 11
[42] Ibid 27-28
[43] Kik et al (n 3) 47. Kik et al addressed the question; 'How has the UK Restaurant sector been affected by the fissuring of the worker-employer relationship in the last 10 years?' The researchers conducted 32 qualitative interviews with restaurant workers. Data collected from worker interviews examined; worker experiences of employer non-compliance with employment law, worker awareness of their rights and worker responses to raising issues with their employer. Kik et al conducted wider research but it is the use of qualitative interview data that the current analysis predominately draws on. See: Kik et al (n 3) 11, 45-58
[44] López-Andreu et al (n 3) 37

up after, a shift but not being paid for this extra time.[45] Kik et al highlight the serious impact not being paid for all hours worked had on interviewees:

> 'One individual was upset as she'd been unable to get her children any Christmas presents and noted that she'd had to borrow money from her father to manage. Others struggled to pay their bills, or to cover their living costs more generally. Often their pay was low, and therefore small discrepancies in what they received could have serious consequences on their already tight budgets.'[46]

Kik et al also noted that some workers were paid below the NMW because employers informed workers they were not entitled to the NMW.[47] For example, some workers reported being told that because they were paid cash-in-hand they were not entitled to the NMW, while others were told their tips would bring their pay up to the NMW and as such their employer paying them a lower rate was appropriate.[48] Workers also reported being unaware this was false and, as a result, carried on working for that employer while it was breaching its minimum wage obligations.[49]

Another way in which employers paid workers below the NMW noted by Kik et al was where workers employed on an annual salary worked hours that brought their overall pay below the NMW.[50] The experiences of two chefs illustrate this. The first was contracted to work 55 hours per week on an annual salary of £21,000. Their employer also wanted them to work an extra 10-15 hours per week without extra pay.[51] Table 5.5 demonstrates the difference between this chef's salary and their entitlements under the NMW. The second chef was employed on a salary of £22,000 and worked an average of 80-90 hours per week in 2015.[52] Table 5.6 shows the difference between this chef's salary and what they were entitled to under the NMW.

[45] Kik et al (n 3) 47-48
[46] Ibid 48
[47] Ibid 51
[48] See chapter four at 4.4 for discussion of the law and tips.
[49] Ibid 52
[50] Ibid 51
[51] Ibid 51-52
[52] Ibid 52

Table 5.5: Estimated difference between wage and NMW[53]

Hours per week	Pay per hour	Level of underpayment according to the NMW (per hour)	Level of underpayment according to the NMW (annually)
55	£7.34	£0.49	£1,393.80
65	£6.21	£1.62	£5,465.40
70	£5.77	£2.06	£7,501.20

Table 5.6: Estimated difference between wage and NMW[54]

Hours per week	Pay per hour	Level of underpayment according to the NMW (per hour)	Level of underpayment according to the NMW (annually)
80	£5.29	£1.41	£5,872
90	£4.70	£2.00	£9,356

The above tables demonstrate the significant difference between what these workers were paid and what they were entitled to under the NMW. While a salary of £21,000 or £22,000 on the surface seems like a good wage, particularly for a traditionally lower-paid job, upon close examination non-compliance with the NMW becomes apparent.

The Living Wage Foundation has argued that the NMW is insufficient to provide workers with an appropriate income to meet the costs of living.[55] This indicates that increased financial pressure can be placed on workers where wages fall below the NMW, even if it is only slightly below. This is particularly true where the gap between the NMW and a wage earned is as significant as some of the examples above.

[53] Estimates arrived at using the NMW applicable to the chef when interviewed (£7.83): Ibid 9
[54] Estimates arrived at using the NMW applicable from 15th October 2015 (£6.70): National Minimum Wage (Amendment) Regulations 2015, reg.2(a)
[55] Living Wage Foundation, *What is the Real Living Wage?* <https://www.livingwage.org.uk/what-real-living-wage> Accessed 02.12.2020

5.3.2 Working Time Regulations

Three protections contained in the WTR are particularly relevant to the current analysis; the 48-hour working week, the 11-hour rest period workers are entitled to between shifts, and the 20-minute break workers are entitled to during shifts lasting over six hours.[56] As was discussed in previous chapters, although the WTR set a maximum working week, the Regulations include an opt-out clause, meaning that, so long as workers have signed an opt-out agreement, the weekly limit does not apply. There is no opt-out option for protections relating to rest breaks in work and between shifts.

The effects long working hours have on workers can be significant. Both Wright and Pollert and Kik et al highlight the long working hours interviewees experienced. Wright and Pollert state that very few of the full-time workers interviewed worked less than 40 hours per week, with 50-60 hours a week standard for many, and some working as many as 70-80 hours a week.[57] Kik et al also note the long working hours within the industry, with one interviewee reporting 70-hour working weeks during busy periods without any extra pay, another reporting 80-90 hour working weeks, and industry stakeholders indicating that working hours could be as high as 100 per week.[58] While these working weeks will likely not be contrary to employment law as it can be assumed that the workers will have signed an agreement in which they opted-out of the 48-hour working week, the effect that these long hours can have on workers should be noted. Three Worker testimonies from Wright and Pollert highlight the effect long working hours can have on workers' mental and physical health:

> 'My life here is only working and sleeping… Nowadays I don't feel as if I have any feelings any more.'[59]

> 'After working for the whole day, my legs and feet are in terrible pain. However, we have to cope with it. If you can't do it someone else would soon step in to take your place. The employers don't have any problems hiring workers here.'[60]

[56] WTR, regs.4-5, 10, 12
[57] Wright and Pollert (n 3) 15, 17-18
[58] Kik et al (n 3) 31, 47, 52
[59] Wright and Pollert (n 3) 18
[60] Ibid

> ‘Another thing is the physical strain – I feel tired all the time. I think because of the long hour shifts… We don’t have a decent life here. We just live for work.’[61]

Further, a worker interviewed by Wright and Pollert described employer expectation they were available ‘24/7’, and the expectation that they would be available when called upon at short notice.[62] The lack of job security means that many workers in this situation feel unable to refuse their employer when called to work. Here, a connection can be made to the argument presented in chapter three regarding the ‘on-call’ nature of zero-hour contract (ZHC) work.

Employer non-compliance with the 11-hour rest period between shifts was raised by López-Andreu et al as an issue for some workers. One worker described finishing work at 11pm-12am and being required to start work again at 6am – roughly half of the rest period they were legally entitled to. This worker also described feeling ‘afraid’ of the manager and not being ‘allowed’ to complain.[63] Further, although the WTR stipulate workers are entitled to a break during shifts lasting longer than six hours, Kik et al describe workers not receiving breaks they are entitled to as ‘standard practice’ in the restaurant sector.[64] Similarly, López-Andreu et al describe this as ‘usual practice’ in the hotel sector.[65] Several workers interviewed by Kik et al described feeling pressured to not take breaks, despite being entitled to one, and describe an acceptance among workers that not receiving a break was part of ‘the nature of the job.’[66] One worker described working 12-14 hour shifts without a break, another described working a 17 hour shift with only a 10 minute break, and another described feeling afraid that if they raised an issue regarding breaks they would lose their job.[67] López-Andreu et al also report that some interviewees stated that managers lied to workers regarding break entitlements and that others were unable to take breaks due to a lack of cover.[68]

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[61] Ibid 31
[62] Ibid
[63] López-Andreu et al (n 3) 33
[64] Kik et al (n 3) 45
[65] López-Andreu et al (n 3) 32
[66] Kik et al (n 3) 45-47
[67] Ibid
[68] López-Andreu et al (n 3) 32-33

Kik et al argue that, as worker experience of employer non-compliance with breaks occurred across a range of employers, from smaller to larger businesses and from cafés to bars to catering businesses, workers not receiving breaks was primarily due to a culture in the industry as a whole, instead of a problem concentrated to individual employers.[69] This argument is strengthened by the research by López-Andreu et al as workers not receiving breaks was also described as the norm in the hotel sector.

5.3.3 Possible Explanations for Employer Non-Compliance

The studies and Government data examined above in relation to employer non-compliance with contemporary employment rights cannot provide a comprehensive and definite picture of practices in the hospitality industry as a whole, but they do help to indicate non-compliance has been an ongoing issue across the industry for a significant period. Wright and Pollert, Kik et al and López-Andreu et al offer explanations for why these instances of non-compliance occur, and why workers do not challenge breaches.

Wright and Pollert focussed on experiences of ethnic minority workers in the industry and highlight four primary issues specific to migrant and ethnic minority workers which can increase their experience, or the severity of their experience, of non-compliance; immigration status, informal work, discrimination, and workers accepting poor conditions due to low expectations.[70] The high percentage of migrant, female and young workers is also pointed to by Kik et al and López-Andreu et al as issues relating to non-compliance.[71]

Kik et al highlighted the 'widespread' use of ZHCs as a 'key driver' of non-compliant practices.[72] López-Andreu et al also pointed to outsourcing, agency work and other precarious forms of employment, including ZHCs, as contributing to an environment where non-compliant practices can emerge as workers find it harder to understand their rights as

[69] Kik et al (n 3) 47
[70] Wright and Pollert (n 3) 48
[71] Kik et al (n 3) 60; López-Andreu et al (n 3) 39
[72] Kik et al (n 3) 60

well as employers taking advantage of the 'legal ambiguity' of these employment relationships.[73]

Wright and Pollert, Kik et al and López-Andreu et al all also argue that fear plays a part in many hospitality workplaces. All three studies describe workers feeling afraid of losing their job if they were unable to work or if they raised issues regarding working conditions or employment rights. López-Andreu et al describe these fears as significant, and even as one of the defining characteristics of the employment relationship within the industry.[74]

Another explanation offered by all three studies is low trade union and collective bargaining levels within the industry.[75] Wright and Pollert highlighted low trade union presence acted as a 'deterrent' for workers raising issues as there was not a clear body for workers to turn to for support and advice.[76] Further, López-Andreu et al argued that it 'exacerbated the individualization of the employment relationship', made it difficult for workers to enforce employment rights and contributed to workers' reluctance and feelings of fear regarding challenging employers.[77]

Kik et al highlight that employers see a 'low risk associated with non-compliance'.[78] López-Andreu et al also point to the low levels of enforcement and punishment for non-compliance and state this 'reinforces violation since employers see no deterrent to their actions and are therefore rather relaxed about obeying the rules.'[79] López-Andreu et al argue for the need to increase worker awareness of employment rights, increase enforcement and advocated for a labour inspectorate with a larger role in tackling non-compliant practices, as the authors found that, in their sample, breaches of employment rights were 'widespread'.[80]

[73] López-Andreu et al (n 3) 37-38
[74] Wright and Pollert (n 3) 18, 21; Kik et al (n 3) 47; López-Andreu et al (n 3) 27, 31-32, 35, 38
[75] Wright and Pollert (n 3) 51; Kik et al (n 3) 60; López-Andreu et al (n 3) 38
[76] Wright and Pollert (n 3) 51
[77] López-Andreu et al (n 3) 38
[78] Kik et al (n 3) 60
[79] López-Andreu et al (n 3) 38
[80] Ibid 39

5.4 Conclusion

The lack of an effective regulatory body is the primary difference between the post-war period and today. As can be seen from the previous three chapters, in both periods there is: legislation which is intended to provide workers with basic employment rights and protections; low trade union membership levels within the industry; and, as this chapter demonstrates, employer breaches of legal obligations owed to workers under employment law. The post-war period, for the majority of hospitality workers, however, had an effective regulatory body that inspected employers to ensure compliance with wages regulation orders, and where needed, enforce these orders. Today there is not the same effective regulatory and enforcement body for hospitality workers. Although the Government 'named and shamed' employers for underpayment of the NMW, it is hard to believe that in five years only 43 hospitality employers paid their workers below the NMW, especially upon examination of other literature, in particular the empirical studies which all interviewed workers paid below the NMW. Also, the stark comparison between figures produced by the Wages Inspectorate each year during the post-war period and figures produced today highlights the lack of an effective regulatory body for hospitality workers today. Today, employment law provides workers with basic employment rights, however, for these to be protective for all workers there needs to be adequate machinery in place to ensure compliance. It is suggested that for labour law today to effectively provide hospitality workers with decent terms and conditions of employment, collective support and effective enforcement of employment law is needed.

Chapter Six
Conclusion

This thesis examined the effectiveness of post-war and contemporary labour law in providing hospitality workers with decent terms and conditions of employment. Chapter two considered the manner in which labour law was organised in the two periods; in the post-war years collective organisation and bargaining were the primary regulators of labour relations, while today there has been an increased individualisation of labour law. Chapter three built on this, focussing on the precarious forms of employment that are prevalent in the sector today, specifically zero-hours contracts (ZHCs), arguing that these employment relationships can mean workers find it difficult to access employment rights. Chapter four drew on chapters two and three, examining labour law in the two time periods specifically in relation to hospitality workers. It argued that the nature of work in hospitality (the influence of the customer in the employment relationship and the reliance on tips) exacerbated the already precarious nature of many hospitality workers' employment relationships. Chapter five moved on to explore employer compliance with employment law in both periods and worker experiences of employment rights.

In recent years it has been argued by the Institute of Employment Rights that sectoral collective bargaining, similar to the wages councils (or the Joint Industrial Councils of other industries), should be re-established and 'Sectoral Employment Commissions' introduced to "promote collective bargaining and to regulate minimum terms and conditions within specific industry sectors".[1] The intention here is to shift regulation of the labour market "from legislation to collective bargaining",[2] which could see rules better enforced and bring justice into the workplace.[3] In its 2017 and 2019 election Manifestos the Labour Party set out proposals to reintroduce sectoral collective bargaining, stating in 2019 that

[1] KD Ewing et al, *A Manifesto for Labour Law: towards a comprehensive revision of workers' rights* (The Institute of Employment Rights 2016) 20
[2] Ibid 24
[3] Ibid chapters 2 and 3

> "[o]nly by shifting the balance of power back towards workers will we achieve decent wages, security and dignity at work… Sectoral collective bargaining will increase wages and reduce inequality."[4]

In line with these arguments and proposals, this thesis concludes that the catering wages boards of the post-war years were more effective in ensuring compliance with employment laws for hospitality workers, and in involving workers, through the bargaining machinery established by the boards, in the setting of standards. While the majority of hospitality workers today are entitled to employment rights contained in legislation, employer compliance with these rights is a major problem, as demonstrated in chapter five. The findings of chapters two to five suggest that a model similar to the catering wages boards of the post-war years could ensure workers are not only entitled to employment rights, but also have the power to bargain for better terms and conditions of employment, and importantly, that they experience rights entitled to.

Hospitality workers had access to legally enforceable employment rights in both periods, through the catering wages boards and wages regulation orders in the post-war years, and through individual employment rights, such as the national minimum wage (NMW), today. However, as was shown in chapter three, there has been an increase in precarious forms of employment, such as ZHCs, over the last two decades. Precarious employment relationships not only put workers in an unstable and unreliable position regarding working pattern and income, but they also introduce questions regarding workers' entitlements to employment rights.

As chapter three demonstrated, today there are several employment rights reserved only for those able to demonstrate 'employee' status, disqualifying those who do not meet the tests for these protections. The nature of a ZHC means that workers are unable to satisfy these tests (as there is no commitment from the employer to provide any future work), and so will not be able to access these protections. Further, 'ZHCs' are sometimes used by employers when the reality of the employment relationship is not one of a 'zero-hours' arrangement, as was the case in *Pulse Healthcare Ltd v Carewatch Care Services Ltd*,[5] discussed in chapter three.

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[4] The Labour Party, *It's Time for Real Change: The Labour Party Manifesto 2019* (Manifesto 2019) 60-61. See also: The Labour Party, *For the Many, Not the Few* (Manifesto 2017) 47

[5] [2012] UKEAT/0123/12/BA

Where this happens, workers are disqualified from employment rights which, based on the reality of their employment relationship, they should be entitled to. Employers categorising workers under the wrong employment status also impacts worker access to employment rights. For example, in *Uber BV v Aslam*[6] and *Autoclenz v Belcher,*[7] also discussed in chapter three, the employers stated that the workers were self-employed, meaning they were placed outside the scope of labour legislation. In both examples, workers will not receive employment rights they are legally entitled to unless their financial and social situation enables them to challenge their employer, an unrealistic prospect for many workers. This means, for many ZHC and precarious workers today, labour law is not effective in providing them with decent terms and conditions of employment.

Further, chapter four found that the nature of work in hospitality itself has traditionally been unstable and unreliable due to the high reliance on customers for work, customer tips for income and the role played by the customer in the employment relationship. Today, although the existence of the NMW means workers are perhaps not as financially reliant on customers as they historically have been, the role of the customer is still significant. These factors exacerbate the precarity of already precarious employment relationships, such as ZHCs, which are widely utilised within the industry.

Chapter five demonstrated that employer non-compliance with employment law has been a problem in both periods. In the post-war years this took the form of employer non-compliance with wages regulation orders, while today it can take the form of employer non-compliance with any aspect of employment law. Chapter five specifically focussed on underpayment of the NMW and non-compliance with aspects of the Working Time Regulations. Government data analysed in relation to the post-war years showed a significantly higher level of inspection and enforcement of wages regulation orders than can be seen from Government data analysed in relation to underpayment of the NMW today. For example, in the post war years (from 1946-1958) data showed that the average number of hospitality employers, per year, who paid workers arrears due to underpayment of the minimum wage (or holiday pay) was 3260. This can be compared to the 43 hospitality employers who were identified by the Government, in total, from 2013-2018 for

[6] [2019] ICR 845
[7] [2011] ICR 1157

underpayment of the NMW. This reflects 1.3% of the post-war's average annual figure of employers who paid wages arrears to workers. However, other research discussed in chapter five points to a higher instance of NMW underpayment, suggesting that Government figures today are inaccurate, and indicating that enforcement of employment law is a major issue in labour law today. This, along with the analyses of the previous three chapters, supports the conclusion that the catering wages boards of the post-war years were more effective in ensuring compliance with employment laws, and were therefore more capable of providing hospitality workers with decent terms and conditions of employment.

In analyses of the effectiveness of labour law in providing hospitality workers with employment rights, worker experiences and employer compliance must be considered. Employment law has the potential to provide workers with good terms and conditions of employment as well as the potential to address the inherent power imbalance present in the employment relationship, something not achieved for many hospitality workers today. To ensure all hospitality workers today are provided with decent terms and conditions of employment perhaps a model similar to the catering wages boards should be adopted by the Government, as was proposed by the Labour Party in the 2017 and 2019 elections.

Bibliography

Books

Bayliss FJ, *British Wages Councils* (Blackwell 1962)

Collins H et al, *Labour Law* (CUP 2012)

Collins H et al, *Labour Law* (2nd edn, CUP 2019)

Davis ACL, *Perspectives on Labour Law* (CUP 2004)

Davies P and Freedland M, *Kahn-Freund's Labour and the Law* (3rd edn, Stevens & Sons 1983)

Davies P and Freedland M, *Labour Legislation and Public Policy* (Clarendon 1993)

Davies P and Freedland M*, Towards a Flexible Labour Market: Labour Legislation and Regulation since the 1990s* (OUP 2007)

Deakin S and Morris G, *Labour Law* (6th edn, Hart 2012)

Deakin S and Wilkinson F, *The Law of the Labour Market: Industrialization, Employment and Legal Evolution* (OUP 2005)

Dickens L, *Making Employment Rights Effective: Issues of Enforcement and Compliance* (Hart 2012)

Dukes R*, The Labour Constitution: The Enduring Idea of Labour Law* (OUP 2014)

Freedland M, *The Personal Contract of Employment* (OUP 2003)

Prassl J, *Humans as a Service: The Promise and Perils of Work in the Gig Economy* (OUP 2018)

Toynbee P, *Hard Work: Life in Low-Pay Britain* (Bloomsbury 2003)

Chapters in Edited Works

Collins H, 'Is There a Third Way in Labour Law?' in J Conaghan et al (eds), *Labour Law in an Era of Globalization: Transformative Practices and Possibilities* (OUP 2004)

Davies ACL, ‘‘Half a Person’ A Legal Perspective on Organizing and Representing ‘Non-Standard’ Workers’, in A Bogg and T Novitz (eds), *Voices at Work: Continuity and Change in the Common Law World* (OUP 2014)

Kahn-Freund O, ‘Legal Framework’ in A Flanders and HA Clegg (eds), *The System of Industrial Relations in Great Britain: Its History, Law and Institutions* (Blackwell 1954)

Kahn-Freund O, ‘Labour Law’ in M Ginsberg (ed), *Law and Opinion in England in the 20th Century* (Stevens & Sons 1959)

Kenner J, ‘Inverting the Flexicurity Paradigm: The United Kingdom and Zero Hours Contracts’ in E Ales et al (eds), *Core and Contingent Work in the European Union: A Comparative Analysis* (Hart 2017)

McKay S and Moore S, ‘Collective Labour Law Explored’ in A Ludlow and A Blackham (eds), *New Frontiers in Empirical Labour Law Research* (Hart 2015)

Morris G, ‘The Development of Statutory Employment Rights in Britain and Enforcement Mechanisms’ in Dickens L (ed), *Making Employment Rights Effective: Issues of Enforcement and Compliance* (Hart 2012)

Partington S, ‘Hospitality Employment’ in C Lashley (ed), *The Routledge Handbook of Hospitality Studies* (Routledge 2016)

Journal Articles

Albin E, ‘Labour Law in a Service World’ (2010) 73 MLR 959

Albin E, ‘A Worker-Employer-Customer Triangle: The Case of Tips’ (2011) 40 ILJ 181

Albin E, ‘Customer Domination at Work: A New Paradigm for the Sexual Harassment of Employees by Customers’ (2017) 24 Mich J Gender & L 167

Barnard C et al, ‘Opting Out of the 48-Hour Week: Employer Necessity or Individual Choice? An Empirical Study of the Operation of Article 18(1)(b) of the Working Time Directive in the UK’ (2003) 32 ILJ 223

Bayliss FJ, ‘British Wages Councils and Full Employment’ (1959) 80 Int’lLabRev 410

W Brown et al, ‘The Employment Contract: From Collective Procedures to Individual Rights’ (2000) 38 BJIR 611

Collins H, ‘Against Abstentionism in Labour Law’, *Oxford Essays in Jurisprudence* (OUP 1987)

Collins H, 'The Productive Disintegration of Labour Law' (1997) 26 ILJ 295

Collins H, ‘Employment Rights of Casual Workers’ (2000) 29 ILJ 73

Davies ACL, 'The Contract for Intermittent Employment' (2007) 36 ILJ 102

Davies ACL, ‘Getting More than You Bargained for? Rethinking the Meaning of ‘Work’ in Employment Law’ (2017) 46 ILJ 477

Eeckhout P, ‘Waiters, Waitresses, and their Tips in Western Europe before World War I’ (2015) 60 IRSH 349 <https://www.cambridge.org/core/journals/international-review-of-social-history/article/waiters-waitresses-and-their-tips-in-western-europe-before-world-war-i/4DD8000692B6373705C52B94156F8D44> Accessed 15.02.2021

Farina E et al, 'Zero Hours Contracts and their Growth' (2019) 58 BJIR 508

Guerrier Y and Adib AS, ‘No, we Don't Provide that Service: The Harassment of Hotel Employees by Customers’ (2000) 14 Work, Employment and Society 689

Hepple B and Morris G, ‘The Employment Act 2002 and the Crisis of Individual Employment Rights’ (2002) 31 ILJ 245

Kahn-Freund O, ‘Minimum wage legislation in Great Britain’ (1949) 97 UPaLRev 779

Kahn-Freund O, ‘Terms and Conditions of Employment Act, 1959’ (1959) 22 MLR 408

Koumenta M and Williams M, 'An Anatomy of Zero-Hour Contracts in the UK' (2019) 50 IRJ 20

A Pollert, 'The Unorganised Worker: The Decline in Collectivism and New Hurdles to Individual Employment Rights' (2005) 34 ILJ 217

Walmsley A et al, ‘Reactions to the National Living Wage in Hospitality’ (2019) 41 ER 253 <https://www.emerald.com/insight/publication/issn/0142-5455> Accessed 13.02.2021

C Warhurst and D Nickson, ‘Employee Experience of Aesthetic Labour in Retail and Hospitality’ (2007) 21 Work, Employment and Society 103

Williams S et al, ‘Remuneration Practices in the UK Hospitality Industry in the Age of the National Minimum Wage’ (2004) 24 The Service Industries Journal 171, 182-183

<https://www.tandfonline.com/doi/abs/10.1080/02642060412331301192> Accessed 15.02.2021

Wrottesley AJF, 'The Catering Wages Act' (1952) 6 ILR 187

Reports and Other Publications

Adams Z and S Deakin, *'Re-Regulating Zero Hours Contracts'* (Institute of Employment Rights 2014)

Catering Wages Commission (CWC), *First Annual Report 1943-1944* (HM Stationary Office 1944)
Second Annual Report 1944-1945 (HM Stationary Office 1945)

CWC, *Third Annual Report 1945-1946* (HM Stationary Office 1946)

CWC, *Fourth Annual Report 1946-1947* (HM Stationary Office 1947)

CWC, *Fifth Annual Report 1947-1948* (HM Stationary Office 1948)

CWC, *Sixth Annual Report 1948-1949* (HM Stationary Office 1949)

CWC, *Report on an Inquiry into the Operation of the Catering Wages Act, 1943, in the Hotel Industry* (HM Stationary Office 1950)

CWC, *Seventh Annual Report 1949-1950* (HM Stationary Office 1951)

CWC, *Eighth Annual Report 1951* (HM Stationary Office 1952)

CWC, *Ninth Annual Report 1952* (HM Stationary Office 1953)

CWC, *Tenth Annual Report 1953* (HM Stationary Office 1954)

CWC, *Eleventh Annual Report 1954* (HM Stationary Office 1955)

CWC, *Twelfth Annual Report 1955* (HM Stationary Office 1956)

CWC, *Thirteenth Annual Report 1956* (HM Stationary Office (1957)

Chartered Institute of Personnel and Development (CIPD), *Zero-hours contracts: Myth and reality* (2013)

CIPD, *Zero-hours and short-hours contracts in the UK: Employer and employee perspectives* (Policy report 2015)

CIDP and Lewis Silkin, *Zero-hours Contracts: Understanding the Law* (2019)

Citizens Advice, *How can job security exist in the modern world of work?* (January 2017)

Department for Business, Energy and Industrial Strategy (DBEIS), *Trade union membership 2019: statistical bulletin* (2020)

DBEIS, *Trade union membership 2019: tables* (2020)

Department for Business, Enterprise and Regulatory Reform, *The National Minimum Wage. Government response to consultation on: Service Charges, Tips, Gratuities and Cover Charges* (May 2009)

Department of Trade and Industry, *Fairness at Work* (White Paper, Cm 3968, 1998)

Evans Y et al, *Making the City Work: Low Paid Employment in London* (Queen Mary University of London 2005)

Ewing KD et al, *A Manifesto for Labour Law: towards a comprehensive revision of workers' rights* (The Institute of Employment Rights 2016)

HC Deb 9 July 1958, vol 591, cols 377-80

HM Government, *Good Work Plan* (December 2018)

Ignite Economics, *The Economic Contribution of the UK Hospitality Industry* (UK Hospitality 2018)

Incomes Data Research, *Minimum and zero hours contracts and low-paid staff* (October 2018)

Kik et al, *How has the UK Restaurant sector been affected by the fissuring of the worker-employer relationship in the last 10 years?* (IFF Research, Director of Labour Market Enforcement 2019)

Labour Party, *Let us Face the Future* (Manifesto 1945)

Labour Party, *For the Many, Not the Few* (Manifesto 2017)

Labour Party, *It's Time for Real Change: The Labour Party Manifesto 2019* (Manifesto 2019)

Labour Party, *Workers' Rights Manifesto* (Manifesto 2019)

López-Andreu M et al, *How has the UK Hotels sector been affected by the fissuring of the worker-employer relationship in the last 10 years?* (University of Leicester, Keele University, Director of Labour Market Enforcement 2019)

Metcalf D, Director of Labour Market Enforcement, *United Kingdom Labour Market Enforcement Strategy 2018/19* (HM Government 2018)

Ministry of Labour and National Service (MLNS), *Report for the Year 1947* (HM Stationary Office 1948)

MLNS, *Report for the Year 1948* (HM Stationary Office 1949)

MLNS, *Report for the Year 1949* (HM Stationary Office 1950)

MLNS, *Report for the Year 1950* (HM Stationary Office 1951)

MLNS, *Report for the Year 1951* (HM Stationary Office 1952)

MLNS, *Report for the Year 1952* (HM Stationary Office 1953)

MLNS, *Report for the Year 1953* (HM Stationary Office 1954)

MLNS, *Report for the Year 1954* (HM Stationary Office 1955)

MLNS, *Report for the Year 1955* (HM Stationary Office 1956)

MLNS, *Report for the Year 1956* (HM Stationary Office 1957)

MLNS, *Report for the Year 1957* (HM Stationary Office 1958)

MLNS, *Report for the Year 1958* (HM Stationary Office 1959)

Office for National Statistics (ONS), *Analysis of Employee Contracts that do not Guarantee a Minimum Number of Hours* (April 2014)

ONS, *EMP17: Labour Force Survey: zero-hours contract data tables: Summary table* (2017)

ONS, *Contracts that do not guarantee a minimum number of hours* (April 2018)

ONS, *HOU02 NSA: Usual weekly hours worked (not seasonally adjusted)* (September 2020)

ONS, *EARN03: Average weekly earnings by industry* (September 2020)

Pennycook M et al, *A Matter of Time: The rise of zero-hours contracts* (Resolution Foundation 2013)

Pickavance N, *Zeroed Out: The place of zero-hours contracts in a fair and productive economy* (2014)

Pyper D and F McGuiness, *Zero-hours contracts* (House of Commons Library 2018)

Wright T and A Pollert, *The experience of ethnic minority workers in the hotel and catering industry: Routes to support and advice on workplace problems* (Acas 2006)

Statutes and Statutory Instruments

Catering Wages Act 1943

Cotton Manufacturing Industry (Temporary Provisions) Act 1934

Employment Act 2002

Equality Act 2010

Employment Relations Act 1999

Employment Rights Act 1996

European Convention on Human Rights

Fair Wages Resolution of 1946

Health and Safety at Work Act 1974

International Labour Organisation Conventions 87

International Labour Organisation Conventions 98

Jobseekers Act 1995

National Minimum Wage Act 1998

National Minimum Wage Regulations 1999

National Minimum Wage Regulations 2015

Small Business Enterprise and Employment Act 2015

Social Security Act 1989

Terms and Conditions of Employment Act 1959

Trade Boards Act 1909

Trade Boards Act 1918

Trade Union Reform and Employment Rights Act 1993

Transfer of Undertakings (Protection of Employment) Regulation 2006

Wages Councils Act 1945

Wages Councils Act 1979

Wages Councils Act 1986

Working Time Regulations 1998

Case Law

Autoclenz v Belcher [2011] ICR 1157

Carmichael v National Power plc [1999] 1 WLR 2042

Nerva and others v R.L. & G. Ltd. [1997] ICR 11

Nerva and others v United Kingdom (Application no. 42295/98) ECHR September 2002

O'Kelly v Trusthouse Forte plc [1983] ICR 728

Penn v Spiers & Pond Ltd [1908] 1 KB 766

Pulse Healthcare Ltd v Carewatch Care Services Ltd [2012] UKEAT/0123/12/BA

Uber BV v Aslam [2019] ICR 845

Wrottesley v Regent Street Florida Restaurant [1951] 2 KB 277

Websites

BBC, *Coronavirus: PM says everyone should avoid office, pubs and* travelling (16th March 2020) <https://www.bbc.co.uk/news/uk-51917562> Accessed 08.02.2021

BBC, *UK pubs and restaurants told to shut in virus fight* (20th March 2020) <https://www.bbc.co.uk/news/uk-51981653> Accessed 08.02.2021

Christie N, *Glasgow politicians urge bosses to return more than £5,000 in TRNSMT staff tips*, Glasgow Evening Times (July 2019) <https://www.glasgowtimes.co.uk/news/17787339.glasgow-politicians-urge-bosses-return-5-000-trnsmt-staff-tips/> Accessed 16.08.2020

Citizens Advice, *Workers given just 48 hours notice of shifts starting, changing or being cancelled, says citizens advice* (January 2017) <https://www.citizensadvice.org.uk/about-us/how-citizens-advice-works/media/press-releases/workers-given-48-hours-notice-of-shifts/> Accessed 30.06.2020

DBEIS, *Zero hours contracts: guidance for employers* (2015) <https://www.gov.uk/government/publications/zero-hours-contracts-guidance-for-employers/zero-hours-contracts-guidance-for-employers> Accessed 25.06.2020

DBEIS, *Employers named for NMW underpayment* (2018) <https://www.gov.uk/government/news/nearly-200-employers-named-and-shamed-for-underpaying-thousands-of-minimum-wage-workers> Accessed 26.08.2020

Gov.uk, *Employment status* <https://www.gov.uk/employment-status> < https://www.gov.uk/employment-status/worker> <https://www.gov.uk/employment-status/employee> Accessed 11.07.2020

Living Wage Foundation, *Explaining UK Wage Rates* <https://www.livingwage.org.uk/what-real-living-wage> Accessed 01.05.2020

Living Wage Foundation, *Living Hours Campaign Launched to Tackle Work Insecurity* <https://www.livingwage.org.uk/news/living-hours-campaign-launched-tackle-work-insecurity> Accessed 30.06.2020

Living Wage Foundation, *What is the Real Living Wage?* <https://www.livingwage.org.uk/what-real-living-wage> Accessed 02.12.2020

McDonalds, *McDonald's Reports Fourth Quarter and Full Year 2019 Results And Quarterly Cash Dividend* (2020) < https://mcdonaldscorporation.gcs-web.com/news-releases/news-release-details/mcdonalds-reports-fourth-quarter-and-full-year-2019-results-and> Accessed 06.08.2020

ONS, *An overview of the UK labour market* (2015) <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/articles/anoverviewoftheuklabourmarket/2015-02-27> Accessed 22.09.2020

ONS, *Employment in the UK: August 2019* (2019) <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/bulletins/employmentintheuk/august2019#:~:text=There%20were%20an%20estimated%20896%2C000,for%20April%20to%20June%202019> Accessed 01.10.2020

Oxford English Dictionary, 'precarious' (3rd edn, 2007) < https://www-oed-com.ezproxy.lib.gla.ac.uk/view/Entry/149548?redirectedFrom=precarious#eid> Accessed 13.07.2020

Tesco, *Preliminary Results* (2018/19) <https://www.tescoplc.com/news/2019/preliminary-results-201819/> Accessed 06.08.2020

The Guardian*, Margaret Thatcher: a life in quotes* (2013) <https://www.theguardian.com/politics/2013/apr/08/margaret-thatcher-quotes> Accessed 01.04.2020

Unite the Union, *Carluccio's waiting staff pushed over tipping point, as governments fail to legislate* (October 2019) <https://unitetheunion.org/news-events/news/2019/october/carluccio-s-waiting-staff-pushed-over-tipping-point-as-government-s-fails-to-legislate/> Accessed 16.08.2020