

Low Pay Commission (LPC) 2018 consultation
The Taylor premium and hours/income volatility
Response from the Low Incomes Tax Reform Group (LITRG)

1 Executive Summary

- 1.1 We welcome the opportunity to respond to this consultation. Our response focuses on the part of the consultation looking at the recommendation made in ‘Good work: the Taylor review of modern working practices’ that the LPC should consider the potential impact of a higher minimum wage for hours that are not ‘guaranteed’.
- 1.2 We discussed this ‘Taylor premium’ with the LPC in a meeting on 13 April 2018. This paper records some key points from that discussion and contributes additional thoughts. We are happy to discuss any of the points raised in this paper in more detail.
- 1.3 In general, we have concerns about the impact that arrangements involving nominal hours or zero-hours contracts have on vulnerable workers who are desperate for a secure and stable job. Although, on the face of it, the Taylor premium seems like a worthwhile idea that could perhaps help them, after a proper period of analysis and evaluation, we do have some doubts that the proposal will achieve its stated objectives; we set out why in this response.
- 1.4 Firstly, we draw attention to the ways in which such a premium could interact with the workers’ tax, National Insurance (NIC) position, related tax credits and welfare entitlements. Few workers will feel the full benefit of the premium – indeed in many cases, it will benefit the Exchequer more than the workers. This is likely to be at the expense of employers – many of whom use non-guaranteed hours contracts sensibly and may already be contending with rising costs and constrained income.
- 1.5 Our view is that the Taylor premium may not do much to compensate workers for any risk and insecurity they may feel. In addition, there are potentially very serious financial

consequences for those who might currently qualify for ‘passport’ benefits like free school meals. There are also interactions with the tax and NIC positions for those slightly higher up the income ladder who salary sacrifice.

- 1.6 We are concerned that certain employers facing higher labour costs might simply decide to turn to other options to protect their profitability, such as the cutting of hours, with potential knock on consequences on working tax credit (WTC) claims and any other provisions that are based on number of hours worked. We think it is too simplistic to say that employers could just move workers to set hours contracts if they do not want to pay the premium – many need the flexibility of non-guaranteed hours to manage the peaks and troughs of their business.
- 1.7 We have particular questions over what will happen in the care sector, as it is not clear to us where the money will come from to fund the premium. Many care workers are funded (either directly or indirectly) by Local Authorities, NHS and the Department for Work and Pensions (DWP) and are often on zero-hours contracts – there would most likely be a significant impact on the budgets of those bodies if the premium was introduced.
- 1.8 In the agency worker sector, our overriding feeling is that we will see an increased use of vicious models based on self-employment, which will leave the low-income worker in a potentially worse situation than they are currently.
- 1.9 In a nutshell, we have significant doubts as to whether the ‘Taylor premium’ will help tackle the issue of ‘one sided flexibility’ and workers experiencing uncertain and unpredictable work schedules, however a more targeted proposal might. We suggest that the Government could look at what other countries are doing in this area.
- 1.10 In addition, on the basis that many of the problems low-paid workers on non-guaranteed hours face are due to insufficient support from the system, rather than the contracts per se, we suggest that there are alternative ways to bolster a worker’s position. The following are good starting points:
- Vastly improving the provision of information about rights and protections for workers – there is still a dire need for basic information about what low-income workers on such contracts should expect in relation to holiday pay, etc.
 - Strengthening care workers’ positions under the minimum wage rules, which could in turn help regularise the heavy use of non-guaranteed hours contracts in the sector (this should include dealing with the complex inconsistencies between the minimum wage rules and the tax and tax credits rules).
 - Extending the system of NIC credits, as exists for those on Jobseeker’s Allowance for example, to workers on very low earnings. A person in work arguably deserves to have their contributions record protected to the same extent as an unemployed person.
 - Undertaking an assessment of challenges in tax credits and Universal Credit (UC) faced by low-paid care workers with volatile income or hours – with a view to easing the burdens that are currently placed on them by those systems.

2 About Us

- 2.1 The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998 LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low income workers, pensioners, migrants, students, disabled people and carers.
- 2.2 LITRG works extensively with HM Revenue & Customs (HMRC) and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.
- 2.3 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

3 Introduction

- 3.1 As a group of tax specialists with interest and insight into the pay and tax issues facing the low-paid, we welcome the opportunity to respond to the aspect of this LPC consultation looking at the Taylor premium.
- 3.2 Matthew Taylor says¹ the proposal aims to achieve two alternative benefits:
- 'First, the wage premium for variable time would encourage employers to think a bit harder about whether they need so much work to be through ZNHs. The consequence should be that more people who are customarily asked to work longer than the time specified in their contract will get more guaranteed hours with consequent benefits for their economic opportunities and security. The second benefit is that those low paid people who continue to be on ZNHs will get a bit more income to compensate them for the risk and insecurity.'*
- 3.3 Non-guaranteed hours contracts are not in themselves at odds with 'good work'. However, they often seem to appear hand-in-hand with low-paid workers and problems that lie within HMRC's remit, such as those to do with the minimum wage, and that may be why we receive email correspondence from people confused about their position in the context of being on non-guaranteed hours contract (mainly zero-hours contracts).

¹ <https://www.thersa.org/discover/publications-and-articles/matthew-taylor-blog/2018/paying-for-flexibility-should-workers-on-zero-hours-contracts-receive-a-higher-minimum-wage>

3.4 We thought it would be useful to give the LPC a flavor of what we see as some of the issues around the Taylor premium – based on what we know about those parts of the system within our remit and gleaned from workers writing to us via our websites.¹

3.5 First, we offer some high-level observations around the potential impact of a premium, and then we go on to look in detail at the tax and welfare interactions of a premium and likely employer reaction to the changes. We finish our response by looking at some alternative ways to help bolster a zero-hours worker's position. We have chosen to do this under the following broad headings rather than answer specific questions:

Tax and welfare interactions (Section 5)

- *Passported benefits*
- *Salary sacrifice*
- *Claimant commitment*

Likely employer reaction (Section 6)

- *Loss of hours*
- *False self-employment*
- *Agency workers*

Other options (Section 7)

- *Improving transparency*
- *Tackling blacklisting*
- *Helping care workers*
- *Fixing disconnections in the tax and welfare systems*

3.6 We hope that our comments, when taken together, will be useful input for the LPC – not just in respect of the Taylor premium but also with regards to their work more widely/other aspects of the consultation.

4 General comments

4.1 Although, on the face of it, a Taylor premium seems like a positive move in terms of helping to regularise the use of non-guaranteed hours in the labour market, there is more to it than meets the eye and we have a number questions and observations stemming from the proposal.

4.2 We are not clear on what would constitute hours that are not 'guaranteed'. For example, will the proposal apply to ordinary 'overtime' as well as zero-hours or 'nominal hours' contracts? Introducing a premium that applies only to specific hours worked means that

¹ www.litrg.org.uk, www.taxguideforstudents.org.uk, www.disabilitytaxguide.org.uk and www.revenuebenefits.org.uk

there will need to be detailed definitions provided so that employers and employees are clear of the position. This will require the Government to define what is meant by hours that are not 'guaranteed' – which may be a more difficult task than it appears. In the past, the Government have seemed reluctant to get embroiled in the inner workings of the labour market – does this signal the beginning of more than just a superficial interest in regulating the employment relationship?

- 4.3 How will this work with people who have guaranteed *annualised* hours – for example, those in the agency worker industry who are offered continuous contracts of employment (which HMRC say must guarantee 336 hours a year¹). Will the guaranteed hours be taken to be frontloaded or spread over the year?
- 4.4 We worry about complicating the minimum wage – it could potentially bring the number of minimum wage bands to 10, causing further confusion and complexity. Indeed, Sir David Metcalf, the Director of Labour Market enforcement, has said² that workers would find it harder to understand the composition of their wage packet if a premium were introduced and therefore would be less able to see if they had been fairly paid.
- 4.5 The proposal has presumably come about because of concerns over the fall out when zero-hours contracts are in the hands of unscrupulous employers. However, in many cases, workers are happy on zero-hours contracts, particularly where they can use them to work around childcare responsibilities and/or when they are not in need of long term security. Zero-hours contracts are also often used by employers sensibly and for legitimate reasons – for example, because their work is weather dependent or because they are just starting up. This seems like quite a broad-brush approach that may unfairly affect them.
- 4.6 We also note that this measure does not seem to do much for those who are already paid at slightly more than the minimum wage. So, for example, if the premium is 15% – then someone on the £7.83 rate will have their hourly rate lifted to £9. But if they are already on £9, their pay will stay £9? If the proposal goes ahead, we question whether the same justifications apply to those who are paid at higher rates and therefore some consideration will need to be given about whether a premium should be applied to *any* contractual rate not just the minimum wage rate. However, we do question how this would work or be policed in practice.
- 4.7 HMRC have recently received increases to their minimum wage enforcement funding, however, we are concerned that a Taylor premium could increase HMRC's workload substantially. Any extra money that there was in the budget seems very likely to be absorbed quickly if this proposal goes ahead.

¹ <https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm2350>

² <https://www.telegraph.co.uk/business/2017/10/25/premium-minimum-wage-workers-would-confusing-mps-told/>

5 Tax and welfare interactions

- 5.1 While much may be made of the workers' pocket being bolstered by the benefit of a premium, our view is that it may be largely illusory and at worst, could leave people facing unexpected burdens.
- 5.2 Higher pay means things like paying tax (usually 20% on anything over £228 a week in 2018/19) and National Insurance (12% on anything over £162 a week in 2018/19) and paying more in pension contributions (3% of your wages over £116 a week – although, if you are lucky, some of this may be made up from tax relief).
- 5.3 It may also impact on the amount of in-work benefits you receive, as the higher your wages, the less you get in benefits.¹ For UC purposes, there is a 63% withdrawal rate on 'net' income over £409 per month. For WTC purposes, there is a 41% withdrawal rate on 'gross' income over £6,420 a year.²
- 5.4 *Example:* Jenny, 35, a lone parent usually works around 20 hours a week in a pub, at the minimum wage on a zero-hours contract. At £7.83 per hour there is no tax or NIC (earnings of £156.60). Because she is on a low income, Jenny receives UC of £457.94³ per UC assessment period.⁴ If her hourly rate were to rise to £9 an hour (£180 a week), then her award would be £404.42 per UC assessment period.⁵ At £9 an hour, there is also NIC at 12% on her earnings above £162 per week (£2.16) (but no tax).
- 5.5 So, of her £93.60 increase in terms of gross earnings during her UC assessment period, the true value of the Taylor premium to Jenny is only £31.44. The Treasury accrues the remaining amount in reduced welfare payments and increased NIC revenue. There must also be significant questions as to what her employer's likely reaction will be (we explore this in the next part of this response).

¹ Although outside the scope of our work somewhat, it is worth flagging that people working a low number of hours who still qualify for income-replacement benefits (i.e. Jobseeker's Allowance) are hit by a £ for £ withdrawal of benefits.

² For UC purposes, pay rise information will flow directly in most cases into the DWP via a feed of data from HMRC and the award will be adjusted automatically. For tax credit purposes, the £2,500 disregard means that any tax credit award may not be adjusted straight away.

³ She is entitled to maximum elements of £317.82 (basic) + £277.08 (child) of £594.90 per month. Her monthly income of £626.40 is over the £409 work allowance, so her maximum award is reduced by £136.96 (£626.40 - £409 x 63%).

⁴ We have assumed for the purposes of this example that Jenny has four pay days in each UC monthly assessment period. However, in some months she may have five pay days.

⁵ Her monthly income of £711.36 is over the work allowance of £409 by £302.36. This means her award is reduced by £190.48 (£711.36 - 409 x 63%).

- 5.6 One solution to this might be to disregard the premium from the standard minimum wage for benefits and tax credit purposes but this would likely add substantial complexity and confusion.
- 5.7 ***Passported benefits***
- 5.7.1 Loss of ‘passported benefits’¹ could be a huge consideration for those who will receive the Taylor premium.
- 5.7.2 There are a variety of passported benefits – free school meals is perhaps the most important one for many people. Sadly, there is a sharp cliff edge for free school meals, above which an additional £1 of earnings will result in a total loss of free school meals.²
- 5.7.3 The Children’s Society report that the average cost of school meals are £400 per child a year³ – this could leave a person having to work considerably more hours to make up the shortfall (remembering that the cost of school meals is paid out of a person’s ‘net income’).
- 5.7.4 We recognise that this is a consideration that applies more widely – e.g. a small pay rise or the general annual increase to the National Minimum or Living Wage could also result in a loss of passported benefits (and indeed the withdrawal of benefits issues raised earlier). However, the loss of free school meals could be triggered by the introduction of the premium. When coupled with the fact that a UC claimant may not gain the full amount of the premium, as explained in section 5 above, it could actually leave someone in a worse position financially compared to their pre-premium situation. Given that it is women that are most likely to be affected by the premium⁴ – many of whom will also be parents (or indeed, lone parents), we think this is something that needs further thought with perhaps some more detailed calculations in a range of situations to understand the impact fully.⁵
- 5.8 ***Salary sacrifice***
- 5.8.1 There are potential tax and NIC consequences of the Taylor premium for those slightly higher up the income ladder too (albeit still on non-guaranteed hours contracts) because an

¹ <https://www.entitledto.co.uk/help/Passported-benefits>

² There is a net earnings threshold of £7,400 per annum for free school meals eligibility under Universal Credit from 1 April 2018.

³ <https://www.childrensociety.org.uk/news-and-blogs/press-releases/universal-credit-one-million-children-in-poverty-to-miss-out-on-free>

⁴ 55% of people on a zero-hours contract were women in December 2017:
<http://researchbriefings.files.parliament.uk/documents/SN06553/SN06553.pdf>

⁵ <https://www.theguardian.com/society/2018/feb/21/rise-in-zero-hours-jobs-for-single-parents-risks-causing-child-poverty>

increase in their minimum wage rate may affect their ability to salary sacrifice for things like childcare vouchers.

- 5.8.2 To explain: there is a limited tax/NIC break for employer provided ‘childcare vouchers’, which workers can then use to pay for qualifying childcare. If a worker is a basic rate taxpayer, the first £55 of childcare vouchers per week will be exempt from tax and NICs. The vouchers are not usually provided on top of normal pay, they are usually provided in conjunction with a salary sacrifice arrangement. However, a salary sacrifice arrangement cannot reduce an employee’s cash earnings below the appropriate minimum wage rate.
- 5.8.3 *Example:* Neena, 38, works for a University on a non-guaranteed hours contract. She generally works around 35 hours a week @ £10 an hour (except in the holidays when there is no work, but this suits her as she has children to look after). At the moment she can give up £55 of her £350 pay packet and get childcare vouchers instead (bringing her cash pay down to £295 (but still above the minimum wage rate of £7.83 per hour) and saving her tax of £11 and NIC of £6.60, a total of £17.60 each week.
- 5.8.4 If the minimum wage rate for her circumstances was £9 an hour, say, Neena would only be able to sacrifice £35 of her pay for childcare vouchers, saving her £11.20 (£7 in tax and £4.20 in NIC). She has not benefited from the Taylor premium at all, in fact she has lost out by £6.40, and we do not think that it can be assumed that people like Neena, who already earn slightly over the minimum wage rate will have their pay differential kept if the Taylor premium is brought in.
- 5.8.5 While it is expected that the tax/NIC benefits of childcare vouchers will be closed to new members from October 2018 (making way for Tax Free Childcare), people that are already receiving childcare vouchers will be able to continue to do so. It is worth noting that salary sacrifice schemes are also popular for pension contributions – made by increasing numbers of workers by virtue of the auto-enrolment programme.

5.9 ***Claimant commitment***

- 5.9.1 It is important to understand how things that are linked to the minimum wage rates in the wider tax and benefits systems will work with the Taylor premium.
- 5.9.2 So, for example, although in UC a person does not need to work a set number of hours like they do to qualify for WTC, they may be expected to carry out ‘work related activity’¹ as part of their Claimant Commitment if they are not earning above their Conditionality Earnings Threshold (CET) – or risk sanctions, such as having their UC stopped.

¹ Work related activity can involve looking for extra work or doing things like attending CV workshops. The requirements imposed and the support available to claimants is tailored and personalised and is recorded on the Claimant Commitment drawn up by the claimant’s personal adviser during a face-to-face discussion.

- 5.9.3 An individual's CET depends on the work activity group they are placed in. For those who are subject to 'all-work requirements', it is normally 35 hours x minimum wage although this may be reduced for claimants with young children, physical or mental health conditions, or who are carers. Some people will not be subject to conditionality if they are placed in the 'no-work requirements' group. This will be agreed as part of the person's Claimant Commitment.
- 5.9.4 Would the Taylor premium mean that a person on a zero-hours contract can only escape 'conditionality' if they are earning 35 x the ordinary minimum wage for their age or 35 x the premium minimum wage? What if they have a mixture of 'mini' jobs, one with guaranteed hours, one with non-guaranteed hours – what would their CET be set at then?

6 Likely employer reaction

- 6.1 One of our main objectives is to investigate new proposals to see what impact they may have in terms of employer response and to what extent low-income workers will be impacted as a result of any changed behavior by their employer.
- 6.2 It should be remembered that over the past few years, many employers (including in the retail/restaurant sectors) will have been contending with difficult trading conditions¹ and/or costs and obligations of employment that only ever rise. This includes large increases in the minimum wage, no longer being able to reclaim sick pay, the administrative cost of running a payroll under the Real Time Information (RTI) system, pension contributions under the auto-enrolment programme,² changes to the expenses and benefits regime that stop employers being able to offer salary sacrifice schemes (under which usually both they and their employee usually benefit) and for larger employers – the Apprenticeship Levy.
- 6.3 The Taylor premium will obviously mean that extra costs will be borne by the employer. But they will also become responsible for paying employers NIC, holiday pay and pension contributions based on the higher rates. In many cases, for example, where they just cannot offer guaranteed hours and/or the employer's income is itself is constrained, we cannot imagine that such an increase in costs will be absorbed by the employer; therefore, the costs are likely to be borne to a significant degree by the low-income worker themselves in the form 'trade-offs' like fewer hours – or potentially worse.
- 6.4 **Loss of hours**
- 6.4.1 One of the drivers for using zero-hours or nominal hours contracts is that it helps employers stay below the various thresholds at which different employer obligations are triggered.

¹ See this article on the high street 'crisis' - <http://www.bbc.co.uk/news/business-43240996>

² An employer currently has to pay 2% of qualifying earnings, but this is set to rise to 3%, in April 2019.

- 6.4.2 For example, if I can keep my employee's earnings below the LEL (equating to earnings of less than £116), I can potentially avoid having to pay SSP – currently payable at around £92 a week (for a maximum of 28 weeks (which since April 2014, is not reclaimable from the Government for any employers) and having to pay parental payments, e.g. Statutory Maternity Pay – much, if not all, of which is reclaimable from the Government, but payments can be hugely complicated to understand and administer.¹
- 6.4.3 As an employer, if I can keep my employees earnings below £162 a week, I can potentially avoid having to pay Class 1 secondary National Insurance at 13.8%. If I can keep my employees' earnings below £192 a week, I can potentially avoid having to pay any contributions into their workers' pension scheme which I have had to set up for them under the auto-enrolment programme.
- 6.4.4 If employers are unable to absorb the cost of paying a higher minimum wage (as is likely to be in the case in the care sector for example² – including care and support employers who may already be receiving the maximum amount allowable under the relevant scheme³), it is likely that they will just cut the number of hours to bring the worker's pay back down below the relevant threshold – with potential knock on effects for their other entitlements.
- 6.4.5 *Example:* Sandy works on a zero-hours contract, although she usually works around 24 hours a week. At the current level of minimum wage £7.83 this means she usually earns £187.92 per week. This is below the auto-enrolment threshold and only just above the employers NIC threshold, meaning that her employer's costs are kept to a minimum.
- 6.4.6 However, if a premium was added to the minimum wage to bring it to, say, £9 an hour, this would raise Sandy's pay to £216 per week – over the point at which auto-enrolment duties are triggered. This does not just involve having to pay into Sandy's workplace pension but also the cost of setting everything up in the first place. It also more than doubles the employer NIC contributions. So, paying a £28 premium each week on Sandy's wages, actually costs the employer at least £37.45.⁴

¹ Particularly the Statutory Parental Pay rules which were introduced from April 2015 – the technical guidance is 66 pages long and there are possible penalties of up to £3,000 if an employer gets things wrong.

² Indeed, we can already see that care providers are struggling:
<https://www.theguardian.com/society/2018/apr/20/care-for-13000-britons-at-risk-as-provider-seeks-rescue-plan>

³ i.e. those that receive funding under various government initiatives, e.g. Access to Work, personal health budgets, direct payments and have used the money to take on a personal assistant (carer) to help them live independently (and thus become responsible for complying with administrative requirements associated with being an employer).

⁴ Including auto-enrolment costs of 2% of her pay between £116 and £216 (£2) and employer's NIC of £7.24 (13.8% on pay over £162).

- 6.4.7 We recognise that one option for Sandy’s employer is to put her on a fixed hours contract to avoid these extra costs. If, for whatever reason, this is just not possible, one coping mechanism for her employer would be to reduce her hours to 21 (meaning pay of around £187 again) – however, this means that she may no longer qualify for WTC (she needs to work 24 hours to qualify if she is in a couple with children, and her partner does not work).¹ A reduction in working hours could also impact on the availability of free childcare.²
- 6.4.8 In essence, many employers will be forced by the Government to give on the one hand but to take away on the other. Indeed, this seems to have already started happening in response to the National Living Wage, where we have seen reports of employers trying to erode the benefit or offset the additional cost by removing or changing certain perks.³
- 6.5 ***False self-employment***
- 6.5.1 We are concerned that the imposition of a premium could be seen as the ‘final straw’ for some employers with potentially serious consequences for their workers.
- 6.5.2 *Example:* John is a genuinely self-employed plumber in the construction industry. He is building his business slowly and has taken on Toby, 19, to help him as his laborer. John wants to do things right so pays Toby through the Pay As You Earn (PAYE) system, even though it is a huge hassle administratively and even though it is typical in his line of work for laborers to be treated as self-employed (possibly incorrectly).
- 6.5.3 Because John does not know himself what his work schedule looks like from one day to the next, he cannot guarantee Toby set hours, although he tries his best to find work for him on ‘quiet’ days e.g. by asking him to tidy his van (mainly Toby likes to just have the time off anyway). He also makes sure that Toby receives holiday pay and is aware of his auto-enrolment position (and everything else that he should do as the engager of a ‘worker’ under employment law).
- 6.5.4 It is not hard to see that having to pay Toby a premium could be the ‘final straw’ for John, and, with little fear of HMRC’s enforcement function, he could just decide to treat Toby as a self-employed person, therefore by-passing the minimum wage rules, never mind other work protections and the PAYE system, altogether. Alternatively, but equally serious for

¹ Briefly, the working tax credit conditions are:

- If you are single and responsible for a child, qualify for the disability element of WTC, or are 60 years old or over, you must work at least 16 hours per week.
- If you are a couple and responsible for a child you must, in most cases, work at least 24 hours between you (with one of you working at least 16 hours). If your partner is incapacitated, in prison, in hospital or entitled to Carer’s Allowance then you can qualify if you work at least 16 hours.
- Otherwise, you must be aged 25 or over and work at least 30 hours a week.

² <https://www.childcarechoices.gov.uk/>

³ <https://www.independent.co.uk/news/business/comment/can-bosses-legally-take-away-benefits-and-perks-because-of-the-national-living-wage-a7006331.html>

Toby who has little education and few skills, John might decide to try and find someone that is 'worth' the premium – denying Toby the chance to gain experience and improve his employability.

6.6 **Agency workers**

- 6.6.1 The LPC will need to try and understand what the likely ramifications are within the agency worker industry where avoidance behaviors are pervasive and non-guaranteed hours are inherent (even those under continuous contracts of employment are only guaranteed 336 annualised hours).
- 6.6.2 This is a largely unregulated marketplace, and we have we have concerns that achieving a better outcome for workers through the Taylor premium will be a challenging objective. Given their business model is dependent upon supplying workers at the lowest price possible, there is a high probability that they will turn to other 'solutions' to help them remain competitive.
- 6.6.3 There is a particularly vicious model that we are aware of that agencies and other intermediaries could turn to: the elective deductions model – created as a consequence of the April 2014 rules to deal with false self-employment amongst agent workers (in particular, the non-operation of PAYE). Under this model, the individual is treated as an employee for tax purposes so that PAYE is operated as is required under law (so they do not flag to HMRC), but treated as self-employed for all other purposes, meaning that they are not paid the minimum wage, not given paid annual leave, etc. Operating such a scheme may save the business concerned money, but is unlikely to benefit the worker in any way at all.
- 6.6.4 HMRC have taken no action against the elective deduction model from a minimum wage perspective (none that we are aware of anyway), although they must certainly be aware of it having had it brought to their attention by several groups, including the Freelancer & Contractor Services Association, the Recruitment & Employment Confederation and the Association of Professional Staffing Companies.¹

7 **Other options**

- 7.1 Despite the considerable doubts we have about the Taylor premium, we are nevertheless concerned about those on zero-hours contracts and in particular, unfair practices such as having shifts cancelled at the last minute. A balance needs to be found and we wonder whether a more narrowly focused proposal could help tackle poor practices such as this. The Government could look to other countries for inspiration. For example in Italy, employees on zero-hours contracts must be notified of work at least one working day in advance, and in

¹http://www.contractoruk.com/news/0011498edm_tries_avoid_false_self_employment_rules_hmrc_told.html

some instances, there is a minimum number of hours that the worker gets paid for, regardless if they work or not.¹

7.2 In addition, correspondence we receive into our mailbox from workers on zero-hours contracts exposes that, in practice, the problems that they face are often more to do with insufficient support from the system (as we go on to look at below), rather than the actual contracts themselves, so there are probably some measures that the Government could also take within the current framework to help workers better understand and manage their positions.

7.3 ***Improving transparency***

7.3.1 The Government took steps to improve the transparency of zero-hours contracts following the Department for Business, Innovation and Skills (BIS) 2013 consultation,² however it seems that some individuals are still unclear on their employment rights while on a zero-hour contract. Indeed, a recent Citizens Advice press release³ has indicated that half of people on zero-hours contracts wrongly believe they are not entitled to paid holidays. This is unsurprising, given the only decent guidance around 'zero-hours contracts' on GOV.UK is aimed at employers.⁴

7.3.2 It must be remembered that their use is most notable in low-paid industries where workers are young, or have lower levels of education or with English as a second language. If the rules were better explained (and, very importantly, illustrated) on GOV.UK in a way that these types of workers could understand, unconscientious employers would have less opportunity not to abide by them and the individual would be more able to check their employer's compliance.

7.3.3 The fact that these types of workers are often in a weak position to secure their employment rights also needs to be recognised and addressed by Government – this is now starting to happen under the watch of the Director of Labour Market Enforcement⁵ – but more could always be done.

¹ <http://speri.dept.shef.ac.uk/wp-content/uploads/2017/09/Tackling-insecure-work-political-actions-from-around-the-world-SPERI-report-for-GMB.pdf>

² <https://www.gov.uk/government/consultations/zero-hours-employment-contracts>

³ <https://www.citizensadvice.org.uk/about-us/how-citizens-advice-works/media/press-releases/sharp-practices-paid-holiday1/>

⁴ <https://www.gov.uk/government/publications/zero-hours-contracts-guidance-for-employers>

⁵ Also see recent consultation on enforcement of employment rights: <https://www.gov.uk/government/consultations/enforcement-of-employment-rights-recommendations>

7.4 ***Tackling blacklisting***

7.4.1 While we appreciate that the Government have taken steps to improve protection for workers by banning exclusivity clauses in the Small Business, Enterprise and Employment Act 2015, our feeling is that such changes have not made much of a difference to those staff holding unskilled/low-paid roles and who need the Government's protection the most.

7.4.2 This is because by BEIS's own admission (at the time of the consultation), exclusivity clauses are contained in only 9% of all zero-hours contracts, which we think are most likely to be for staff holding skilled technical rather than elementary roles. Additionally, these proposals do little to help those staff who are not under an exclusivity clause in the literal sense, but who feel like they are due to the practice of blacklisting if they turn down work or raise a grievance.

7.4.3 We think the Government need to go much further to protect low-paid workers from being blacklisted – particularly where it is because a worker has turned down a shift offered to them at the last minute. Again, perhaps the Government could look to what other countries are doing in this area.

7.5 ***Helping care workers***

7.5.1 No discussion of zero-hours contracts would be complete without a mention of care workers who are often subject to most unfair practices.

7.5.2 These workers are particularly vulnerable in terms of the correlation between zero-hours contracts and breaches of the minimum wage rules (not to mention minimum wage rules that just do not 'work' for them given their travel patterns).¹

7.5.3 However, zero-hours contracts are not the same 'problem' as non-compliance with the minimum wage. While it might take Government some time to decide what to do on the former, it is totally within their power to do something about the latter – being paid below the minimum wage only serves to erode their precarious 'zero-hours' positions even further and should be tackled as a priority.

7.6 ***Fixing disconnections in the tax and welfare systems***

7.6.1 For many workers, zero-hours contracts mean financial insecurity. But low weekly earnings can have other, more unexpected consequences. One part of the system that seems to put them at a disadvantage is having to meet the Lower Earnings Limit (LEL)² in order to qualify

¹ We look at the minimum wage rules and their confusing and unfair interaction with tax and tax credits in some detail in our most recent report on care workers: <https://www.litrg.org.uk/latest-news/reports>

² As of 2018/19, the LEL is £116 – with earnings at this level, employees are treated as paying NIC, even though they actually do not start to pay anything until £162 per week.

for welfare support like the state pension, statutory payments (like sick pay, etc.) and some contribution-based benefits, such as Jobseekers' Allowance.

- 7.6.2 Many people on zero-hours contracts do not meet this. We find this worrying – the general move towards flexible labour means that people could have irregular earnings patterns for many years. They could be unwittingly heading towards an uncertain retirement, as well as an uncertain working life. We therefore would urge the Government to seriously consider extending the system of credits, as exists for those on Jobseeker's Allowance for example, to casual workers, as a person in work arguably deserves to have their contributions record protected to the same extent as an unemployed person.¹
- 7.6.3 Finally, although one purpose of the tax credit and UC systems is to support those on low pay, zero-hours contract do not sit easily within them and many workers may not be getting the support that they need.
- 7.6.4 For example, erratic hours lead to real difficulties in claiming WTC because WTC requires claimants to normally work a set number of hours per week depending on their circumstances. We think, having seen various conversations on internet forums² on the topic of zero-hours contracts, that it is possible that some workers will feel unable to claim tax credits, even if they are otherwise entitled to them. This is because the variation in their hours will take them above and below the thresholds for claiming WTC too frequently to claim without the risk of overpayments and/or the starting and stopping of claims.
- 7.6.5 Alternatively, there is a real danger that workers are claiming tax credits incorrectly, meaning that tax credits are overpaid, possibly pushing the worker and their family into debt as they attempt to repay that sum in a later year.
- 7.6.6 UC is more responsive to fluctuations in working hours, but urgent clarity is needed about zero-hours contracts and the Claimant Commitment.
- 7.6.7 At the moment, people on UC are not required to accept zero-hours contracts – but only if the contract requires exclusivity. This seems like quite a limited concession considering the reality of being on a zero-hours contract and appears to create a 'trap'. That is, if you are claiming UC and refuse a zero-hours contract job, you can be sanctioned. However, if you accept a zero-hours contract, you may be sanctioned for not working enough hours. On the other hand, if you accept a zero-hours contract and apply for other jobs, you risk being blacklisted by your employer. In addition to the interactions with UC we have outlined

¹ Alternatively, the option to buy their way cheaply in to the system would be potentially useful, as exists in the form of Class 2 NIC for the self-employed (although this is due to be abolished from April 2019). Another thought is that the ability to aggregate earnings in the event of more than one 'mini' job could help them meet the LEL more easily.

² For an example, see here: https://www.mumsnet.com/Talk/legal_money_matters/1190504-Anyone-know-how-tax-credits-would-workwith-irregular-hours

above, earning a premium hourly rate will do nothing to resolve this more fundamental problem.

- 7.6.8 We would urge the Government to undertake an assessment of the challenges faced by low-paid care workers on fluctuating zero-hours contracts on tax credits – with a view to easing the process for them. The Government also should proceed cautiously with their plans to impose strict conditionality rules in UC for workers on zero-hours contracts.

LITRG
31 May 2018