

Dadansoddi ar gyfer Polisi



Llywodraeth Cymru  
Welsh Government

Ymchwil gymdeithasol

Social research

Number: 36/2015

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

## Executive Summary



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

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

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Welsh Government Social Research, 7 July 2015

ISBN: 978-1-4734-4243-6

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## EXECUTIVE SUMMARY

- 1 Zero hours contracts have been the subject of much debate in recent times. By some, they are regarded as an insecure and exploitative form of employment, whilst others see them as an important part of the UK's flexible labour market and crucial in enabling employers to manage swings in demand for products and services.
- 2 The Welsh Government commissioned Old Bell 3 and Dateb to explore the extent to which zero hours contracts are used in the delivery of devolved public services in Wales and how their use impacts on employers, workers and services. Our study was undertaken between January and March 2015.
- 3 There has sometimes been confusion surrounding the definition of 'zero hours contracts' and the term has increasingly come to be used in a negative sense. On this basis, and in the interest of securing objective research, we adopted the more neutral term 'No Guaranteed Hours Contracts', used by the Office for National Statistics to describe an arrangement whereby the employer does not guarantee the individual any work, and the individual is not obliged to accept any work offered. Our study also considered the use made of agency and self-employed or freelance workers (who are often employed under similar terms to NGHC workers) in the delivery of public services in Wales.
- 4 The study involved:
  - a review of recent research into the use of No Guaranteed Hours Contracts (NGHCs) of various forms across the UK;
  - a survey of organisations involved in the provision of public services in Wales. A total of 60 organisations responded to our survey. The majority of these were public sector organisations, though 17 private and third sector service organisations providing public services under contract also contributed;
  - holding a series of discussions with human resource professionals from organisations involved in the delivery of public services;

- holding discussions with intermediary organisations representing key employer groups;
  - holding discussions with the Wales TUC and a number of relevant individual trade unions.
- 5 The timescale and resource available for the study meant that it was not possible to engage directly with workers affected by NGHCs, although in practice both trade unions and employers were able to provide valuable anecdotal evidence in this respect, which very much accorded with the findings of previous research.
- 6 Whilst our survey provided a useful overview of employment practices across public sector service providers in Wales, the number of organisations available to be surveyed combined with a limited response from further and higher education institutions, means that the findings of the survey need to be treated with a degree of caution. Overall, however, 59% of the public sector organisations targeted responded to the survey and the findings very much echo themes from the wider literature.

### **The Prevalence and Usage of NGHCs across Welsh Public Services**

- 7 Overall, 44% of the organisations which responded to our survey said that they made some use of NGHCs, with 56% of public sector organisations doing so. 35% of all organisations said that they used agency workers, though this proportion rose to 41% among public sector organisations. 23% of all organisations said that they used self-employed or freelance workers. Some organisations used all three types of employment arrangement. The degree to which organisations used each kind of arrangement varied, however. Some organisations employed workers simultaneously on a substantive and NGHC basis. The limited numbers of private and third sector organisations responding to our survey means that these findings may not be entirely representative of the wider population of such organisations involved in the delivery of public services, however.

- 8 Both local authorities and health boards made extensive use of NGHCs via 'bank' type arrangements, whereby managers are able to draw upon databases of people to whom they offer work as and when it is available. These arrangements involve no mutuality of obligation i.e. employers are not obliged to offer work and workers are not obliged to accept work offered to them. In the health service, banks were regarded as rather more formalised affairs than within local authorities, possibly due to the slightly more standardised and predictable nature of work undertaken by NGHC staff in the health service, particularly among nursing and health care support worker roles.
- 9 Often, staff employed via banks within local authorities and health boards were also employed on substantive permanent contracts. Overall, NGHC/bank workers were used in two main ways:
- to provide cover for unforeseen staff shortages e.g. due to illness or spikes in demand for services;
  - to undertake occasional work, particularly where the overall quantum of work was limited e.g. catering at events.
- 10 Although further and higher education institutions' response to our survey was very limited it is clear from previous research that they make use of NGHCs in the shape of 'hourly-paid' contracts, most commonly to employ teaching and student support staff.
- 11 The use of NGHCs was far less prevalent among Welsh Government Sponsored Bodies and the Welsh Government itself made no use of such arrangements.
- 12 Public service providers also used agencies (including via collective framework contracts) and self-employed freelance workers, though this was generally on a far smaller scale than the use of NGHCs.
- 13 Overall, our survey would suggest that the use of NGHCs had increased slightly over the last three years, whilst the use of agency and freelance workers had declined. Beneath this headline, however, there appeared to be

some divergent patterns, with health boards' use of both NGHCs and agency workers increasing in the face of growing demands upon the service alongside a shortage of skilled staff. By contrast, local authorities' use of NGHCs had remained broadly constant whilst their use of more expensive agency workers had declined as they have sought to deal with the challenge of reducing budgets. WGSBs' use of both NGHCs and agency workers had also declined as they too faced reductions in funding.

- 14 It was recognised by both employers and trade unions that NGHCs of various kinds formed an integral and coherent part of public service provider organisations' workforce strategies in that they offered the flexibility needed at the margins to respond to changing circumstances at a reasonable cost. The majority of organisations envisaged that they would continue using NGHCs in the medium to long term, but several were eager to reduce their use of agency and self-employed/freelance workers, primarily as a means of reducing costs, but also in order to have greater control over the quality of services.
- 15 Although the limited size of our survey means that the findings need to be treated with a degree of caution, it would suggest that NGHC, agency and self-employed contractual arrangements fell into two main, contrasting camps. On the one hand, they were used to employ people in elementary occupations, including 'administration', 'care', 'catering' and 'cleaning' roles, whilst on the other, they were also used to employ people in skilled occupations such as nurses, teachers, project workers and specialists in fields such as human resources, information technology and audit.
- 16 In keeping with UK level research, our survey would suggest that women were considerably more likely than men to be employed on NGHCs in public sector organisations. However, in contrast to UK level research findings that employment on NGHCs tended to be polarised at either end of the age range, our survey suggested that public sector organisations predominantly used NGHCs to employ people aged between 25 and 64.

- 17 A recurring theme during our discussions with stakeholders and in earlier UK level research was the use of NGHCs in the employment of home care (or domiciliary care) workers, particularly by private and third sector organisations.
- 18 Both stakeholders and the literature pointed to a growth in the contracting out of home care services by local authorities, often using competitively tendered framework contracts which allowed local authorities to 'spot purchase' services in the volumes and at the times needed. At the same time, financial pressures upon local authorities have led to downward pressure upon the prices paid for these outsourced home care services. It was suggested that a combination of these factors has led to an increase in the use of NGHCs, which essentially shift the risk of there being lulls in demand for services from the employer to workers.
- 19 Whilst some local authorities encouraged contracted providers to aspire to fair employment practices (e.g. by observing the guidance on the use of zero hours contracts issued by the Joint Council for Wales and paying the living wage), we found no evidence of service contracts being used to compel providers to do so. Local authorities themselves, however, did seem to observe the Joint Council for Wales' guidance.
- 20 Our fieldwork suggested that exclusivity clauses were already a rarity (and non-existent in the public sector) and forthcoming legislation means that they are likely to become of a thing of the past. In the same vein, the majority of organisations responding to our survey said that NGHC workers were not obliged to accept work that was offered to them (i.e. there was no mutuality of obligation), though our fieldwork suggested that in practice managers sometimes favoured workers they knew to be competent and dependable in offering work opportunities that arose.
- 21 Most organisations had no prescribed minimum periods of advanced notice to be given to individuals on NGHCs when work was available to them, not least because NGHCs were used primarily to fill unexpected staff shortages. Neither

did most organisations have prescribed minimum notice periods should work previously offered and accepted be cancelled.

- 22 The majority of organisations responding to our survey said that the rates paid to workers on NGHCs were either the same as or higher than those paid to permanent workers with set contracted hours doing the same job. However, previous research would suggest that the rates paid to home care workers in the private and third sectors (many of whom are employed on NGHCs) were considerably lower than those paid to their counterparts in the public sector.
- 23 Hourly rates paid by agencies to healthcare workers (from healthcare assistants to managers in charge of specialist units) could be substantially higher than the rates paid to staff on substantive contracts within health boards. Other types of agency worker were also paid more per hour than the going rate for people doing similar jobs on permanent contracts, though the premium tended to be considerably more modest than that paid to healthcare workers. Agency workers also sometimes qualified for additional benefits such as travel expenses, lunch allowances or self-booking fees. Supply teachers represented an exception among agency workers in that they tended to be paid less than their counterparts on substantive contracts, though the agency premium means that the cost to schools could be higher.
- 24 Our survey would suggest that a majority of employers using NGHCs provided workers with holiday pay and workplace pension automatic enrolment. Roughly half these employers said that they also offered NGHC workers a written statement of terms and conditions, a minimum contract termination period, statutory sick pay, maternity/paternity/ adoption leave and pay and redundancy pay.
- 25 A majority of organisations responding to our survey also said that staff employed on NGHCs were eligible to participate in at least some organisational training and development activities, though the focus of these tended to be on mandatory training.

## **Impact of the Use of NGHCs on Employers, Individuals and Services**

- 26 It was generally recognised that NGHCs, agency and self-employed or freelance employment arrangements offered both advantages and disadvantages to both employers and individuals.
- 27 It was thought that individuals' motives in taking on work on a NGHC basis were quite mixed. It was argued that many genuinely wanted the flexibility that NGHCs could offer. Previous research has also pointed to people choosing NGHCs because such arrangements offer a better fit with family, leisure or academic commitments. This view was borne out by some organisations' experience of staff who worked on a NGHC basis on a fairly regular basis turning down substantive contracts when they were offered to them.
- 28 By contrast, it was thought that other people take on NGHCs because of a lack of suitable employment opportunities. Previous UK level research has suggested that a third of those employed on zero hours contracts did so because it was the only option available, with this proportion increasing to over half of those aged 16-24.
- 29 Our fieldwork suggested that individuals chose to work on an agency or freelance basis for similar reasons, though some argued that the comparatively high rates paid to some types of agency worker provided an additional incentive.
- 30 The wider literature has pointed to some significant disadvantages to individuals of working on a NGHC basis and these were echoed by some contributors to our study. These disadvantages fell into three main categories:
- financial: individuals on NGHCs earn less on average than their counterparts on permanent contracts and are more likely to experience variable earnings. As a consequence, they are more likely to encounter problems in terms of calculating benefits entitlements and difficulties in securing access to credit, mortgages or even tenancies;

- employment rights and benefits: some NGHC workers lose out on basic workplace protections because they fail to qualify as ‘employees’ rather than ‘workers’. Even where individuals on NGHCs are recognised as ‘employees’, benefits such as occupational pension entitlements can be compromised;
- expectations: the literature suggested that working on a NGHC basis can impact adversely on workers’ expectations of work and increase their tolerance of bad treatment. It was argued during our fieldwork that individuals on NGHCs can feel compelled to accept work when it is offered.

31 However, whereas unions are less likely to have an influence over the pay and conditions of NGHC workers on the whole, the public sector in Wales is relatively strongly unionised and the employers we consulted all recognised trade unions and collective bargaining rights.

32 The two main reasons given by employers responding to our survey for using NGHCs, self-employed or agency workers were:

- to manage fluctuations in demand for services;
- to provide flexibility for individual employees.

33 Particular benefits that employers contributing to our study associated with the use of bank staff in particular were:

- minimising costs by avoiding having to pay those in substantive roles overtime or using more expensive agency workers;
- being able to access staff with up-to-date skills and who were familiar with the organisation and its work practices;
- being able to access staff who had been pre-vetted, where checks were required;
- being able to retain workers during periods when staffing needs were not so high.

34 Whilst there was no suggestion that the organisations which contributed to this study themselves employed NGHCs in a way which deliberately undermined

employment rights for other employees, it has been argued in the wider UK level literature that NGHCs, by virtue of transferring the burden of varying demand from the employer to workers, can be a means of undermining employees' bargaining position and of making it easier for employers to manage staffing requirements at minimal cost.

- 35 Contributors to our fieldwork suggested that there were also disadvantages to the use of NGHCs from an employers' perspective. These included discontent within teams brought about by insecurity and inconsistencies in the terms under which people were employed and, as a consequence, a poorer quality of service. Some contributors also felt that the lack of continuity which is often associated with the use of staff employed on NGHCs and on an agency or self-employed basis undermines the quality of the services provided.

### **Conclusions and Possible Ways Forward**

- 36 The Welsh Government (along with the political leadership in many local authorities) was widely perceived as having been clear in terms of its position against exploitative contractual arrangements. Whilst this position should be sustained, and indeed, could be strengthened by pointing to good practice in public sector employment practices where they occur, this report concludes by cautioning against the wholesale ban on the use of NGHCs in public service delivery. Some contributors argued that Government needs to be careful not to legislate to deal with what amounts to bad management practice and that there is a serious risk that further legislation would lead to undesirable results.
- 37 Nevertheless, action is needed to tackle the inappropriate use of NGHCs to employ home care workers and the Welsh Government can usefully provide a lead in this respect by working with local authorities and other service commissioners to improve procurement practice, including the inclusion of 'social responsibility clauses' within the terms of contracts with home care providers. Guidance already issued by the Joint Council for Wales as well as UNISON's ethical care charter may provide a useful starting point for this.

- 38 Local authorities should also play a wider role as market managers by working more closely with service providers to develop sustainable local home care markets.
- 39 In order to inform these developments, further detailed research should be undertaken with private and third sector care service providers and with local authority procurement and service management professionals.
- 40 Finally, Welsh Government continues to have an important part to play leadership role in conveying the message that preventing the inappropriate use of NGHCs is unethical and unacceptable, particularly within the provision of publicly funded services.