

**Towards an Understanding of  
Zero-Hours Contracts as a  
Variegated Phenomenon:  
Evidence from the UK Higher  
Education Sector**

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# Abstract

Since 2013, official labour market statistics have documented an exponential rise in the use of Zero-Hours Contracts (ZHCs) which do not guarantee a minimum number of hours. The apparent growth in ZHCs has been accompanied by an explosion of interest and a vigorous legislative and policy debate. A problematic theme that runs throughout these developments is that the current discourse rests on an unspoken assumption that ZHCs constitute a singular or homogenous category of employment. However, since the term ZHC is now far more widely used and broadly defined, it actually encompasses a great variety of work arrangements. This thesis contributes much needed evidence on the use of ZHCs in the UK Higher Education (HE) sector. The empirical basis of the investigation is two in-depth institutional case studies involving an analysis of management data and contractual documents as well as 57 semi-structured interviews with Human Resource Personnel, Departmental Managers, Trade Union Representatives and Employees. The thesis initially argues that employment that can now be labelled as ZHCs in Higher Education Institutions (HEIs) has been in use for some time as part of a wider move to a more employer-led approach to flexibility. Until recently, however, a different terminology has been used and this places doubts on how far the notion of “Zero-Hours Contracts” represents a new or distinctive form of casualisation. Nevertheless, it is posited that the number of contracts within each of the institutions indicates that existing measures of prevalence may significantly underreport levels of use in HE. The thesis then explores the variegated nature of Zero-Hours Contracts for academic and non-academic roles in relation to three major aspects of the employment relationship: *working time*; *employee obligation*; and *rights and entitlements*. It finds that product market and other contextual factors produce many practices that can be mapped onto a series of continuums. The overall pattern of use within the case study HEIs is argued to contrast with the tendency towards extreme labour market flexibility that has been documented in much of the literature and is associated with the most negative impacts for employees. However, some issues and concerns are raised and these are given consideration in relation to numerous policy proposals.



# Table of Contents

<b>Glossary of Abbreviations .....</b>	<b>viii</b>
<b>List of Figures.....</b>	<b>x</b>
<b>List of Tables .....</b>	<b>xii</b>
<b>List of Boxes .....</b>	<b>xiv</b>
<b>1 Introduction.....</b>	<b>1</b>
1.1 A Short History.....	1
1.2 Explosion of Interest.....	2
1.3 Support and Opposition.....	4
1.4 Legislative and Policy Developments.....	5
1.5 Assumptions and Challenges .....	8
1.6 The State of Existing Research.....	13
1.7 Purpose and Structure of the Thesis .....	13
<b>2 Literature Review .....</b>	<b>15</b>
2.1 Introduction.....	15
2.2 Non-Standard and Flexible Employment.....	16
2.2.1 The Employment Landscape in the 1970s and 1980s.....	16
2.2.2 Models of Labour Market and Organisational Re-Structuring.....	18
2.2.3 Employer Strategy and Non-Standard and Flexible Employment .....	22
2.2.4 Working Time in the New Millennium .....	37
2.3 Prevalence of Zero-Hours Contracts .....	42
2.3.1 Numbers.....	42
2.3.2 Sectors.....	48
2.3.3 Characteristics.....	50
2.3.4 Social Care.....	54
2.3.5 Higher Education.....	56
2.4 Reasons for the use of Zero-Hours Contracts .....	60
2.4.1 Social Care.....	62
2.4.2 Higher Education.....	63
2.5 Operation of Zero-Hours Contracts.....	68
2.5.1 Working Time.....	69
2.5.2 Employee Obligation.....	76

2.5.3	Rights and Entitlements .....	78
2.6	Research Agenda.....	83
<b>3</b>	<b>Methodology.....</b>	<b>85</b>
3.1	Introduction.....	85
3.2	Research Design.....	86
3.3	Secondary Data.....	89
3.4	Case Studies .....	91
3.4.1	Sampling.....	91
3.4.2	Access.....	92
3.4.3	Profiles .....	94
3.4.4	Definition.....	95
3.4.5	Documents .....	96
3.4.6	Staff Data.....	97
3.4.7	Interviews.....	99
3.4.8	Data Analysis.....	105
3.4.9	Ethical Considerations.....	108
3.5	Summary.....	110
<b>4</b>	<b>Institutional Overview .....</b>	<b>112</b>
4.1	Introduction.....	112
4.2	HESA on the Case Study HEIs.....	113
4.3	UCU Freedom of Information Request.....	116
4.3.1	Findings.....	116
4.3.2	Responses .....	119
4.4	Contracts Identified.....	121
4.5	Total Number.....	128
4.6	Occupational Roles.....	131
4.7	Payment .....	138
4.8	Summary.....	141
<b>5</b>	<b>Working Time.....</b>	<b>144</b>
5.1	Introduction.....	144
5.2	Academic.....	146
5.3	Non-Academic .....	165
5.3.1	Non-academic roles where work is ongoing throughout the year .....	165
5.3.2	Non-academic roles where work is intermittent throughout the year .....	180
5.4	Summary.....	197
<b>6</b>	<b>Employee Obligation.....</b>	<b>200</b>



6.1	Introduction.....	200
6.2	Academic.....	202
6.2.1	Contract.....	202
6.2.2	Practice.....	203
6.3	Non-Academic.....	213
6.3.1	Contract.....	213
6.3.2	Practice.....	215
6.4	Summary.....	235
<b>7</b>	<b>Rights and Entitlements.....</b>	<b>238</b>
7.1	Introduction.....	238
7.2	Employees.....	241
7.3	Workers.....	267
7.4	Summary.....	284
<b>8</b>	<b>Conclusion.....</b>	<b>287</b>
8.1	Summary of Findings.....	288
8.2	Discussion.....	294
8.3	Policy Implications.....	319
8.4	Limitations.....	327
8.5	Further Research.....	329
	<b>Bibliography.....</b>	<b>331</b>
	<b>Appendices.....</b>	<b>357</b>

# Glossary of Abbreviations

<b>ACAS</b>	Advisory, Conciliation and Arbitration Service
<b>BEIS</b>	Department for Business, Energy and Industrial Strategy
<b>BIS</b>	Department of Business Innovation and Skills
<b>CIPD</b>	Chartered Institute for Personnel and Development
<b>DWP</b>	Department for Work and Pensions
<b>EIS</b>	Educational Institute of Scotland
<b>ERA</b>	Employment Rights Act 1996
<b>EU</b>	European Union
<b>FoI</b>	Freedom of Information
<b>FPE</b>	Full Person Equivalent
<b>FTE</b>	Full Time Equivalent
<b>HE</b>	Higher Education
<b>HEI</b>	Higher Education Institution
<b>HESA</b>	Higher Education Statistics Agency
<b>HPC</b>	Hourly Paid Contract
<b>HR</b>	Human Resources
<b>HRM</b>	Human Resource Management
<b>IER</b>	Institute of Employment Rights
<b>JNCHES</b>	Joint Negotiating Committee for Higher Education Staff
<b>LFS</b>	Labour Force Survey
<b>LPC</b>	Low Pay Commission
<b>NCU</b>	North Coast University
<b>NGHC</b>	No Guaranteed Hours Contract
<b>NLW</b>	National Living Wage
<b>NMDS-SC</b>	National Minimum Dataset for Social Care
<b>NMW</b>	National Minimum Wage
<b>NSE</b>	Non-Standard Employment
<b>OMP</b>	Occupational Maternity Pay
<b>ONS</b>	Office for National Statistics
<b>OSP</b>	Occupational Sick Pay
<b>SIC</b>	Standard Industrial Classification

<b>SMP</b>	Statutory Maternity Pay
<b>SOC</b>	Standard Occupational Classification
<b>SSP</b>	Statutory Sick Pay
<b>SU</b>	Students Union
<b>SVU</b>	South Valley University
<b>TUC</b>	Trades Union Congress
<b>UCEA</b>	University and Colleges Employers Association
<b>UCU</b>	University and College Union
<b>UK</b>	United Kingdom
<b>UKCES</b>	United Kingdom Commission for Employment and Skills
<b>WERS</b>	Workplace Employment Relations Survey
<b>WG</b>	Welsh Government
<b>ZHC(s)</b>	Zero-Hours Contract(s)

# List of Figures

Figure 1.1. News articles including variants of the term Zero-Hours Contracts (LexisNexis) .....	2
Figure 1.2. Internet searches for Zero-Hours Contracts 2004 to present (Google Trends).....	3
Figure 2.1 The Flexible Firm.....	20
Figure 2.2. Prevalence of ZHCs, LFS 2000 to 2019 .....	44
Figure 2.3. Prevalence of Non-Guaranteed Hours Contracts, ONS Business Survey May and November 2015 to 2017 .....	47
Figure 2.4. Distribution of all people on ZHCs by industry sector, LFS April-June 2018 .....	48
Figure 2.5. Proportion of people on ZHCs in industry sectors, LFS Apr-Jun 2016 and 2017 .....	49
Figure 2.6. Work Foundation (2013) analysis of the distribution of ZHCs by occupation .....	51
Figure 2.7. Distribution of ZHCs by age category, LFS October-December 2017 .....	53
Figure 2.8. Distribution of ZHCs by educational status, LFS October-December 2017.....	54
Figure 2.9. Proportion of workers in social care on ZHCs, NMDS-SC 2012 to 2019 .....	55
Figure 2.10. Proportion of workers on ZHCs by care setting and roles, NMDS-SC 2016/17.....	56
Figure 2.11. Reasons given by organisations for using ZHCs .....	62
Figure 2.12. Distribution of typical weekly hours for ZHCs .....	70
Figure 2.13. Comparison of usual and actual hours for ZHCs, LFS Oct- Dec 2017.....	73
Figure 2.14. Whether employers pay compensation for cancelled shifts in low paid sectors.....	75
Figure 2.15. Employment status of individuals on ZHCs .....	82
Figure 4.1. Total number of individuals employed in academic and non-academic roles in South Valley University, HESA staff data 2011-2017.....	113
Figure 4.2. Total number of individuals employed in academic and non-academic roles in North Coast University, HESA staff data 2011-2017 .....	114
Figure 4.3. Top 30 universities reporting highest proportion of workforce on Zero-Hours Contracts to the UCU Freedom of Information Request.....	118
Figure 5.1. Periods where work is ongoing throughout the academic year for academic roles in South Valley University and North Coast University .....	147
Figure 5.2. Average and range of average weekly hours for individuals employed on academic ZHCs in South Valley University and North Coast University .....	148
Figure 5.3. Examples of additional periods when academic work is scheduled for the year in South Valley University and North Coast University .....	154
Figure 5.4. Examples of additional periods when academic work is scheduled semester to semester in South Valley University and North Coast University.....	157
Figure 5.5. Periods where work is ongoing throughout the academic year for non-academic roles in South Valley University and North Coast University.....	165

Figure 5.6. Average and range of average weekly hours for non-academic roles where work is ongoing through the academic year in South Valley University and North Coast University.....	167
Figure 5.7. Changes in quantity of hours for Study Skills Tutors and Mentors in South Valley University covering the period from October to December 2016 .....	173
Figure 5.8. Changes in quantity of hours for Support Workers and ENTs in South Valley University covering the period from October to December 2016.....	176
Figure 5.9. Summary of scheduling and changes to working time for non-academic roles where work is ongoing throughout the year in South Valley University and North Coast University .....	179
Figure 5.10. Periods where work is undertaken intermittently throughout the academic year and the timing of demand is fixed in South Valley University and North Coast University .....	181
Figure 5.11. Average weekly hours for non-academic roles where work is intermittent throughout the academic year in South Valley University and North Coast University.....	183
Figure 5.12. Summary of schedule notification for non-academic roles where work is intermittent during the academic year in South Valley University and North Coast University.....	193
Figure 6.1. Summary of the continuum of employee obligation practices for academic and non-academic roles in South Valley University and North Coast University.....	235
Figure 7.1. Employment status of individuals on ZHCs.....	240
Figure 7.2. Proportion of employees in the Faculty of Computing, Engineering and Science in South Valley University working a certain number of terms in the academic year 2015/2016.....	264
Figure 7.3. Proportion of employees in academic roles in North Coast University working a certain number of terms in the academic year 2015/2016.....	265
Figure 7.4. Continuum illustrating the extent of statutory rights and entitlements coverage in South Valley University and North Coast University.....	285

# List of Tables

Table 1.1. Timeline of legislative and policy developments for Zero-Hours Contracts.....	8
Table 1.2. Regulation of ZHCs or similar contracts in Europe.....	12
Table 2.1 National institutional frameworks for employers use of NSE and flexible employment. ....	25
Table 2.2. Examples of alternative nomenclature used for ZHCs.....	46
Table 2.3. Proportion of organisations that use ZHCs by sector in employer surveys.....	50
Table 2.4. Koumenta and Williams (2015) analysis of ZHC occupations (4-digit level).....	52
Table 2.5. Typology of contract types used in HE with suggested definitions.....	58
Table 2.6. Occupational roles for which potential ZHCs are used in HE.....	59
Table 2.7. Average weekly hours worked for ZHCs.....	70
Table 2.8. Average and range of weekly hours for ZHCs in low paid sectors.....	71
Table 2.9. Employees view on how much notice they receive when work is available.....	72
Table 2.10. Changes to working hours each week for ZHCs.....	73
Table 2.11. Employees view on the notice they receive if work is no longer available.....	74
Table 2.12. Obligation to accept offers of work in contract and practice.....	77
Table 2.13. Employment status and statutory employment rights.....	81
Table 2.14. Employers and employees views on eligibility to rights and entitlements.....	82
Table 3.1. Sources and details of staff data received in South Valley University.....	98
Table 3.2. Number of interview participants by type and case study institution.....	102
Table 3.3. Main coding framework for analysis of textual data in South Valley University and North Coast University.....	107
Table 4.1. Distribution of academic and non-academic staff in South Valley University by terms of employment, HESA staff data 2016/17.....	114
Table 4.2. Distribution of academic and non-academic staff in North Coast University by terms of employment, HESA staff data 2016/17.....	115
Table 4.3. List of UK universities reporting the highest number of Zero-Hours Contracts to the UCU Freedom of Information Request 2013.....	117
Table 4.4. List of UK universities reporting the highest number of Zero-Hours Contracts to the UCU Freedom of Information Request 2013 (continued).....	117
Table 4.5. Contracts identified as ZHCs and their equivalents across the case study HEIs.....	128
Table 4.6. Number of contracts identified as ZHCs in South Valley University.....	130
Table 4.7. Number of contracts identified as ZHCs in North Coast University.....	131
Table 4.8. Occupational roles undertaken on ZHCs grouped according to Standard Occupational Classification (SOC2010) (SVU and NCU).....	135
Table 4.9. Levels of task discretion for occupational roles by ZHC (SVU and NCU).....	137

Table 4.10. Multipliers to hourly rate of pay for Lecturers on Hourly Paid Contracts of Employment in South Valley University .....	138
Table 4.11. Hourly rate of pay for Casual Contracts of Employment and Casual Worker Arrangements in South Valley University .....	140
Table 4.12. Hourly rate of pay for Support Contracts of Employment and Pink Form Casual Worker Arrangements in North Coast University .....	141
Table 5.1. Academic ZHCs and occupational roles in South Valley University and North Coast University .....	146
Table 5.2. Summary of the main forms of schedule notification and change for academic roles in South Valley University and North Coast University .....	158
Table 5.3. Summary of notice and compensation in the event of a cancellation of work for academic roles in South Valley University and North Coast University .....	164
Table 5.4. Non-academic ZHCs and occupational roles where work is ongoing throughout the academic year in South Valley University and North Coast University .....	166
Table 5.5. Weekly hours for a selection of Health and Fitness Instructors in South Valley University covering the period January to May 2016 .....	169
Table 5.6. Non-academic ZHCs and roles where work is intermittent throughout the academic year in South Valley University and North Coast University .....	180
Table 5.7. Notice and compensation in the event of a cancellation of work for non-academic roles in South Valley University and North Coast University .....	197
Table 6.1. Academic roles in South Valley University and North Coast University where there is no obligation to accept work and the reasons involved .....	210
Table 6.2. Non-academic roles in South Valley University and North Coast University where there is no obligation to accept work and the reasons involved. ....	225
Table 6.3. Non-academic roles in SVU and NCU where there is a conditional obligation to accept work and reasons involved .....	234
Table 7.1. Employment status and statutory employment rights.....	239
Table 7.2. Zero-Hours Contracts that provide employee status and employment roles for which they are used in South Valley University and North Coast University .....	242
Table 7.3. Zero-Hours Contracts that provide worker status and employment roles for which they are used in South Valley University and North Coast University.....	268

# List of Boxes

Box 4.1. Hourly Paid Contracts of Employment in South Valley University .....	122
Box 4.2. Casual Contracts of Employment in South Valley University .....	123
Box 4.3. Casual Worker Arrangement in South Valley University.....	123
Box 4.4. Students Union Agency in South Valley University .....	124
Box 4.5. Academic Contract of Employment in North Coast University .....	125
Box 4.6. Support Contracts of Employment in North Coast University.....	126
Box 4.7. Pink Form Casual Worker Arrangements in North Coast University.....	127
Box 4.8. Information on grades and payment for academic roles in North Coast University .....	139
Box 5.1. Cancellation clause for Hourly Paid Contracts of Employment in South Valley University	162
Box 5.2. Departmental guidelines meetings with Study Skills Tutors in South Valley University.....	171
Box 5.3. Scheduling information for Support Workers and ENTs in South Valley University.....	175
Box 5.4. Information schedule changes for Exam Invigilators in South Valley University.....	189
Box 5.5. Information on cancellation of scheduled work in Student Services in South Valley University.....	194
Box 5.6. Information on cancellation of scheduled work for Exam Invigilators in South Valley University.....	195
Box 6.1. Hourly Paid Contracts of Employment and employee obligation in South Valley University .....	202
Box 6.2. Casual Contracts of Employment and employee obligation in South Valley University.....	213
Box 6.3. Casual Worker Arrangements and employee obligation in South Valley University.....	214
Box 6.4. Students Union Agency and employee obligation in South Valley University.....	214
Box 6.5. Information on employee obligation for Support Workers and ENTs in South Valley University.....	226
Box 7.1. Information on continuity of employment for Hourly Paid Contracts of Employment in South Valley University .....	245
Box 7.2. Information on statutory and occupational sickness pay in North Coast University .....	251
Box 7.3. Information on statutory sickness payment in South Valley University .....	254
Box 7.4. Information on occupational and statutory maternity pay in North Coast University .....	256
Box 7.5. Information on occupational maternity pay in North Coast University .....	257
Box 7.6. Information on statutory maternity pay in South Valley University .....	258
Box 7.7. Information on minimum notice periods in South Valley University .....	260
Box 7.8. Information on minimum notice in North Coast University.....	260
Box 7.9. Information on redundancy procedure and payment in North Coast University .....	262
Box 7.10. Information relating to control from the Student Union Agency contract in South Valley University.....	270



Box 7.11. Information on mutuality of obligation for Casual Worker Arrangements in South Valley University .....	271
Box 7.12. Information on mutuality of obligation from Student Union Agency contract in South Valley University .....	272
Box 7.13. Information governing the use of Pink Form Casual Worker Arrangements in North Coast University .....	275
Box 7.14. Information on annual leave payment for Casual Worker Arrangements in South Valley University .....	279
Box 7.15. Information on non-payment for individual days of sickness absence for Casual Worker Arrangements in South Valley University .....	281
Box 7.16. Information on notice for dismissal for Casual Worker Arrangements in South Valley University .....	282
Box 7.17. Information on notice for dismissal from Student Union Agency contracts in South Valley University .....	283



# 1 Introduction

The past fifty years have witnessed many significant changes in the nature of employment. One of the most profound in this sense has been a reduction in the commitment shown by organisations to the standard employment relationship. This has been accompanied by an increase in the use of non-standard and flexible employment aimed at achieving flexibility. While the most notable of these have been part-time and temporary work, employers have begun to develop more diverse practices in pursuit of their economic interests. One form of employment in this context is Zero-Hours Contracts (ZHCs).

## 1.1 A Short History

There has never been an official legal definition of Zero-Hours Contracts. Instead, the term was first used as colloquial expression for some forms of casual work. The earliest evidence of its recording dates back to 1989 (Beavis 1989). ZHCs then enjoyed a period of publicity during the mid-1990s when their use was rolled out by retailers including the Kingfisher and the Burton Group. At this time, ZHCs began to be understood as an “extreme form” of casual work in which no hours were guaranteed but employees were required to be on-call in order to accept work (Boseley 1994 and Johnstone 1994).

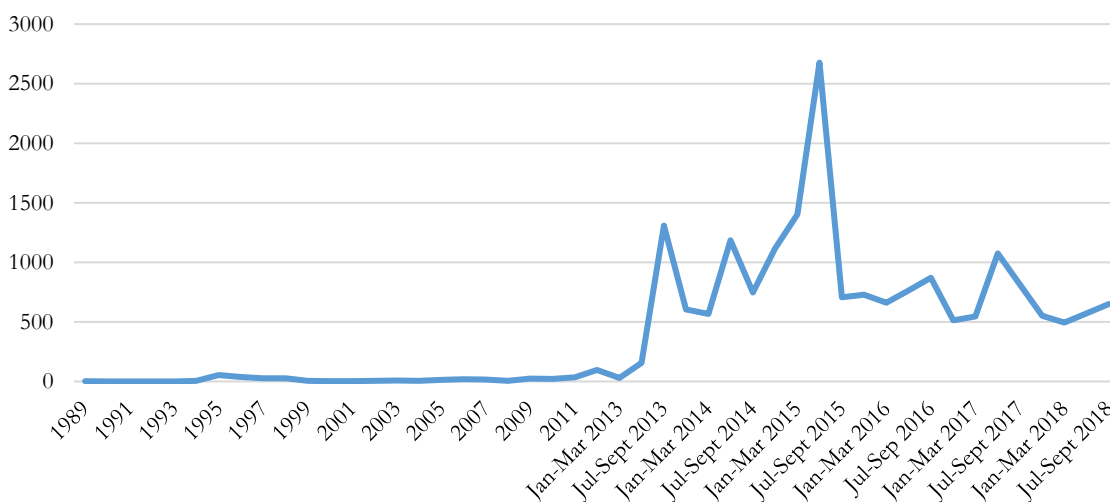
In September 1995, a dispute arose concerning staff at Burger King who were asked to “clock-off” during quiet periods but had to remain on or near the premises without receiving payment for this time. Some reports suggested that this meant employees could be paid as little as £1 for a five-hour shift (Braid 1995). New Labour led a successful campaign for the compensation of these workers and in the following year drafted its policy document *Building Prosperity: Flexibility Efficiency and Fairness at Work*. In response to trade union pressure, an initial promise was included to outlaw the use of Zero-Hours Contracts. However, upon publication an outright ban was abandoned and in its place a commitment was made to examine how people could be protected (Independent 1996). In the following year, Katherine Cave’s survey of 173 employers revealed widespread use which was reported in the media as being as a pressing problem facing hundreds and thousands of UK workers (Cave 1997; Palmer 1997).

During its first full year of office, the new Labour Government published its White Paper *Fairness at Work* which acknowledged the above research and recognised many of the issues raised. A commitment to the National Minimum Wages Regulations 1999 r15 (1)<sup>1</sup> was seen sufficient in defending against abuses. Instead of a ban, the government proposed to seek “views on whether further action should be taken to address the potential abuse and, if so, how to take this forward without undermining labour market flexibility” (Department of Transport and Industry 1998: 27). Nothing appeared to come of this invitation, and in the decade that followed Zero-Hours Contracts all but dropped off the public and political agenda.

## 1.2 Explosion of Interest

Figure 1.1 charts the number of newspaper articles published on the subject of Zero-Hours Contracts from 1989 to the present. Despite the issues noted above, it shows that interest was low for many years and continued to be so throughout the first decade of the millennium. However, coverage increased after the onset of the 2008 recession with an explosion of interest coming in August 2013.

**Figure 1.1. News articles including variants of the term Zero-Hours Contracts (LexisNexis)<sup>2</sup>**

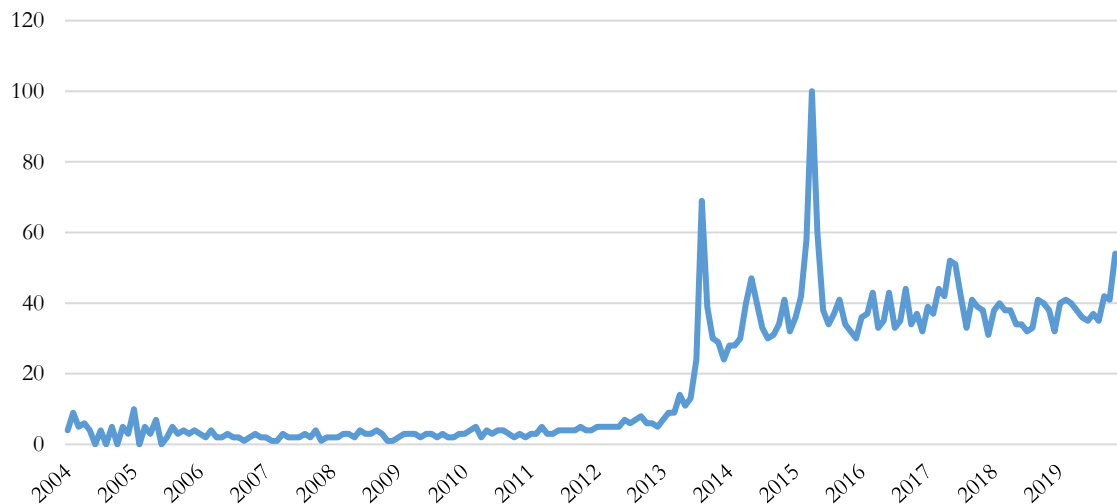


<sup>1</sup> Implementing the European Working Time Directive 1998.

<sup>2</sup> LexisNexis search criteria for each year: “zero-hour contract!” OR “zero hour contract!” excluding group duplicates (medium), non-business news, and websites. UK publications.

Figure 1.2 charts internet searches for Zero-Hours Contracts from 2004 to the present time (the data are automatically scaled so that 100 represents the week with the highest searches). The trend is similar to above with an explosion of interest happening in August 2013 then climbing to a high point in 2015.

**Figure 1.2. Internet searches for Zero-Hours Contracts 2004 to present (Google Trends)<sup>3</sup>.**



In both charts, the initial uptake coincides with the publication of new statistical estimates and the announcement of the Department of Business Innovation and Skills (BIS) consultation in 2013 (BIS 2013). Amid this explosion of interest, Zero-Hours Contracts have been the subject of extensive debate. Indeed, they have arguably become the primary employment issue of the decade alongside the growth of the gig economy brought about by the expansion of technological platforms (Forde et al 2017; Prassl 2018). This debate tends to reflect traditional arguments over the use of non-standard and flexible employment and has been somewhat polarised between those in support and in opposition.

<sup>3</sup> Google Trends data is not available prior to 2004.

### 1.3 Support and Opposition

The Government, along with employer representatives such as the Institute of Directors (2013), claim that the flexibility such contracts provide has mediated the impact of the financial crisis and have provided a vital tool in bringing about economic recovery and sustained growth. An important part of this is the ability to maintain low levels of unemployment, with Neil Carberry of the Confederation of British Industry (CBI) maintaining that there would have been an extra 500,000 people without work if employers were unable to resort to using flexible employment such as ZHCs (in Acas 2014: 2).

Relatedly, it is often suggested that Zero-Hours Contracts provide much needed employment opportunities for individuals who are either new to the labour market or re-engaging after a period of absence. This view is summarised by Jacob Rees-Mogg (2013) writing in *The Telegraph* who states: *“Zero-hours contracts could be an important entry point for people who are new to the workforce...they could be a stepping-stone from unemployment and welfare dependency to employment and self-sufficiency and it is well-known that it is easier to obtain work from a position of employment”*.

Perhaps most common among the arguments of those who advocate the use of Zero-Hours Contracts, however, is the notion that they provide benefits to some employees such as students and retired people by enabling them to choose how much work they wish to undertake and when they wish to do so. This is the notion that flexibility works both ways and its proponents invariably invoke research which finds that 60% of those on ZHCs agree that they are satisfied with their current job (CIPD 2013a).

The explosion of interest has been especially marked by the extent of opposition to Zero-Hours Contracts. People of this persuasion dispute the economic arguments noted above. Rather than creating a jobs miracle in the post-recessionary climate, it is said that higher employment rates are due to the growth of poor-quality work. Moreover, it is suggested that this actually carries a fiscal impact. For example, the TUC (2017a) has estimated that ZHCs cost the government £1.9 billion per year through reduced tax revenues resulting from low pay and increased benefit spending. Beyond this, most of the opposition to Zero-Hours Contract is levelled in relation to the nature of the work itself. Much of the

uptake in interest is due to the fact that Zero-Hours Contracts have become a symbol of an increasingly insecure labour market where the balance of power is tilted decisively in favour of employers.

Much has been made of the ways in which employer-led working time practices can have a detrimental impact on people who work in Zero-Hours Contracts. One way that this can occur is through involuntary underemployment where employers provide insufficient hours of work to employees. This has variously been found to affect over quarter (ONS 2018) and just under half of ZHC employees (Datta et al 2018). A great deal of discussion has also been made of the difficulties that can arise where employers provide work at short-notice and where there are changes to the quantity of hours over which they have no control. The resultant unpredictability of work makes it hard for employees to plan their lives. Indeed, research from UKCES (2014) revealed that over half of all respondents on Zero-Hours Contracts report financial problems due to difficulties in budgeting from one month to the next (also seen in Citizens Advice Scotland 2014; Unite 2013; Wood and Burchell 2014).

Another major issue that has been highlighted is the way in which some employers who impose these kinds of practices still expect their staff to be available if, and when, they choose to offer them work. There is some anecdotal evidence of employees being forced to accept work for fear that their employer or manager might decide to reduce or to “zero-down” their future allocation of work (as in Acas 2017).

These pressures have been shown to result in significant anxiety and other psychological complications. For example, research from UCL (2017) analysed data on more than 7,700 people in the UK and found that those employed on Zero-Hours Contracts were at greater risk of reporting problems of this nature.

## **1.4 Legislative and Policy Developments**

From these positions, there have been two strands of thinking as to how to respond: First, whether there is a case for regulation to address specific issues in terms of the way they are used and second, whether it would be desirable or feasible to prohibit the use of ZHCs. In May 2013, the Coalition

Government reviewed the use of ZHCs and issued a statement outlining four areas of concern. The most pressing of these were exclusivity clauses and the lack of transparency over terms and conditions.

At the end of the year, the Department of Business Innovation and Skills undertook a policy consultation on these issues and collected a wide range of responses. It was concluded that ZHCs have a place in today's labour market since they are economically valuable and provide benefits to employers and employees (BIS 2013). No drastic action was considered necessary, except a ban on the use of exclusivity clauses which later came into force in the Small Business, Enterprise and Employment Act 2015. After these statutory developments, Zero-Hours Contracts remained firmly on the agenda with some suggesting that the provisions did not go far enough. Prior to the 2015 election, Ed Miliband pledged further action to end exploitative Zero-Hours Contracts (Labour Party 2015; BBC 2015), but this and similar efforts such as Ian Means' Private Members Bill eventually came to no avail.

Upon winning the 2015 election, the Conservative Government took the position that the new statute was in fact sufficient. However, some further action in the sphere of employment was announced after Theresa May's became Prime Minister. This eventually took the form of the Taylor Review into Modern Working Practices (Taylor 2017). Although the main focus was on new forms of employment driven by digital platforms, Zero-Hours Contracts did feature. As before, they attracted a commentary that was broadly positive about the economic benefits of flexibility and the ways that ZHCs can work for both employers and employees. It was, however, critical of what it saw as examples of "one-way flexibility", citing issues around requirements to be available at short notice and the inability of employee to refuse work due to the risk of further offers not being made in future. In the year that followed, the Government promised to implement a range of Taylor's recommendations including, most notably, a right to request a contract with guaranteed hours after 26 weeks in employment. Further measures have been highlighted by the Low Pay Commission (LPC) and are subject of an ongoing consultation (Low Pay Commission 2018; BEIS 2019).



During these events, the election of Jeremy Corbyn as Labour leader in the summer of 2015 provided new impetus to the political left and to calls for an outright ban on the use Zero-Hours Contracts. This position has gained sympathy among sections of the press and has been endorsed by the trade union movement who have held such view since the mid-1990s. Advocates of the position have been especially galvanised by the regulatory situation across the international community. In March 2016, New Zealand's *Employment Relations Amendment Bill no 3* was reported to have imposed a total ban on ZHCs and has been cited as clear proof that they can be outlawed. This is seen in the following:

*'Yes, zero hours work can be banned: New Zealand has just done it'* (Chakrobrati 2016).

*"As New Zealand has shown, governments do not have to sit on the side-lines when it comes to tackling exploitation. They can outlaw zero-hours contracts"* (Glen McCluskey cited in Inman 2016).

*"Zero-hour contracts have been banned in New Zealand – look what's possible when you put your mind to it"* (Jeremy Corbyn cited in Sheffield 2016).

In July 2016, similar references were made by Jeremy Corbyn in relation to European regulation. Here, he draws further support for his position on banning Zero-Hours Contracts by suggesting:

*If we want to stop insecurity at work and the exploitation of zero hours contracts why don't we do what other European countries have done and ban them...[they]...are not permitted in Austria, Belgium, Czech Republic, Denmark, France, Germany, Hungary, Italy, Netherlands and Spain.* (Corbyn 2016).

These views on an outright ban became official Labour Party policy in 2017 and have been given renewed commitment in its recent manifesto pledge to set about:

*Banning zero-hour contracts and strengthening the law so that those who work regular hours for more than 12 weeks will have a right to a regular contract, reflecting those hours.*

(Labour Party 2019)

The following table provides a timeline of the legislative developments described here along with parliamentary motions that either had little impact or did not eventually pass into statute.

**Table 1.1. Timeline of legislative and policy developments for Zero-Hours Contracts**

December 2013	BIS Consultation on Zero Hours Employment Contracts
July - November 2014	Ian Mearns Private Members Bill
March 2015	Small Business, Enterprise and Employment Act
November 2016 - July 2017	Matthew Taylor Review of Modern Working Practices
December 2018	Low Pay Commission report
December 2018	Good Work Plan
July 2019	BEIS Consultation on LPC Recommendations

## 1.5 Assumptions and Challenges

At the time of the BIS consultation (but with relevance thereafter) the legal scholars Adams et al (2014: 9) took a critical view of the way Zero-Hours Contracts were being treated, writing instead that:

*“...the current discourse surrounding these work arrangements is fundamentally flawed. It appears to be predicated on an unspoken assumption that there is clarity and coherence in the notion of the Zero-Hours Contracts as a specific phenomenon in employment law and the labour market more broadly and that it could – and should – therefore be regulated as such”.*

Contrary to this assumption, the scholars maintain that there is no such thing as “the” Zero-Hours Contract and that the label is in fact capable of covering a wide variety of working arrangements. They argue that such assumptions are highly problematic because, when ZHCs are viewed in this way, regulatory exercises such as the BIS consultation and subsequent statute give the impression that any intrinsic problems have been remedied and that no further action is necessary. This enables a significant shift towards the legitimisation and normalisation of all but the most extreme forms of abusive flexible employment practices that have grown rapidly in recent years (Adams et al 2014 also Freedland 2014).

Another way that these kinds of unspoken assumptions about Zero-Hours Contracts are apparent is in calls for a total ban. However, they manifest slightly differently and create their own kinds of problems. The views of those who take this position appear to have coalesced around a particularly narrow understanding of what constitutes a Zero-Hours Contract. This tends to resemble the 1990s view of ZHCs as an extreme form of casual employment where workers are on-call and obligated to accept work. Whilst this is true sometimes, it only applies to some of the varieties in official figures.

The reason for this view could be a genuine lack of understanding. Another explanation could be that the label Zero-Hours Contracts provides such a powerful political tool in tackling the perceived problems of precarious and insecure employment that engaging with nuance is relegated to a mere afterthought. Whichever is correct, failure to recognise the reality of the situation raises practical problems. One way of appreciating the difficulties that can arise here is to consider legislative developments elsewhere in the world which are often drawn upon to give credibility to calls for an outright ban. In New Zealand, the *Employment Relations Amendment Bill no 3<sup>4</sup>* includes a provision (67E) that prevents employers demanding that individuals remain available and to accept work at all times. Darren Newman (2016) has pointed out that, in fact, the legislation does not outlaw the use of contracts that do not guarantee work. This is also confirmed by scholars at the University of Wellington:

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<sup>4</sup> Becoming statute on the 10<sup>th</sup> March 2016.

*“...this ban is not intended to prohibit employers from engaging employees on genuine casual arrangements where employers have no obligation to offer work and employees have no obligation to accept any work offered to them. It is only intended to prohibit the type of arrangements...where the employee does not have equal rights in the employment relationship [and is obliged to accept work]”*

(Kiely and Robinson 2016).

Since New Zealand has a narrow definition that distinguishes it from other casual work, it has for all intents and purposes banned what it regards to be ZHCs. However, this does not transfer easily to the UK context where a much broader definition means that employment arrangements involve greater variety. If applied here, it would only restrict some employment now labelled as Zero-Hours Contracts.

A similar problem arises when comparisons are made with the regulatory situation in Europe, which is presented in Table 1.2 below. There is considerable complexity across national contexts with many different terminologies and definitions in use. What is interesting is that none of these countries actually impose a complete ban as has been suggested. In the Republic of Ireland, a distinction is made between “if and when” contracts which do not require employees to be available for work and “Zero-Hours Contracts” where this is a condition of the employment. The former remain legal while the latter have been legislated against. In the UK, however, both of these would be regarded as Zero-Hours Contracts, although we do not know what proportions of the total numbers in use would be made up by each.

In the Netherlands there also different types of arrangements similar to the example above. These include “stand-by” contracts that do not oblige employees to be available and “Zero-Hours Contracts” which are again distinguished by the fact that employees are obliged to accept work offered. Neither of these are prohibited but, again, they would both be regarded as ZHCs in the UK. Those who work on this basis do, however, receive contracted hours that reflect their patterns of work after 3 months. These rules form a baseline that can be extended through collective agreements (O’Sullivan et al 2015).

In Italy, work considered to involve an on-call dimension is also permitted but must be justified with reference to production peaks and cannot be used for organisations day to day and general needs. The arrangements can also only be used for those under 25 and over 54 years of age. If employers want their employees to be available for work despite having no guaranteed hours, there is mandatory on-call allowance amounting to a proportion of payment for a normal working week. In addition, employers must provide at least 1 days' notice and cannot ask employees to work more than 400 days a year. After 3 years, the arrangement reverts to a full-time permanent contract (O'Sullivan et al 2015).

One exception where there is something approaching a complete ban is in France, though here too ZHCs are only prohibited for a majority of workers. The highest court in the land has ruled that an employment contract requires employers to provide employees with work. As part of this, there is a guaranteed 24 hours a week for part-timers over a period decided by collective bargaining, unless employees decide to opt out. These contracts must also include the number and distribution of hours. There are, however, exceptions to the rules for young people and agency workers (Eurofound 2015).

**Table 1.2. Regulation of ZHCs or similar contracts in Europe**

<b>Allowed</b>	<b>Allowed, Heavily Regulated</b>	<b>Not Generally Allowed</b>	<b>Not Used/Rare</b>
Cyprus	Germany	Austria	Bulgaria
Finland	Netherlands	Belgium	Croatia
Ireland	Italy	Czech Republic	Denmark
Malta	Slovakia	Estonia	Hungary
Norway		France	Poland
Sweden		Lithuania	Romania
United Kingdom		Luxembourg	Slovenia
			Spain

Source: *A Study on the Prevalence of Zero Hours Contracts among Irish Employers and their Impact on Employees*

(O’Sullivan et al 2015); *Zero-hours contracts: is the UK “the odd one out”?* (Full Fact 2016)

The intention of those who cite developments in other countries may well be to ban certain forms of practices that they believe define Zero-Hours Contracts. However, without understanding that the label encompasses a much greater variety of employment arrangements in the UK, calls for a ban remain absolutist. Given how far reaching this could be, questions need to be raised as to whether the prospect is politically viable in an economy that is fundamentally reliant on workforce flexibility. Its advocates might also have to concede that total prohibitive action may be undesirable when it comes to instances where mutual benefits of flexibility exist and employees express a preference for working on this basis.

This view of Zero-Hours Contracts is apt at generating more heat than light. A way forward needs to be forged, but this requires a more cautious approach to regulation that occupies an intermediary space between legitimisation and a total ban. For this, an understanding of variegation in ZHCs is imperative and would enable a much better engagement with progressive legislation found elsewhere in Europe.

## **1.6 The State of Existing Research**

Following the explosion of interest, a steady stream of literature has been produced which provides a rich vein of insight into the growth and prevalence of Zero-Hours Contracts. It has also begun to reveal that the label covers a wide variety of employment practices in relation to different aspects of the employment relationship. However, the review of the literature in the next chapter shows that there are significant limitations to this work. Most notable in this respect is that there is very little research which looks at the distribution of different practices in the labour market and which examines varieties of use in specific sectors. One such area where casualisation and Zero-Hours Contracts are rife but where there is also plenty of scope for empirical investigation is the Higher Education sector.

## **1.7 Purpose and Structure of the Thesis**

The purpose of the thesis is to assist this move toward an understanding of Zero-Hours as a variegated phenomenon by contributing evidence from the UK Higher Education Sector. In achieving the overall aim of the thesis, the following objectives are addressed:

1. To clarify what employment arrangements can be labelled as Zero-Hours Contracts in HEIs.
2. To review the use of Zero-Hours Contracts in terms numbers, roles and pay levels in HEIs.
3. To understand the variety of ways that Zero-Hours Contracts are used in relation to the following aspects of the employment relationship for academic and non-academic roles in HEIs.
  - Working time.
  - Employee obligations.
  - Rights and Entitlements.

The research does not have a particularly refined theoretical underpinning. However, it does proceed from the basis that employment in HE must be understood as being linked to wider processes in the

changing nature of work. Among the more recent of these, is that we are in the midst of a move toward a more employer-led approach to flexibility in which employers are increasingly unwilling to pay for labour that exceeds demand by the week, the day, or the hour. A key tenet to the thesis, however, is that this trend is mediated by numerous contextual factors that produce many varieties of practice.

Chapter 2 of the thesis aims to situate the research by reviewing existing literature on the changing nature of employment in the second half of the last century. Attention is given to early debates on flexibility before looking in some depth at employer strategies and the multi-level factors that shape the use of non-standard and flexible employment. After considering more recent developments on working time that are central to the thesis' focus, the chapter then reviews the current body of research on ZHCs. It outlines the gaps in our understanding and sets up an empirical focus on the HE sector.

Chapter 3 provides a comprehensive treatment of the methodological approach and a full justification for a qualitative case study design to address the research objectives and questions. It then reports on the practicalities of each part of the research process including the methods involved and the analytical strategy adopted. After this, the subsequent chapters present the findings and analysis of study.

Chapter 4 analyses some exiting data to position the case studies before addressing the first two objectives of the thesis. It presents the different Zero-Hours Contracts in the HEIs and maps out their use in terms of numbers, roles and pay. After this, Chapters 5 to 7 attend to the third objective of thesis by exploring the variegated nature of ZHCs in relation to three aspects of the employment relationship.

Chapter 8 then revisits the overall purpose of the research and the research problem. It draws together summaries of each of the preceding chapters and delineates the contribution of the thesis. This involves some assessment of how progressive regulatory proposals can be applied within the HE sector.



## 2 Literature Review

### 2.1 Introduction

This chapter will begin by reviewing the extensive body of literature that has been produced over the past 40 years in relation to the changing nature of work and employment. In doing so, it will first look at the move away from the dominance of the standard employment relationship associated with industrial regimes of the early to mid-19<sup>th</sup> century and examine the growth of non-standard and flexible arrangements. We will then consider some of the main models of labour market and organisational restructuring proposed in the 1980s and provide an account of the criticisms to which they were heavily subjected. In line with these critiques, the review then explores how employer strategies toward the use of non-standard and flexible employment are determined by a complex interaction between a range of factors operating at multiple levels. This general review of the issues is tied off with a look at more recent developments in employers' approaches to working time that are of central importance to understanding the recent emergence of Zero-Hours Hours Contracts in the United Kingdom.

The chapter will then undertake a review of the existing research on the use Zero-Hours Contracts. Attention is given to the available statistical measurements along with sectoral and demographic patterns of use within the labour market. It also looks at what is known from research undertaken in specific sectors - including HE, the focus of the thesis. The third section then considers what the literature tells us about the reasons employers make use of ZHCs both generally and in specific sectors. It does so by situating the discussion within the context of the wider processes previously discussed.

The chapter then looks at the actual operation of Zero-Hours Contracts and does so in relation to three major aspects of the employment relationship. It is here that the heterogeneity of employment forms can be seen. However, the existing evidence is shown to be limited to very general insights. There is little work which shows how certain practices are distributed and a paucity of studies that look at variegated use in specific sectors. During this discussion, the basic parameters of knowledge in HE are

highlighted and the scope for a research contribution is outlined. In the final section of the review, the research problem is revisited and the aims and objectives of the study are presented once more.

## **2.2 Non-Standard and Flexible Employment**

Over the past 40 years, there has been an extensive body of literature which has provided in-depth commentary on the changing nature of work and employment. In the following pages, I will review some of the major aspects of the academic debate up to and including more recent developments that, as will be seen, are central to understanding the recent emergence of Zero-Hours Contracts in the UK.

### **2.2.1 The Employment Landscape in the 1970s and 1980s**

Throughout the greater part of the twentieth century, and particularly after the end of WW2, the western world operated according to a distinct set of economic principles often referred to as an era of Fordism. This system – named after its chief industrial architect – was characterised by the mass production of standardised goods in large organisations involving a high division of labour that was subject to tight managerial control. This was inextricably linked to mass consumption which itself was enabled by some key factors. There were strong governmental commitments to welfare provision and full employment involving payment of high wages and security associated with the standard employment relationship. These conditions were achieved, and continued to be protected, through an acceptance of the role of trade unions in the management of the economy. Overall, the fortunes of the population translated to increased spending power and resulted in a “virtuous circle” (see Boyer 2004).

However, in the 1970s the system entered into a period of decline. There were a number of reasons for this, beginning, most notably, with a global recession kickstarted by the Oil Crisis. This was further exacerbated by a saturation of internal consumer markets which had a severe impact on sales of goods and led to a realisation that mass production had reached its technical limits. Most critical, however, was the emergence of global competition from industrialising countries who offered much lower production costs. This context of a reduced market for standardised goods and an inability to out-

contend new international players lead to a decline in traditional industry and the development of what has been described as the “new competition” (Best 1990) involving smaller more dynamic firms focusing on product differentiation. The particular production regimes intended meet this challenge developed in multiple ways across countries. However, one thing that each of these had in common is that employers began to look for ways to manage their way through the increasingly uncertain conditions. Their attempt to do so has been encapsulated by the concept of labour market flexibility.

The literature shows that this has several dimensions (Standing 1999). One of the most notable is an attempt by employers to assert control over wage levels, but perhaps more important is the way in which they have sought greater flexibility through the restructuring of their workforces. Thus, the wider changes to processes of production were accompanied by altered patterns of labour use characterised by some retention of employees on standard conditions and a growth in the use of different forms of non-standard employment (NSE). There has never been an official definition of NSE and, though many have been proposed, there has been some dispute over its scope. However, in recent years the International Labour Organisation (ILO) (2016: 7) explain that:

*Typically, the term encompasses work that falls out of the realm of the “standard employment relationship”, understood as work that is full time, indefinite, as well as part of a subordinate and bilateral employment relationship.*

This covered a whole array of employment forms. There have been many attempts to categorise these according to their particular characteristics or the implications that they might have for employees. However, given the lack of agreement on this over the years, some of the main individual types that came to prominence are included below. It should be noted that many of these were already established in certain areas of the UK economy prior to the period in question, albeit to a much lesser extent.

- Outsourcing
- Part-time
- Temporary (including fixed-term, casual and agency work)

While instigated by employer organisations, restructuring and a growth in the use of these types of non-standard employment also occurred to the extent it did because it was promoted and enabled by western governments. In the case of the USA and UK, and to a lesser extent Europe, this took form of a neo-liberal politics which sought to remove rigidities and obstacles to flexibility posed by strong employment protections and the bargaining power of trade unions. A key argument levelled by governments was that this was essential for ensuring national competitiveness and for tackling the rise of unemployment. In the context of these developments, scholars began to focus on the role that employers played in driving labour market and organisational re-structuring. Throughout the 1970s and 1980s, this led to a series of theoretical models that attempted to understand the changes taking place.

### **2.2.2 Models of Labour Market and Organisational Re-Structuring**

The earliest of these came in the form of theories of segmentation and dual labour markets. These emerged in the early 1970s at the beginning of the process outlined above and were posited by scholars who, being critical of orthodox economic theory, desired an approach that encompassed a wider range institutional and technological considerations – see, in particular, Doeringer and Piore (1971). The theory held that the labour market was being organised into two disparate segments. In the primary segment, employers who had a high market power began to branch into more advanced spheres of production. These were said to be providing favourable conditions that involved high levels of pay and a continuation of the kinds of long-term standard employment relationships seen in earlier periods. The segment was characterised by the presence of strong internal labour market (ILM) structures which provided individuals with opportunities for career advancement in bid to ensure their commitment. These areas also tended to be heavily unionised which helped to keep the overall situation intact.

In the secondary segment of the labour market, however, employers were said to operate with less market power as well as more labour intensive technologies and unstable product demand. Contrary to those above, employers here had no comparable desire for stability or commitment from employees.

Thus, significantly lower wages were paid and employers recruit individuals from the external labour market (ELM) on non-standard employment contracts with poorer terms and conditions. The aim is to enable employers to dispose of employees with ease whenever economic conditions require (ibid).

The model attracted criticism for being rather over-simplistic and initially lead one of the authors to introduce a series of gradients or tiers within each of the segments in order to indicate the presence of a scale of employment conditions (Piore 1975). Another issue was that employers tended to be seen as only adhering to one or the other type of strategic position. Thus, scholars instead suggested that, in some instances, it was in fact possible for employers to adopt both approaches at once for different sections of their overall workforce (see for example Osterman 1977 and particularly Craig et al 1982).

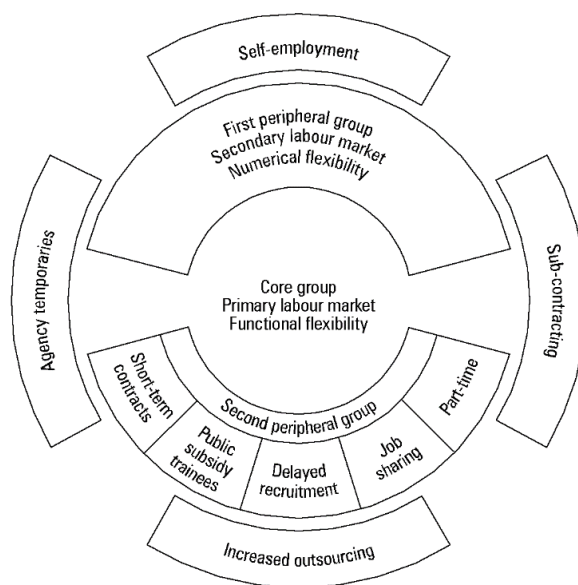
With these dual labour market theories well established, in the middle of the decade attention shifted to another contribution from the UK which arguably played the most significant role in shaping debate. This took the form of Atkinson's (1984) model of the flexible firm which built on earlier insights. The author recognised the continued intensification of economic pressures, in particular, the recession of the early 1980s and an ongoing struggle to compete in increasingly uncertain world markets. This led to an emphasis on the need for employers to adapt their workforces to meet the pace of technological change in production methods and to find ways to reduce unit costs and to avoid over-investment.

As a solution, employers were said to be pursuing an intentional strategy of structuring their workforces into a core and periphery, as can be seen in the diagram presented below. The core constitutes the primary labour market and is central to the organisations operations. It provides what the author calls "functional flexibility" in which individuals with multiple skills can be deployed across occupational boundaries. Given their indispensability to firm-specific activities, these employees also have access to an internal labour market with stable employment as well as many intrinsic employment benefits.

Clearly distinct from the core is the organisation's periphery which is larger in size and forms a secondary labour market composed of those employees whose role is less essential to operations. These

provide what the author sees as “numerical flexibility” by enabling the organisation to adjust the number of employees in order to adapt to changes in product demand or economic performance. The first peripheral group is made up of full-time employees while the second supplements this and is composed of different forms of NSE – including, most notably, temporary and part-time employment. Given their lack of importance to the organisation and the non-firm specific nature of their skills, these employees are exposed to the external labour market. They have fewer employment protections and lower levels of security since they are vulnerable to being removed when the workforce is required to contract. Beyond this, additional flexibility is said to be provided by an emphasis on outsourcing. A key tenet – or at least implication - of this model is that it declares a new form of manpower strategy that represented a break from past and was leading to a sudden growth in NSE. The author later produced evidence based on the experience of organisations in major UK sectors (Atkinson and Meager 1986).

**Figure 2.1 The Flexible Firm**



Source: Atkinson (1984)

The model attracted a great deal of positive interest in the years that followed, particularly among political and business circles. However, it also came in for substantial criticism. The original and most well-known critique came from Pollert (1988a and 1988b) who asserted that the appeal of the model stemmed from the fact that it was part of a wider trend in post-industrial visions and the fact that it

reflected a neo-classical revival that was pre-occupied with employer autonomy and perfecting of labour markets. However, it was suggested that the model, based on generalisations from a small number of case studies, did not stand up to analysis. One major point of contention was the extent to which there had been a growth in organisations use of non-standard employment. The available evidence, including the actual NEDO research undertaken by the original authors, did show some change, but this was not as profound as was being suggested and instead indicated considerable continuity across sectors. It was also argued that restructuring occurred in a more uneven and complex manner and involved many outcomes that did not conform to the basic polar structures of the model. There were questions, for example, as to whether it was really appropriate to view the core as being completely separate and distinct from the periphery providing numerical flexibility. In addition, issues were raised as to whether the latter should be seen as being made up of one homogenous group of employment arrangements and whether those employed on these bases are inevitably a secondary or marginal category of workers.

In the wake of the debate, attention turned toward an empirical assessment of the model's claims. The lines of criticism noted above were supported by analyses of UK datasets and a series of case study research. In addition, these subsequent studies drew their focus upon the issue of strategy and found very limited evidence of there being an a well thought-out conscious core-periphery plan of a kind suggested by the original authors. In most organisations where there had been some recent change, it was instead found to have proceeded from long-standing approaches to the use of different forms of non-standard employment that had been developed in more of an ad hoc or opportunistic manner (these studies include for example Hakim 1990; Casey 1991; Marginson 1991; and Hunter et al 1993).

In the years that followed these initial debates, there was an ongoing transformation of western economies characterised by a further decline in manufacturing and a seemingly inexorable march toward a service-orientated society. This has been accompanied by increased employer reliance upon, and considerable growth in, the use of non-standard employment. Some aspects of the theories and models discussed above have continued to have some currency in general commentary and academic debate. Over the last 30 years, however, the literature has refused to accept that these broad-brush

approaches based on unbounded economic rationality can adequately account for the reality of the situation in the labour market. Instead, it has sought to understand how employer strategy is developed through a complex interaction between numerous factors operating on many levels and, as such, how this ultimately results in a range of outcomes with regards to the use of non-standard and flexible employment. It is to an overview of some (though not all) of the trends that the review now turns.

### **2.2.3 Employer Strategy and Non-Standard and Flexible Employment**

In order to provide a thorough overview it is important to begin at the national level. Many have pointed to the different economic or production regimes that emerged in the wake of the demise of the old industrial order. However, it is perhaps better to consider what has occurred in terms of the political and institutional climate. As previously noted, all western governments have undertaken widespread efforts to enable employers to pursue multiple forms of flexibility. Though these have moved in a common direction, the situation has, however, developed in different ways across countries. Over the years, a well-known comparative literature has been produced that has explored the main similarities and contrasts between systems. Perhaps most notable in this regard is the influential literature on varieties of capitalism which drew a distinction between “liberal market economies” (LMEs) including the USA, UK, Australia, New Zealand and “co-ordinated market economics” (CMEs) such as Netherlands, Germany, Scandinavia (for more on this see Hall and Soskice 2001).

However, this literature is quite limited in terms of a specific focus on employment outcomes. Indeed, it has been superseded by other holistic approaches to examining the national institutional frameworks which set the parameters in which employers are able to use non-standard employment and which, ultimately, determine the nature of each country's labour market. One of the most comprehensive undertakings in this respect is found in Rubery and Grimshaw's (2003) *The Organisation of Employment*. There is no attempt here to represent their work in all its sophistication, but rather to outline some of main aspects of different systems. These have been summarised within Table 2.1 below (see page 25).



The USA and UK are the most extreme examples of countries who have embraced and facilitated change. In both, there has been a consensus with regards to the need for extensive de-regulation to free up employees in their pursuit of flexibility (sometimes labelled the “British Way”). The authors note that this has led to them providing the least strict protections among OECD (1999 and 2020) nations according to available indices, with an absence of, or very little restrictions on, the ease with which employers can recruit and dismiss employees. Some forms of non-standard employment such as part-time and temporary work have basic comparable conditions to those in standard employment, with the UK more generous in this respect due to EU directives. However, there are very few limits on employers use of these forms of employment with regard to the management of working time. Many of the employment rights are also subject to qualification thresholds and there exists several different legal employment statuses that can have the effect of barring many individuals from any form of access.

In terms of the industrial relations systems, trade unions in the US do not tend to organise at national level and instead adopt a small scale business-oriented approach in which concessions are sought with individual employers. In contrast, unions in the UK have historically been more successful though a larger scale voluntarist tradition which hold that state regulations should be overlooked in favour of collective bargaining as the primary means of securing favourable pay, working time arrangements, and other conditions. Successive waves of anti-union legislation since the 1980s and the changing composition of the economy, however, has resulted in a steep decline in membership and has imposed significant obstacles to reaching agreements with employers. The effective defeat of the union movement has also left the Trades Union Congress (TUC) with very limited ability to exert influence on the development of employment regulation in ways that can benefit the general working population.

On the European continent, and particularly in its northern regions, countries have developed a markedly different overall approach and are treated together here on account of the parallels that exist between them. Unlike the previous examples, the growth of non-standard employment has been incorporated into existing systems of legal regulations. The countries are ranked much higher on the OECD (1999 and 2020) index of employment protections designed to discourage ease of dismissal.

There are also greater restrictions on the management of working time and more rights available to non-standard and flexible employees in excess of those required by EU membership. Moreover, there are relatively strict limitations on the reasons for which temporary and casual employment can be used.

In terms of industrial relations, many countries on the continent adopt a social partnership model developed in the wake of WW2. Unlike the more adversarial approach of UK, the aim is to achieve consensus and cooperation within a formalised relationship between the state, employers and unions which enables a balance to be struck between the interests of all those involved. Owing to this, unions have not been undermined through a series of hostile legislations. They continue to be able to engage in collective bargaining for favourable working time arrangements and other protections that exceed the legal minimum, while simultaneously influencing the development of labour market regulation. This is also the case in countries that do not fully implement the model such as the Netherlands and France.

These notable differences in national institutional frameworks can encourage or discourage use of NSE and, through interaction with cultural issues such as attitudes toward the participation of certain groups, are found to result in significant average differences across countries. This is apparent in the levels with which particular employment forms are used and the proportion that they make up of the labour market. One particular issue of interest concerns the nature of this work. In one international study, O'Reilly and Fagan (1998) note that the institutional situation in the USA and UK tends to result in "marginalisation" of these forms of employment (though this is by no means the case across all areas of the economy for reasons we shall see later in the review) while on the continent the overall balance between employer and employee interests has led to more "integration" in the sense that NSE is less segregated, is of better overall quality, and offers greater opportunities for employee progression. Indeed, this is evidenced in the kinds of Zero-Hours Contracts regulation seen in the first chapter of the thesis. Overall, this situation remains, although there is some evidence of changes underway as a strong EU neo-liberal commitment to competitive markets and assimilation becomes more intense (Hyman 2005).

**Table 2.1 National institutional frameworks for employers use of NSE and flexible employment.**

	<b>USA</b>	<b>UK</b>	<b>Northern Europe</b>
<b>Regulation</b>	Weak in OECD index No protections on notice and dismissal Minimal rights for part-time and temporary employment not including holiday or sick pay Differentiation between standard and NSE	Weak in OECD index Some protections on notice and dismissal Some basic rights for part time and temporary employment including holiday and sick pay Differentiation between standard and NSE	Medium to strong in OECD index Protections on notice and dismissal More rights for part time and temporary employment including holiday and sick pay Low differentiation between standard and NSE
<b>Industrial Relations</b>	A small scale business-oriented approach from TUs seeking to win concessions via collective bargaining with individual employers without any wider political engagement. Trade union membership in decline Weak TU presence at workplaces No ability to influence regulation	An voluntarist tradition in which TUs reject state regulation in favour of collective bargaining as the means of advancing the interests of workers. Trade union membership in decline. Generally weak TU presence at workplaces Limited ability to influence regulation.	A social partnership system involving a formal relationship between the state, employers and TUs that is aimed at promoting and advancing mutual economic interests. Trade union membership maintained Stronger presence at workplace Ability to influence regulation.
<b>Welfare</b>	De-commodification low Residual support payment for those out of work Low public expenditure	De-commodification low-medium More substantial support payments for those out of work and unable to work Medium-high public expenditure	De-commodification medium-high Either ensure participation in insurance policies or provision of universal support High public expenditure

Source: Adapted from Rubery and Grimshaw (2003)

Despite the average national trends, it has been well documented throughout the years that there is no uniformity in employers' use of NSE and flexible employment within any particular country. This can be explained by the fact that economies are composed of a whole host of industry sectors in which employers encounter contrasting sets of conditions. In the years after the early debates discussed in the previous section, a number of contributions in the literature pointed to the importance of this level of analysis, with particular consideration given to role of product market pressures in terms of the nature of competition and demand (one of particular note is the collection by Rubery and Wilkinson 1994). Much of this initial work centred its attention on more traditional areas such as construction and manufacturing. However, in the years since, the economy has undergone profound change with official ONS data now recording that these sectors only constitute a small minority while the service sector now makes up over 80 percent of total UK workforce (ONS, Stephens 2018). The service sector, of course, encompasses both private and public spheres with the former being significantly larger than the latter. Since these are very different entities, they will require a separate discussion in this review.

## **Private Sector**

Looking first at the private sector, employers here are more subject the pressures associated with conventional market forces, though here too there are contrasting situations. The most intuitive way to organise the review is to look at a broad selection of industry and sectoral groups where organisations can (on the whole) be said to have adopted either a high-road competitive strategy based on quality or a low-road strategy that is based on cost. This enables us to account for some of the greatest trends.

With regard to the former of these, the areas of interest include professional, informational and financial services. In these areas, services are sought on the basis of their high standards of quality with cost being more of a secondary consideration for potential customers. In terms of employer strategy, there is a realisation that employees with significant knowledge and skills acquired through qualifications and specialised training are essential for ensuring that such a service can be provided. Thus, employers tend to adopt what has been conceptualised in the literature as a “soft HRM” approach

(Storey 1989 later elaborated in 2014) to the management of their workforces which focuses on gaining high-commitment from employees. This involves several practices, the most notable being that they maintain a sizable primary labour market or core with secure conditions and benefits. There are also strong internal labour markets so employees are encouraged to remain with the organisation in order to maintain competitive advantage over rivals (overall, then, there are similarities with older theory).

In close relation to this, there is also a well-documented use of non-standard employment in these sectors. In the first instance, this applies to the employees described above and takes the form of working practices that provide flexibility for employees by allowing them to control their working time and working patterns (in this sense, it is an aspect of NSE that was not considered in early models).

There has been an extensive literature from around the world that consistently shows that there is a gap in the distribution such practices and that they are overwhelmingly more common in higher-level professional occupations (among these see Golden 2005; Chung et al 2007 and OECD 2011). There are numerous mechanisms involved here and perhaps the two most notable are flexitime and part-time/reduced hours arrangements where individuals can decide to work fewer hours for a certain period. The motivation for employers to provide these options is to enhance the work-life balance of employees by allowing them to manage their work around other personal and family commitments.

There are, however, many indirect benefits for employers that are consistent with the HRM approach. Studies have shown that they can be offered as a means of aiding recruitment and attracting high-quality candidates. It is also reported to have a positive effect on morale and commitment which, combined with practical opportunities to balance responsibilities, is found to help with retention of personnel and can protect against poaching (see Hogarth et al 2001 and Messenger 2004). Though it has proved difficult to determine causation on account of a multitude of confounding variables, studies such as those provided by Dex and Scheibl (1999) and Dex et al (2001) have also shown that many flexible working policies have been adopted in these areas of the economy in order to enhance productivity and bring about improvements in various aspects of individual and business performance.

These kinds of practices have undergone a steady growth in the UK since the 1990s. The more recent available research shows that three quarters of organisation in these areas make use of flexible working (CIPD 2019). There are, of course, some differences in the number and types in use within sectors. This can be explained by numerous issues. If workloads are more dependent on certain patterns of demand it might necessitate high levels of resource at certain times and reduce the opportunity for employees to exercise choice over their working hours. Some differences can also be related to organisational factors such as the size of company, with significantly higher levels of use in larger workforces that have more advanced human resources systems and a greater number of employees who can be drawn upon to cover any possible manning requirements (see for example OCED 2011)

It is said that the use of other traditional forms of non-standard employment runs contrary to the interests of organisations whose strategies are targeted towards high performance and high commitment. However, some employers in these areas of the labour market have been found to adopt strategies that involve the use of NSE in order to attend more directly to the operational needs of the organisation. One way that this occurs is through the increased use of temporary arrangements in the form of fixed-term contracts or third party agency engagements. The staffing of operations in this way tends to be aimed at obtaining specialised non-firm specific skills to contribute to or complete projects without having to commit to the cost of recruiting full-time permanent employees. This has been documented in studies over the years, particularly within the information and financial services sectors.

To give one example, Purcell and Purcell (2004) undertook a detailed study of temporary agency work in ICT, an area where its use is particularly common. They find that employers took this option in order to source specialist skills pertaining to older or more cutting-edge technology that falls outside of the main areas of the service they provide. The presence of expert agencies is increasingly common and has in recent decades become a feature of the high-end labour market as intermediaries have promoted themselves by placing emphasis on quality and have sought to develop relational networks with firms (ibid). In localised markets where this has occurred, the strategic uptake of this kind of working has

been more common. These employees with high levels of human capital have been shown attract advanced pay and conditions (Cam et al 2003), making them an exception to the overall trend for NSE in the UK. This situation underpins much of the discourse on the “new economy” in which knowledge workers are seen as mobile, in demand, and seeking to build prosperous careers through a series of temporary employment engagements. The extent to which change in this direction has really occurred has, however, been disputed by some (Forde and Slater 2001 and 2005) and is yet to be fully realised.

Elsewhere in the UK economy within low-end sectors like retail and hospitality, there is a contrasting overall situation. While some organisations do seek to differentiate themselves with a view to providing quality services, in these areas, the trend is for services to be more straightforward and standardised with employers competitive strategies based more on the lowering price of their products. There is, as such, less of a perceived need to protect human resource who have advanced skills and knowledge. Instead, organisations’ primary labour market or core encompasses a minority of its workforce with managerial and marketing functions, applying to little as a mere 10-20 percent (Boxall and Purcell 2015).

The need to keep the price of products relatively low whilst still making a return means that employers must seek to lower other outgoings and, since these sectors are extremely labour intensive, this invariably involves a reduction of labour costs (ibid). One obvious way is for employers to provide low-pay and, indeed, where competition is intense and employers are not burdened by institutional restraints, it has been shown to result in a ‘race to the bottom’. There is also an emphasis on managing outgoings closely to demand which is more likely to exist outside of normal hours and is subject to change. This has led to the widespread use of non-standard employment that provides organisations with numerical and temporal flexibility. In this sense, the situation bares a closer resemblance to earlier models and, unlike above, there is more of a “hard HRM” approach to the management of the workforce in which labour is viewed as a resource or commodity to be controlled in order to extract surplus value and to establish competitive advantage (Storey 2014 also Lucas 2002 and Lynch 2004).

So how does this general situation pan out in terms of the use of specific forms of NSE? There has been much research over the decades that provide insights into employers strategy with regards to this. Here, we can explore a selection of the main trends in these sectors which, in a way that is consistent with the critiques of earlier models, presents a picture not of homogeneity but of considerable nuance.

The most prolific and well documented form of non-standard employment at this end of the labour market has been the use of part-time contracts. Given the extent of its presence, there has been some suggestion that it should be considered somewhat differently to other forms of non-standard employment. Indeed, it has also been noted that individuals employed on this basis often perform roles that are essential to an organisations function and do so on a long-term permanent basis. This has prompted questions with regards to their categorisation as peripheral workers within earlier models.

While the use of part-time work varies widely across the economy, in these low-end sectors there are some common reasons. Overwhelmingly, it is a strategic choice intended serve the economic interests of employers. However, scholars have rightly pointed out that, in doing so, the use of the arrangements reflects the wider demographic make-up of the available supply of labour. Indeed, in addition to young people, evidence consistently shows that women constitute the bulk of the workforce, making up 80 percent of hospitality (including health and social care) and 60 percent of the retail sector (ONS, Jenkins 2013). It is necessary, then, to take account of the inability of many to work long hours and, in some instances, employers will actively seek to facilitate work-life balance (Fagan 2001 and Fagan et al 2012).

On the whole, however, this situation is something that works to advantage of employers. Studies show that part-time work provides an important source of numerical flexibility by enabling them to expand and contract the number of employees registered on the payroll. More importantly, however, is that it allows employers to control costs and enhance productivity by matching labour inputs through shift work to times when demand is highest during the week. In hospitality and retail this tends to apply during weekends and other specific periods such as evenings. Having a relative abundance of part-time workers ensures that there is an available body of human resource to cover busy periods without having



to incur the costs of an equivalent number of full-timers who would otherwise spend large proportions of their time with little or no work to undertake (see for example Walsh 1991 and Houseman 2001).

To supplement the use of part-time employment, employers in these lower-end sectors also make use of additional forms of non-standard work that are more contingent in nature. In the first instance, this can occur through the use of temporary employment, either through direct recruitment or via third party agencies, and is very much of a contrasting nature to similar arrangements discussed in high-end sectors. The literature shows that the primary motivation for this is that it enables employers to increase headcounts in order to cover patterns of demand that increase significantly for certain periods of the year. Thus, it is commonly used in the hospitality and retail sectors to respond to predictable seasonal uptakes that are known to occur within the summer and winter months. Once normal service resumes, these employers can reduce the number of employees in their organisation without having any of the burden of ongoing cost commitments (see for example Walsh 1991 and Houseman 2001).

Within these lower-end sectors, there is also a well-established use of casual or on-call work which underwent a significant increase in the 1990s (as seen with the initial emergence of Zero-Hours Contracts). This employment, unlike others in use, involves no firm contractual commitment from employers with regards to work that will be undertaken and workers are not employed for set periods. Instead, some employers use these arrangements to meet ongoing patterns of demand that are sporadic and unpredictable. This is found to be the case particularly in the hospitality sector for hotels and entertainment venues where, in addition normal service, there are often functions and events that require a regular body of casual workers for a short increase in numbers (Walsh 1991 Houseman 2001)

These are some general reasons for which employers adopt non-standard employment. However, the available literature has shown that there are differences among organisations within the same sector in terms of the extent to which they choose to use particular forms. In addition to the rationale noted above, other matters can also influence decisions and these lend themselves more to the idea employer strategy is not necessarily a matter conscious design but more of pragmatic response to conditions.

Some research on low-paid sectors in the UK such as Dutton et al (2008) (hospitality) and Mason and Osborne (2008) (retail) has shown that decisions can be shaped by local labour markets structures and the available supply of labour. So, for example, where the market is tight, employers may rely on part-timers in order to ensure that they have sufficient human resource in place, but where there is relative ease of recruitment, it can lead to more temporary or casual employment. If third party agencies operate in the geographical area, this can lead to more external resourcing, but if the reliability and the productivity of agency workers is not seen as satisfactory, employers might decide against this route.

Much of the non-standard employment within these sectors belongs, as noted, to the kind of secondary labour market imagined in earlier models. It involves relatively poor conditions with lower levels of employment security and little or no access to the kinds of occupational benefits seen in higher-end sectors. This marginalisation (as discussed earlier in the review) is linked to the low-level of employment regulation and protections. The situation has also been compounded by low levels of trade union density due to issues such as the high presence of groups that have traditionally been less involved in collective activities and the small size of organisations (see Heery and Simms 2008 and Lucas 2009) .

## **Public Sector**

Moving on to look at the public sector, it was previously noted that this area is subject to a different set of pressures that stem from changes in the role of the state over the past 40 years. In the post-war era, the prevailing system of *public administration* emphasised centralised top-down control of the provision of standardised services that was underpinned by a commitment to the principle of equal access. However, at end of the 1970s, significant concerns were raised with regard to ever increasing levels of expenditure in the sector and the need to curb perceived waste while ensuring value for tax payers money. The solution came in the form of a new neo-liberal ideology which sought to fundamentally reduce the role of the state. Seeking to peel back its reach, the government set about privatising various key amenities and the industries that had been built up around them. Within those that remained in public hands, there was a change in approach that is encapsulated by the concept of

*new public management* (NPM). While this involves numerous dimensions (Greener 2013), in essence it is based on a commitment to granting greater managerial autonomy over the use of resources in way that is subject to advanced systems of monitoring and accountability. In doing so, these individuals were encouraged to act as they would in normal market conditions by competing with other providers in an effort to improve quality and responsiveness to consumer needs (Bach and Kessler 2012). Moreover, the agenda of flexibility with regards to employment was put forward as a means of achieving cost-efficiency gains. This resulted in restructuring and a growth in NSE consistent with the earlier debates.

The changes in the public sector under the banner of NPM have moved through a series of phases. Different governments have approached it in marginally different ways, which were strongly influenced by the economy at the time. Increased support for public services was given by New Labour after 1997 but there was also an extension of most of the major reforms underway. This included further commitments to facilitating a more diverse market-orientated funding of different services through compulsory-competitive tendering. The recession of 2008 presented another milestone. Throughout the world, but particularly in the UK, the public sector has been the target of responses to the economic crisis (Bach and Bordogna 2013). The period of austerity imposed by the Conservative Government has led to severe reductions in funding and mounting pressures which have led to an acceleration of reforms. Together, these developments have spurred further impacts on the nature of employment.

Although the overall drivers of employer strategy are different in the public sector, in many ways there are parallels with the situation in the high and low-end areas of the private sector discussed above. There is still what can be regarded as a significant core of employees that is made up of mainly managers and professionals since there is also a need to ensure that a consistent quality of service is provided.

To discuss the use of non-standard employment, we look here at employers strategy in the two largest areas of the public sector – namely, education and health. In both, there is extensive use of the kinds of flexible working arrangements which give some control of working time to employees. Indeed, the

available research shows these to be more common in the public sector with recent findings indicating that nearly three quarters of all organisations made use of such employment (see again CIPD 2019).

The reasons for this appear very similar to the higher-end private sectors. There are also quality concerns in the public sector, alongside a need to aid recruitment and improve retention in areas where there has been a well-documented issue with staff shortages. In addition, the public sector is more sensitive to political pressure for employee-friendly working practices whether from the public or the incumbent government. There is also higher levels of trade union membership which has been shown to enhance consultation on such matters (see Hogarth et al 2001 and Plagenta and Remery 2005).

In many cases, however, ONS have noted that the use of what are recorded as ‘flexible working arrangements’ are not entirely flexible from an employee’s point of view. Indeed, operational pressures mean that they have been expected to work in line with service needs. One such example is term-time working in education which makes up three quarters of the so-called flexible work available (ONS, Haughton and Bibby 2019). This dictates that teachers and assistants must work within a certain timeframe within the year when there is a demand for service (also see annualised contracts). Though many in these situations are salaried, the practices ensure that labour costs can be tightly controlled and, to do so, UNISON (2012) have pointed to the use of formulas to reduce pay from annual rates.

Elsewhere in the NHS, some medical professionals such as doctors have a long history of on-call work as part of broader set contractual hours, with data showing this this applies to a third of those working in healthcare. This is again designed to utilise the available and often limited human resource effectively by matching its deployment to uptakes in demand for medical services. The practices are common with specialist and associate specialist (SAS) doctors but are particularly used for those in junior positions.

In these areas of the public sector, there is also extensive use of other more conventional forms of non-standard employment whose purpose is to provide organisations with numerical flexibility – notably, temporary employment that is either direct or sourced via agencies. Some analysis of datasets shows

that for professionals and associate professionals in these areas, the level of agency work can be up to three times what it is in the wider labour market and is considerably higher than for comparable roles within the private sector (see Forde and Slater 2001). In addition, some research on behalf of the National Institute for Economic and Social Research (LFS) shows that in these areas of the public sector, agency working remained high throughout the 2000s but increased by around 30 percent following the recession and ongoing austerity measures (figures included within Range et al 2017).

The drivers of use in education have been closely linked to cutbacks and uncertainties in budgets that have prompted the use of short-term employment in order to save costs. Some studies have shown how this can be linked to local authority systems that enable schools to apply for additional funding for set periods, as well as policies on staggered school intakes that result in extra teaching requirements at the start of the school year but which fall off thereafter (see Range et al 2017). However, managers use of temporary work is primarily due to significant organisational staff shortages. This is exacerbated by levels of work intensification that discourage many from joining the profession and can result in high levels of staff turn-over as employees “vote with their feet” (in Conley 2002 also Range et al 2017).

One particularly widespread practice is the use of supply teachers to cover instances where there is either no staff availability in the schools or a need to cover daily or periodic staff absences. These are sourced via a well-established but highly-decentralised system of private sector agency providers. This is said by managers to be a useful means of gaining the required human resources, but studies find that is not always a natural preference and is often a last resort. This indicates that the use of agencies is not so much strategic in the sense that it follows from a long-term plan but rather a force of unavoidable circumstance (ibid). In addition, there are also differences in organisational use stemming from the relationship between schools and the local external labour market. Some managers may have traditional links with agencies and, where this occurs, it can result in a greater likelihood of resourcing in this manner. One issue is the variable rates that agencies can charge, especially if they attempt to undercut one another. If the agency is trusted, this may encourage greater use but, if not, managers may be disinclined to use them if there are potential risks to quality (Grimshaw et al 2003 and Range et al 2017).

There is a very similar situation in the NHS, particularly for medical staff such as nurses. Here too, there has been an increase in agency work that has been used by management under budgetary constraints to match staffing closely to demand. However, as above, it has largely emerged in response to a severe shortages of staff due to difficulties in recruitment and retention associated with growing work intensity and pay freezes that have compounded the problem of low-wages in the sector. Initially, this led to an extensive reliance on private agencies, which proved incredibly costly. For example, spending on agencies almost doubled, increasing from £402 million in 1996 to £730 million in 2000 (Department of Health 2001) and amounted to nearly 5 percent of all spending in NHS Trusts in England and Wales (Audit Commission 2001). This raised serious concerns and far from being an intentional approach, it was an unavoidable consequence of the collapse of the internal labour market.

There have, however, been some efforts to mitigate this through the development of nursing banks within health boards and trusts. These involve comparable conditions to other public sector workers and are intended to be a more cost-effective source of short-term employees. In the past decade, there has been an ongoing growth in this form of employment as demand increased and shortages remain unresolved (Nuffield Foundation 2018). The use of these arrangements has not displaced agencies, however. Some hospital departments may still reluctantly decide to look to the private sector if there are organisational deficiencies in terms of their own banks. Moreover, interaction with local external labour markets is important here, and can make use more likely in areas where commercial agencies have succeeded in controlling the supply of skilled nurses by attracting them with premium pay rates.

In other lower-level roles such as administration and other routine occupations like catering and portering, there is also an extensive use of non-standard employment. This can be used to meet the working preferences of employees but it is primarily designed to serve the needs of organisations. Within the context of funding pressures and the need for cost-efficiency, the reasons reflect those of the private sector in that they enable a matching of labour through part-time shift work to busier

periods of the week. In addition, temporary contracts are also used to increase the number of staff during winter months where, for example, the numbers of hospital admissions are at their highest point.

While this can involve insecure work, within the literature we see that those employed directly within these areas of the public sector tend to have access to better employment conditions through occupational schemes that provide sickness and maternity benefits. These exceed the bare legal minimum making the employment less marginalised than comparable roles in low-end private sectors. What is the reason for this? Traditionally, the state has been committed to “model employer” status and to setting exemplary best practice. This has been cast into doubt given the changes that have occurred over the decades (for example, Brown 2007 and Coffey and Thorley 2009) but there is, however, a lasting legacy. This reflects the level of exposure to public scrutiny and the need to ensure that a sufficient supply of labour is attracted to the service. Importantly, trade union membership also remains high and has helped to maintain conditions for the workforce. While this is the case for employment that remains within the public sector remit, it does not, however, extend to many lower-level operations such as aspects of catering and cleaning that have been contracted out through private finance initiative (PFI) investments (see Pollock et al 2010) and compulsory competitive tendering.

In summary, then, this is a very broad overview of some major trends in the UK labour market. It has sought to demonstrate that, in contrast to the early models, employer strategies are shaped through a complex interaction between different factors operating at the national, sectoral, organisational, and local labour market levels. This results in a range of outcomes with regards to the use of non-standard and flexible employment. Having established this, the review now can now build on some of the insights provided by turning to other recent developments in the literature since the turn of millennium.

#### **2.2.4 Working Time in the New Millennium**

The most significant of these relates to developments in the management of working time. There has been much ongoing change in the nature of the service economy owing to technological developments

and the evolution of public management. This has continued to spur the use of non-standard employment for employees, but more particularly, to serve the interests of employers. The literature shows that working time has become increasingly less standard in the sense that is set on a daily or weekly basis and more fragmented to the extent that has blurred or has even completely revolutionised the traditional boundaries between work and nonwork (see reviews by Messenger 2011 Bosch 1999).

In the literature, Rubery et al (2005) provide a major contribution to this debate by exploring the changes through an comparative analysis of major regulatory and industrial relations systems (explored earlier in the review). In the European and UK models, working time was for decades regulated through collective bargaining. On the continent this is still intact and is supported by a series legal protections. However, in the UK the decline in the labour movement means unions can only exert influence insofar as they have continued recognition and there is little to no equivalent legal protections to act as a safety net. As a result of this, the authors suggest that we could be moving to a more employer-led system such as that in the USA where employers, without institutional constraints, are able to set hours in any way that is deemed necessary in order to enhance productivity, save costs and gain economic advantage.

The authors provide evidence from case study research based on six private and public service organisations facing ever increasing pressures. They report a number of changes that are indicative of this shift, including an intensification of work, the extension of operating hours, and a further fragmentation of working patterns as employers set working hours only for times when input is needed. Most notable, however, was the increased pursuit of temporal flexibility (rather than numerical) through the use of flexible scheduling. Here, employers were continuously adapting working hours to the times when demand was predicted to be highest and were doing so with very little or no regard to the needs and preferences of employees. The authors note that these developments could represent a “new temporality of capitalism” that had not been fully realised through the use of non-standard employment until this time and which showed no signs of slowing with additional changes predicted in future (ibid).



Since these insights were published there has been surprisingly little further research on flexible scheduling. However, there are key studies available in the academic literature. It is important to note that this work has understood the concept in different ways with some making a clear conceptual distinction between “worker-controlled” (as discussed earlier) and “manager-controlled” flexible scheduling, the latter of which being the most relevant to this thesis. The majority of studies on this phenomenon come from the USA where conditions leading to an employer-led model are most pronounced. They are interesting as they provide detailed insights into the ways it operates in practice.

The work of Lambert et al (2008) is perhaps most notable in this regard and is based on comparative study of non-production jobs in organisations belonging to four mostly low-end sectors including transportation, retail, and hospitality. Much like in the previous study, employers in these areas each had a commitment to cost containment strategies and made use of flexible scheduling practices for full and part-time roles because they were increasingly unwilling to pay for any labour that exceeds demand. In all organisations, frontline managers were given strict quotas of hours along with the responsibility for overseeing their allocation. These managers began by insisting that employees provide and then maintain their availability to work at all times. They then set about varying the number and distribution of hours that employees worked each week in line with the level and timing of demand within their respective sectors and did so by posting schedules with very limited notice, in most cases only 2 or 3 days prior to the start of the week. Since scheduling on this basis cannot account for unforeseen upturns or downturns during the actual working week, there was also evidence of the managers adjusting existing schedules at the last minute or sending employees home without providing any payment for the remainder of their shifts. In later research from the author, Henly and Lambert (2014) (also see Lambert et al 2012) find that the unpredictability caused by these practices and the high likelihood of working entirely different days each week has been shown to result in numerous problems for employees in the form of what is referred to as “time-based” and “strain-based” work-life conflicts.

In the UK there has been comparably little research into employers use of flexible scheduling. One important exception is Wood and Burchell (2014) and Wood (2016) based on a comparative study of

employers in the US and UK retail sectors. The author found that organisations had also introduced contractual requirements which involved a reduction in core hours for full-time and part-timers with an enhanced use of flexible scheduling. This involved many of the same practices with regards to short notice and variation of hours as well as similar consequences for employees. The findings also raised some important questions for early models by suggesting that these practices transcended the conventional core-periphery divide and that introducing them into the workforce was a means of replacing the firms reliance on forms of numerical flexibility to control employee numbers. In a later publication the author provides novel insights into the ways that arbitrary power exercised by managers over the allocation of hours was leading to new informal regimes of workplace control (Wood 2018).

There has also been some studies based on the hospitality sector which are broader in their focus but do give some consideration to the matters of interest here. Lloyd and Payne (2018), for example, have analysed levels of pay and working time with a view to the kinds of multi-level factors that shape employer strategies. They find that although organisations differed in the way they did things, there was evidence of many similar flexible scheduling practices to those found in the studies discussed. Interestingly, they compare the situation to same-sector organisations in countries on the continent with more robust regulatory and industrial relations systems. These serve to constrain employers in their use of the flexible scheduling, leading them to provide relatively stable hours from week to week that are subject to considerable amounts of advanced notice. Thus, the findings demonstrate that in these nations, there continues to be some resistance to changes that are becoming increasingly embedded within the labour markets of the English speaking countries (also see Carre et al 2010).

So what, then, do we know about the extent of the phenomenon in the UK? Until the last few years we have been largely unaware since there has been no official measurement by ONS and the Labour Force Survey. Recently, however, there have been some analyses of other available data. Wood and Burchell (2018) examined the European Working Conditions Survey with a view to producing an estimate for 'precarious scheduling' which they define as instances where "working time arrangements change regularly and are dictated by the employer or company [with] employees unable to influence

their own starting or finishing times”. The findings show that 15% of employees reported that they experience manager controlled alterations to schedules at short notice, equating to 4.6 million people.

Another useful source of comes from Felstead et al (2018 and 2020) who have adapted the long-standing Skills and Employment Survey (SES) to include a new measure on ‘insecure hours’ which is based at those who reported that they were anxious that their hours could change unexpectedly either in terms of number of hours worked or when the work is carried out. In this sense, it also captures the practice of employer or manager instigated change to working time which lies outside of workers control. They find that this could affect as many as 1.7 million people in the UK across the complete range of occupational levels. It is worth noting that the figure is lower than that discussed above. The reason for this is likely to be because employee respondents are required to register a feeling of anxiety, but it is entirely possible that their hours could be subject to change without causing them to experience such emotions - for example, if they are less economically dependent on job or the work at hand.

Together these few sources show that the phenomenon is widespread and, as time progresses, additional work will explore trends in the extent to which employers are resorting to these kinds of practices. These available figures encompass individuals employed on many forms of employment, including everything from full-time or part-time work to very minimal hour arrangements. However, most of the attention with regard to public and political interest has been focused on one particular group, namely Zero-Hours Contracts. These are relatively few in number and are distinguished by fact that they do not guarantee employees any minimum hours of work. This condition provides employers with the potential to achieve maximum numerical and temporal flexibility without any obligation to employees and, as such, they have been described by many as the most extreme manifestation of the developments that are discussed in this section. Let us now turn our attention to what is known about this kind of employment, beginning with measures of prevalence and some of the issues involved.

## 2.3 Prevalence of Zero-Hours Contracts

### 2.3.1 Numbers

Measures of prevalence have been central to creating and sustaining the extraordinary uptake of interest in ZHC. However, this has not been straightforward and involves a number of different sources.

#### 2.3.1.1 Labour Force Survey

The Labour Force Survey (LFS) is the most notable and official of these sources. It is a quarter annual household survey of employees and has been the leading source of data on employment since the late 1990s. Holding a Zero-Hours Contract is one of multiple options in response to a question about flexible working practices<sup>5</sup>. Respondents are asked: *In your main job is your agreed working arrangement any of the following:*

- |                                       |                                 |
|---------------------------------------|---------------------------------|
| 1. Flexitime (flexible working hours) | 2. An annualised hours contract |
| 3. Term-time working                  | 4. Job sharing                  |
| 5. A nine-day fortnight               | 6. A four-and-a-half day week   |
| 7 Zero hours contract                 | 8. On-call working              |

Although a definition is not provided to respondents unless they ask for one, a Zero-Hours Contract is defined as an arrangement: “*where a person is not contracted to work a set number of hours and is only paid for the number of hours they do*”. Analysis by the Resolution Foundation indicated that the number of people employed on this basis fluctuated significantly in the first decade of measurement, with levels declining from 225,000 in 2000 to just 100,000 in 2004 before returning to 200,008 by 2012 (Pennycook et al 2013).

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<sup>5</sup> Originally this was the variable FLED9D which became FLEX10 in 2006.

In 2013, Zero-Hours Contracts began to creep into the public debate. Concerns were raised in relation to the statistical estimates and the reliability of the time series. These stemmed from a number of issues:

- A lack of attention paid to data collected on Zero-Hours Contracts when it is not a respondent's main employment arrangement (this was covered in by a different variable FLEXW7).
- Data for Zero-Hours Contracts was not registered when respondents reported that they did shift work because the two arrangements were thought to be incompatible.
- Shifting data collection from a seasonal to calendar basis in 2006 meant that missing responses were introduced to the time-series because new and old quarters only overlapped for two out of three months.

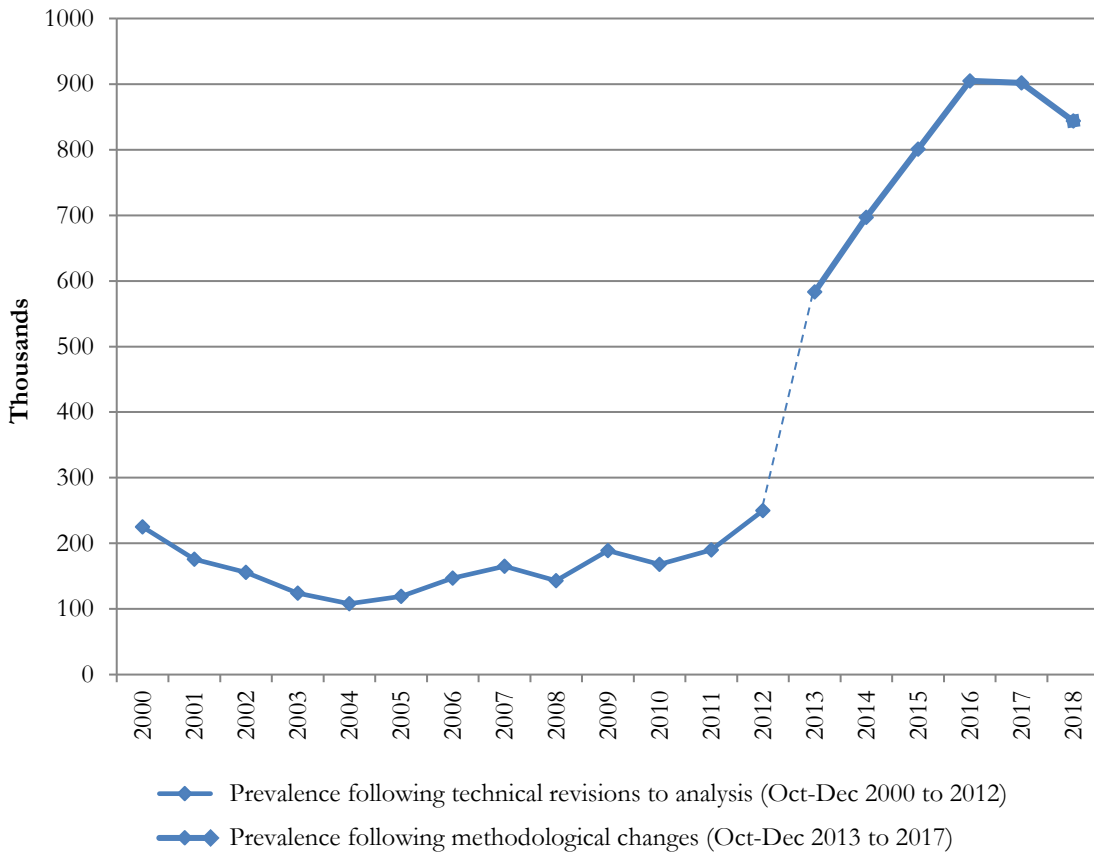
After applying some technical revisions and adjustments to account for these issues, the analysis resulted in an alteration of estimates across the time series with the final figure for October to December 2012 being increased from 208,000 to 250,000 (0.8% of the workforce) (ONS 2013a).

Figure 2.2 presents the overall LFS estimates of prevalence for the period 2000 to 2018 and takes account of further methodological changes implemented by ONS<sup>6</sup>. Because of these changes it should be noted that there is discontinuity in the time series which is indicated by the dotted line. Partly as a result of the changes, in 2013 there was, as predicted, “*a step change in the data*” with a total of 583,000 doubling the figure for the previous year (ONS 2014a). According to LFS, the prevalence of Zero-Hours Contracts continued to increase to 679,000 in 2014 and then to 801,000 in 2015 before eventually plateauing at just over 900,000 and declining slightly in 2019 (around 2.5% of all people in employment) (ONS 2019).

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<sup>6</sup> The years prior to 2000 are excluded due to missing variables on datasets between 1997 and 1999 and advice on the use of October-December quarters due to the seasonal effects associated with different times of the year is heeded (ONS 2013a).

**Figure 2.2. Prevalence of ZHCs, LFS 2000 to 2019**



Source: Office for National Statistics

Questions have been raised as to whether these figures actually represent a genuine increase in the numbers in use. For example, Ian Brinkley (2018) has noted that it is highly unusual to see such large increases in employment practices outside of recessions and that it stretches credibility to suggest that employers have turned to this form of working almost overnight. It is suggested by ONS (2014a) that in the context of extensive media coverage, much of the increase is in fact likely to be attributed to heightened awareness among respondents that their working arrangements could be described as a ZHC (this could not be ruled out either in analysis undertaken by Farina et al 2019).

### 2.3.1.2 Independent Estimates

During the time when ONS was adjusting its LFS measurements, some organisations endeavoured to produce their own independent estimates. Most notable among these came from the Chartered

Institute of Personnel and Development (CIPD) (2013a) who conducted two representative surveys with 1000 HR professionals in the summer and autumn of 2013. The following were asked in the respective seasons:

- 1) *Do you currently employ anybody on a Zero-Hours Contract?*
- 2) *Does your organisation use people on Zero-Hours Contracts?*

By aggregating data from both surveys, the CIPD produced an estimate of just over 1 million ZHCs representing 3.1% of the total UK workforce. It was these figures that ultimately acted as the catalysis for the explosion of interest discussed in the previous chapter (more details in Appendix A).

In 2013, Unite (2013) commissioned an independent survey of its union membership using a sample of 5,000 and a phone bank of 900 individual workers. The results showed that 22% of respondents were either on a ZHC or short-hours contract or knew somebody who was. It therefore concluded that potentially up to 5.5 million people in the UK could be employed in these ways (ibid: 5 and 6). This is a much less credible estimate than the others available, and although the figure has been cited as an exclusive reference to ZHCs (e.g. BBC 2013 and Moss 2013), it is in fact based on an aggregate of several contractual forms.

### **2.3.1.3 Business Survey**

In August 2013, ONS recognised the huge contrast between its adjusted LFS measurements and the figures for prevalence derived from employer-based surveys. It gave the following reasons:

- Employers may be more aware than employees of the exact nature of their contractual terms while employee respondents might not associate their work patterns with being on a Zero-Hours Contract.

- Employer estimates take account of multiple contracts per person rather than just individual people.
- Employer estimates include contracts where work was not undertaken in the reference period whereas these are excluded from LFS unless respondents say they are temporarily away from their jobs.

Under mounting pressure from the Government and public alike, ONS announced it was to undertake its own employer-based survey in order to get a more accurate picture of the scale of the issue (ONS 2013b). In doing so it also recognised that there were significant issues to do with definition and terminology that were key to gaining accurate measurements. It was noted in the previous chapter that there is no official legal definition of Zero-Hours Contracts and, as such, there is plenty of scope for it to be conceived of in different ways. There is also a range of terminology that can differ by employer and sector as seen in the table below.

**Table 2.2. Examples of alternative nomenclature used for ZHCs**

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Casual	As and when contracts
On-call relationship	Key time workers
Hours to be notified	Min-max contracts
Occasional professional assistance	Nil-hours contracts

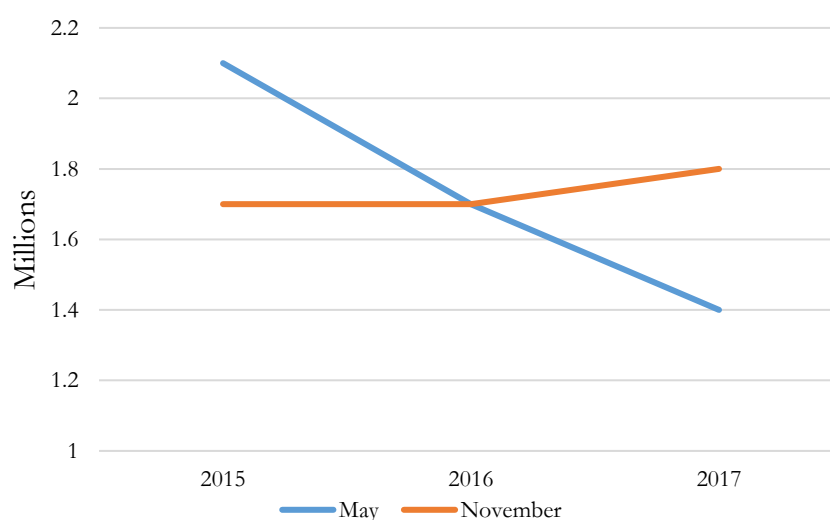
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In order to avoid employers failing to report because they have a particular way of defining Zero-Hours Contracts or because they do not like or recognise the term, ONS opted for a different tact. In order to overcome these issues, they focused instead on the common element of existing definitions. Following consultation, it was decided that *“a lack of a guaranteed minimum number of hours work”* was the most appropriate concept for question development (ONS 2014a:1 and 2014b). A provisional estimate



from the ONS survey of 5,000 businesses indicated that in January 2014 there were around 1.4 million<sup>7</sup> contracts which provided work in the survey reference period. After this time, estimates are only comparable for the months of May and November and are shown in Figure 2.3. There is a steady decline from a high point of 2.1 million in May 2015 to 1.4 million in May 2017. The figures for the month of November are comparatively steady at 1.7 million for 2015 and 2016 increasing to 1.8 million in 2017 - although it is suggested that this final rise should be treated with caution as the survey became compulsory between the periods.

**Figure 2.3. Prevalence of Non-Guaranteed Hours Contracts, ONS Business Survey May and November 2015 to 2017**



Source: Office of National Statistics Business Survey (ONS 2018)

The proportion of businesses reporting use in the survey has been moving downwards from 11 percent and reflects a general decline in total numbers seen above. It was announced that the Business Survey would cease in 2018 due to methodological challenges and the fact that improvements to the Labour Force Survey mean that is now capable of meeting a range of different information needs (ONS 2018).

<sup>7</sup> ONS places likely figure at  $\pm 240,000$  meaning the true figure lay between 1.2 and 1.7 million (ONS 2014)

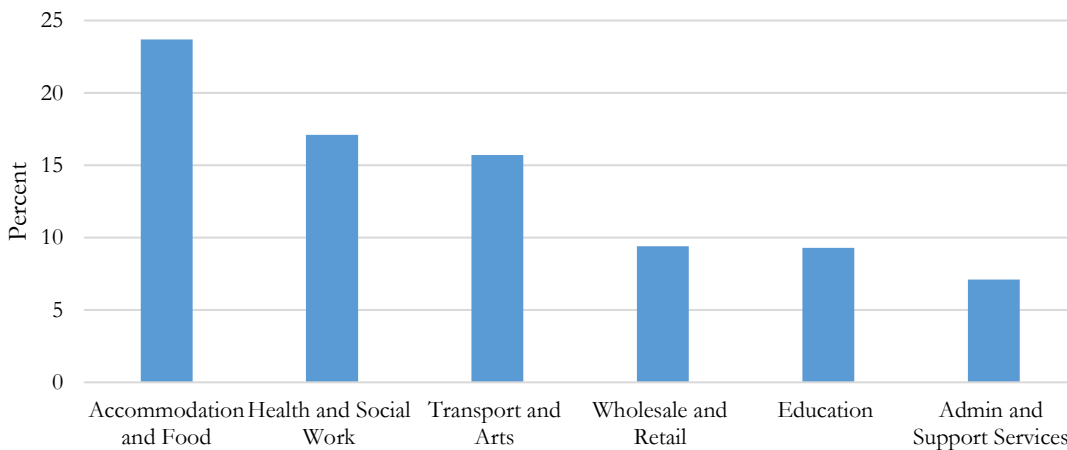
### 2.3.2 Sectors

The sources that have been discussed above also enable an analysis of the patterns of use for Zero-Hours Contracts use in terms of sectors within the labour market – indeed, we have very detailed picture in this regard.

#### 2.3.2.1 Distribution

Analysis is widely available in relation to industry sectors and in Figure 2.4 below, the sectors six with the greatest share of Zero-Hours Contracts can be seen. The highest number are concentrated in Accommodation and Food followed by Health and Social Work, while other areas of extensive use include Wholesale and Retail and, notably, Education (this tends to remain consistent across releases since 2013).

**Figure 2.4. Distribution of all people on ZHCs by industry sector, LFS April-June 2018**



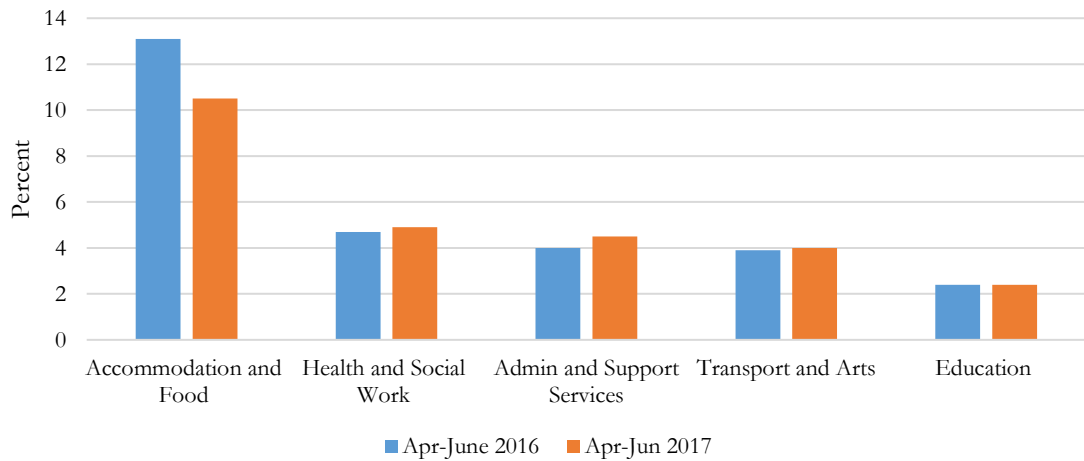
Source: Office for National Statistics (ONS 2019)

#### 2.3.2.2 Proportions

A different measure for sectors also exists which gives insight into the extent of use within different industries themselves. Figure 2.5 presents Labour Force Survey data on the proportion of people

employed on Zero-Hours Contracts in sector over a two-year period from Apr-Jun 2016 to 2017<sup>8</sup>. The same sectors as above feature once more, albeit in a different order. In 2017, the industry sector with the greatest proportion of its workforce employed on ZHCs is Accommodation and Food at 10%.

**Figure 2.5. Proportion of people on ZHCs in industry sectors, LFS Apr-Jun 2016 and 2017**



Source: Office for National Statistics (ONS 2016b and ONS 2017c)

Surveys of employers are useful for looking at the proportion of individual organisations that make use of ZHCs in industry sectors and these are presented in Table 2.3 below. The figures are sometimes more than double those in LFS and differ considerably, for a number of reasons. Nevertheless, a high rate of use in certain service sectors such as Hospitality and Education can again be seen.

<sup>8</sup> This analysis is only available in successive releases since the April-June 2016 but it not included in 2018..

**Table 2.3. Proportion of organisations that use ZHCs by sector in employer surveys**

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ONS Business Survey	Accommodation and Food 12% Education 17% <sup>9</sup>
CIPD (2013a)	Hotels, Catering and Accommodation 61% Education 35%
Institute of Directors (2013)	Hospitality 31% Education 18%
WERS 2011	Hotels and Restaurants 19% Education 10%

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Overall, evidence at the sectoral level provides some support for claims – such those made in the Pickavance (2014) report – that Zero-Hours Contracts are becoming the norm in some sectors of the economy. However, it would be inappropriate to interpret the statement to mean they have become the standard practice in these areas since the majority of organisations maintain that they do not make use of the contracts.

### 2.3.3 Characteristics

#### 2.3.3.1 Occupations

The Work Foundation provides some analysis of occupations using the Labour Force Survey. It should be noted that in the analysis, some categorical adjustments were made to data that would have originally been coded in line with the Standard Occupational Classification (SOC) in order to produce a proxy measure for *Knowledge Workers*. The figure below shows that these contracts are used to employ individuals in all occupational levels across industry sectors but knowledge workers make up nearly half of the total for October to December 2012. In their commentary the Work Foundation note that “a

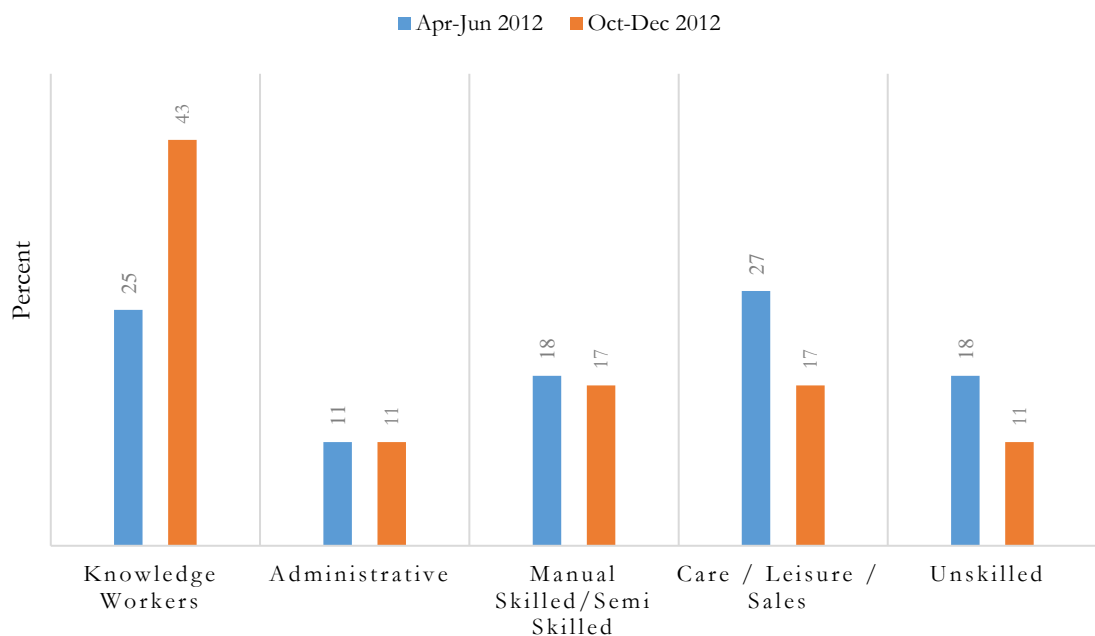
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<sup>9</sup>The highest proportion tends to alternate between these two sectors depending on the time of the survey is taken.

*popular view of Zero-Hours Contracts is that they are pre-dominantly filled with lower skill and lower wage worker... [when]...in fact, a significant share are filled by people in the top three occupational groups*". This is also supported by the results of UKCES' (2014) "myth busting" exercise based on their own survey research.

When data for April-June 2012 are considered, however, the total for knowledge workers is only 25 percent meaning that caution should be exercised not to overstate the share of contracts among these occupational roles. The Work Foundation do nevertheless recognise that in both quarters, most of the remainder of employees are in fact concentrated in what it describes as low paid service occupations, which of little surprise given the distribution and extent of use seen in industry sectors (Brinkley 2013).

**Figure 2.6. Work Foundation (2013) analysis of the distribution of ZHCs by occupation<sup>10</sup>**



Source: Brinkley (2013)

<sup>10</sup> Based on analysis of the Labour Force Survey Apr-June and Oct-Dec 2012

There is no analysis in the academic literature that considers more specific occupational roles except for work by Koumenta and Williams (2015). Drawing on theory by Goldthorpe (2007), they predicted a greater concentration of use in occupations whose characteristics are most amenable to flexibility - that is, where labour inputs are easier to define and high levels of specialist knowledge are not required. In line with this, they find that half of all Zero-Hours Contracts are used in just 10 low paid service occupations out of a possible 353. Again, this clearly reflects the distribution across sectors seen above.

**Table 2.4. Koumenta and Williams (2015) analysis of ZHC occupations (4-digit level)<sup>11</sup>**

Occupation (4 digit)	Percent (%) of all ZHCs
Care Assistants and Home Carers	19.8
Kitchen and Catering Assistants	5.2
Sales and Retail Assistants	4.8
Cleaners and Domestic	4.2
Bar Staff	3.1
Security Guards	3.1
Waiter and Waitresses	2.8
Nursing Auxiliaries	2.7
Office Assistants and Clerks	2.3
Chefs and Cooks	1.8
Total top 10 (%)	48.1

### 2.3.3.2 Earnings

There is a range of earnings associated with Zero-Hours Contracts but given their concentration in low paid services sectors and occupations the rate of pay tends to be lower. Research from the Resolution Foundation (2016) (later corroborated by Adams and Prassl 2018) finds that, on average, those on Zero-Hours Contracts earn 38% less per hour than people in other employment. Their multivariate analysis shows that approximately four fifths of this gap can be explained by the industry sector and

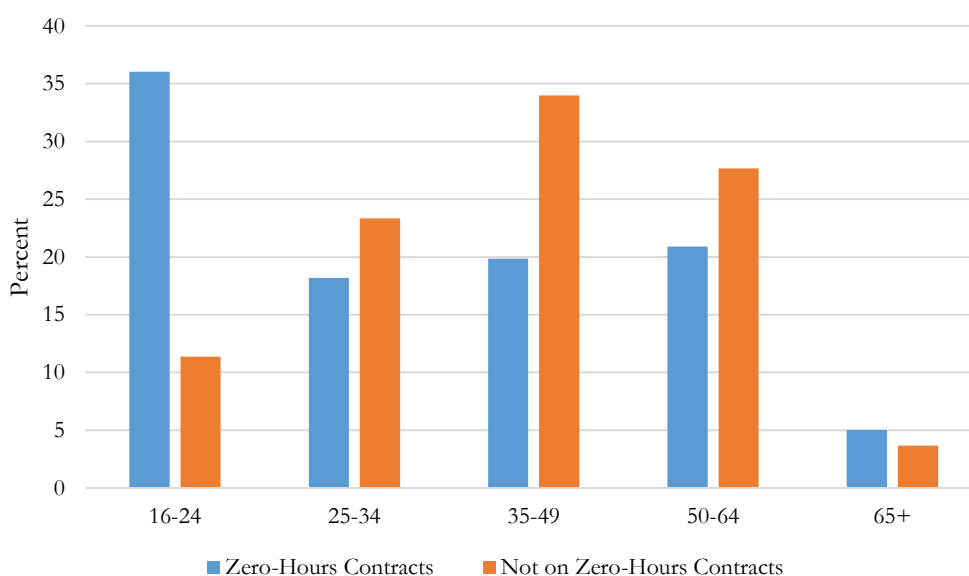
<sup>11</sup> Based on analysis of the Labour Force Survey April-June 2014 to 2016.

the occupations in which the contracts are concentrated. However, when controlling for these factors, a *precarious pay penalty* of 6.6 percent is still found to exist (which rises further to 9.5% among the lowest earners). This is said to be directly associated with the contracts and is greater than for other forms of non-standard employment.

### 2.3.3.3 Demographics

It is important to give some consideration to the demographic profile of those employed on Zero-Hours Contracts since it is they who are most vulnerable or most receptive to its benefits. Figure 2.7 charts analysis from ONS (2018) on the distribution of contracts by age category and shows that all ages are represented. However, they are disproportionately common among younger people compared to other employment.

**Figure 2.7. Distribution of ZHCs by age category, LFS October-December 2017**

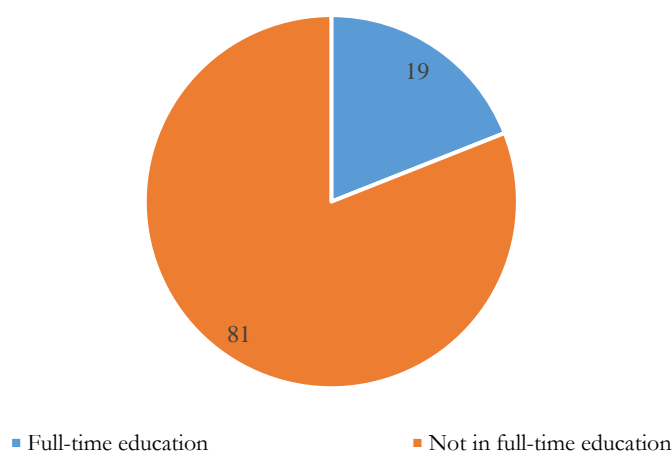


Source: ONS (2018)

The same source shows that the distribution of ZHCs by gender is uneven, with a majority of 55 percent belonging to women. This trend is appears in all available analysis and is in extension of the general over-representation of women in flexible and non-standard forms of employment (Fagan 2001;

Powell 2019). In addition to this, a final demographic measure relates to current educational status and as the figure below shows, the vast majority of those on Zero-Hours Contracts are not in full time education. However, the remaining fifth are in this position, which is significantly higher than the equivalent distribution of those on other employment contracts in the labour market.

**Figure 2.8. Distribution of ZHCs by educational status, LFS October-December 2017**



Source: ONS (2018)

Multivariate analysis undertaken in the academic literature by Koumenta and Williams (2015; 2018) and Adams and Prassl (2018) supports the greater likelihood of working on ZHCs across each of the demographic indicators discussed in this section, although statistical significance is not always found.

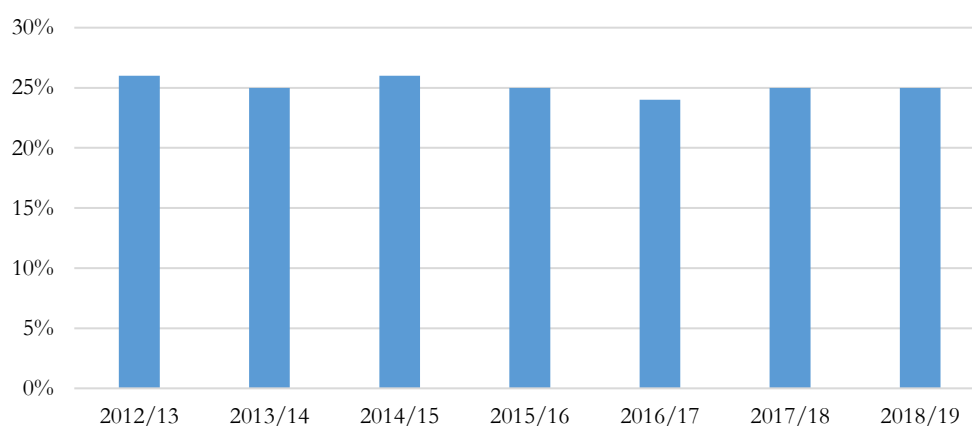
### 2.3.4 Social Care

Aside from research undertaken at the general labour market level, there are some detailed empirical insights on prevalence and characteristics in specific sectors of the labour market. The most notable and accomplished of these is analysis based around the National Minimum Data Set (NMDS-SC) in Social Care. The survey used the following definition for Zero-Hours Contracts: “a zero-hours contract is a contract type where the employer is not obliged to provide any minimum working hours”. Consecutive releases have



shown extensive use in the sector with the most recent survey putting an estimate of prevalence at 370,000 out of a total 1.5 million jobs in England. As the figure below shows, the proportion of workers that are employed in this way has remained high at around a quarter of the workforce but has been relatively steady during the period with only a two percentage point change. There are some problems with understanding change in levels of use but Skills for care (2019: 4) notes that “*although no precise trend is available, evidence from the NMDS-SC suggests that the proportion of worker on zero-hours contracts was substantially lower before 2012*” (supported by Bessa et al 2013).

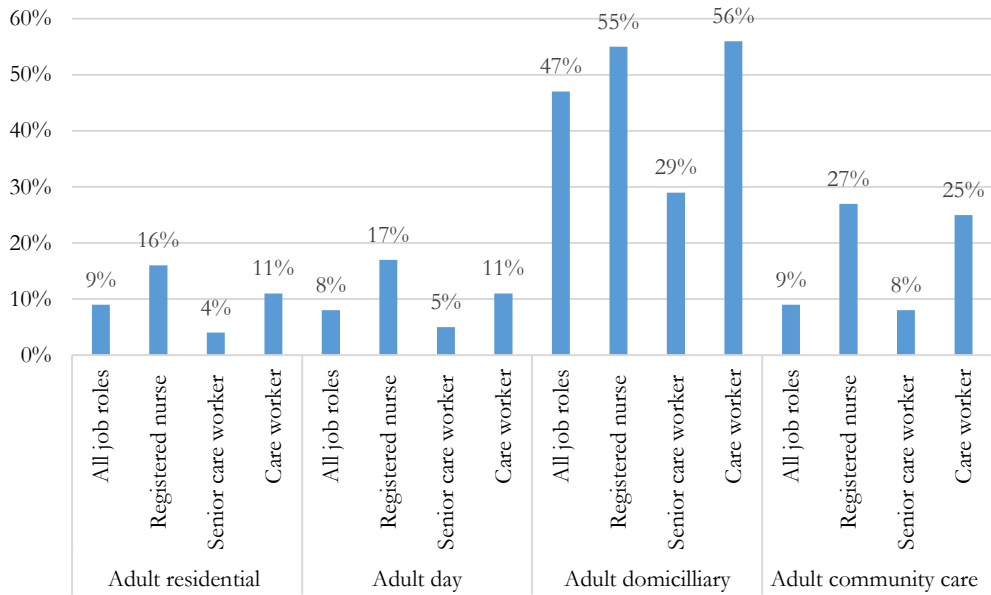
**Figure 2.9. Proportion of workers in social care on ZHCs, NMDS-SC 2012 to 2019**



Source: Skills for Care (2012 to 2019)

Since 2015, developments in the NMDS-SC and Skills for Care’s analysis enable a further look at a breakdown of the use of Zero-Hours Contracts. It is clear that the contracts are used across the board but they are concentrated particularly among care workers. Figure 2.10 shows the estimated proportion of workers in the adult social care sector on a Zero-Hours Contracts by care setting and selected job roles. Although used across a range of settings, there are much higher rates among those who work in domiciliary care where 47% of all jobs are of this nature (extensive use for these roles is also found by Bessa et al 2013).

**Figure 2.10. Proportion of workers on ZHCs by care setting and roles, NMDS-SC 2016/17**



Source: Skills for Care (2017: 29)

No direct analysis of pay for Zero-Hours Contracts exist. However, the Low Pay Commission (2016) have defined Social Care as a low paying industry and analysis of the available data by the National Audit Office (2018) shows that around half of care workers were paid at £7.50 per hour and that 90 percent were among the lowest 25 percent of earners in the UK economy.

### 2.3.5 Higher Education

As discussed in the previous chapter another publicly funded sector where some research has been undertaken is Higher Education, although the available sources of information are disparate and patchy in comparison to social care. In 2013, the University and College Union (UCU) claimed to have been aware for some time that the use of Zero-Hours Contracts within the UK Further and Higher Education was growing. However, it judged that the available data from the Higher Education Statistics Agency (HESA) was not sufficient to understand the scale of the issue, so UCU (2013) sent Freedom of Information requests to Higher Education Institution (HEI) asking for information on numbers of ZHCs in use. In much the same vein as ONS, it recognised that no single definition existed so one was

given to HEI as guidance. The results indicated that there were a total of 24,725 people working on Zero-Hours Contracts. Of the institutions who responded, 52 percent said they use the contracts. This led some to suggest that universities are twice as likely as other employers to make use of the contracts when compared to organisational use in the general labour market (e.g. Butler 2013).

In 2013, the Educational Institute of Scotland (EIS) has also issued FOI requests to Scottish HEIs. They also recognised the presence of different definitions and provided their own to the different institutions. The results found there were a total of 8461 contacts used by 76 percent of Scottish universities (EIS 2013)<sup>12</sup>.

There are a number of significant challenges with this evidence that effects the reliability of the measurements. UCU (2013) (and also EIS 2013) cautions that although most institutions were able to answer whether or not they used ZHCs, there was still a great deal of uncertainty about the definition. There is no discussion of the effect of these issues, but it is likely that differential interpretations of the definition could lead to a potential distortion of the sectoral figures. In addition to these problems, a low number of HEIs provided clarification on the number of contracts where work had not been performed for one calendar month or more. Since it is not possible to determine the proportion of the workforce that these inactive contracts represent, the current total may have overstated levels of use.

Until very recently, the data derived from these FoI exercises were the only available estimates in the HE sector. However, HESA have since produced some new measurements for Zero-Hours Contracts. The main figure that has been produced so far is that there were 11,440 in use during 2017/2018, but this number is more than doubled when other atypical contracts are taken into account (HESA 2019).

Other research in Higher Education does not give us an indication of prevalence but it does afford us some important insights with regards to Zero-Hours Contracts in the sector. In 2015 the Joint

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<sup>12</sup> In 2018 there was a huge reduction in this number to only 606 contracts representing a 92 percent decrease which is attributed to Scottish Government pressure in the form of the Scottish Business Pledge (EIS 2018)

Negotiating Committee for Higher Education Staff (JNCHES) (2015) commissioned a report with the intention of getting a better understanding of the nature and extent of contractual arrangements in HE. As part of this, an attempt was made to map out a typology of contracts with a series of short definitions and these are included in Table 2.5. An important thing to note is that there are many overlaps and that the label “Zero-Hours Contracts” is quite capable of being applied to many of these more established forms of employment for which other nomenclature has previously been used. Though this possibility has not been remarked upon within the report it is confirmed by new HESA data – for example, 75% on ZHCs are also reported to be Hourly Paid Contracts (HESA 2019)<sup>13</sup>.

**Table 2.5. Typology of contract types used in HE with suggested definitions**

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<i>Open-Ended</i>	A contract of employment with no end date whose termination will be through the terms of notice required by either party.
<i>Fixed-Term</i>	A contract of employment with a clearly specified start and end date.
<i>Part-Time</i> (also “fractional”)	A contract of employment that is usually open-ended but can be fixed term which provides a set number of hours to be worked each week.
<i>Variable Hours</i>	A contract that provide a minimum amount of work within an open-ended or fixed-term arrangement with the expectation of additional hours.
<i>Hourly Paid Contracts</i>	A contractual arrangement usually on a fixed-term (annually or termly) basis in which pa is calculated on an hourly basis.
<i>Casual Contracts</i>	Arrangements where work is provided on an as and when basis where there is an underpinning contract or contract issued for every engagement.

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Source: JNCHES (2015: 13-14)

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<sup>13</sup> Lopes and Dewan (2015: 32) find that there is “*little qualitative difference between the experiences of lecturers on hourly paid or zero-hour contracts and...therefore do not make a terminological distinction*”.

One useful aspect of this research by JNCHES (2015) is that it gives us some insights that other work does not. Within the report, more established terminology such as “Hourly Paid” or “Casual” Contracts is used when presenting the findings. However, since it is possible that many of these could also be labelled as Zero-Hours Contracts we can make inferences in terms of the occupations for which they are used. The employment forms are invariably used for teaching roles which gives some support to the findings of UCU’s (2013) FoI, but they also span the breadth of the grade system.

**Table 2.6. Occupational roles for which potential ZHCs are used in HE**

	<b>Academic Roles</b>	<b>Non-Academic Roles</b>
University A	Teaching Demonstration External Examiners	Student ambassadors Administration Student support Sports Coaches Catering
University B	Teaching Demonstration Graduate Teaching Assistants	Student Ambassadors Accommodation
University C	Teaching	Student Ambassadors (Graduation support) Administration
University D	Teaching	Student ambassadors Sport Coaches Life models

Source: JNCHES (2015)

Some evidence is available on payment levels which are based on grade profiles for pre-92 and post-92 institutions and are linked to points on the nationally agreed pay spine for the HE sector. Research from JNCHES (2015) – which again cannot explicitly be seen as Zero-Hours Contracts - informs us that academic roles belong to the highest grades depending on job content. Payment involves a tariff system in which the hourly rate is multiplied by between 0.5 and 1.5 to account for preparation and other undertakings such as administration and assessment. This varies by institution and the number of duties. Less information is given about non-academic roles although these will involve payment according to the pay spine. In some institutions the Living Wage<sup>14</sup> provides a bottom rate while in others it is the National Minimum Wage<sup>15</sup>.

In summary, the current research gives a very basic patchwork of insights into use within HE. However, there is not a great deal of clarity on what kinds of employment arrangements actually constitute Zero-Hours Contracts and where they sit in relation to other forms of employment that are used in the sector (i.e. whether ZHCs are new or re-labelling has occurred). More could also be done to consolidate and improve our understanding of how the contracts are used for different occupational roles and the payment levels that are involved. Establishing these matters should be regarded as a pre-requisite for any research that endeavours to understand Zero-Hours Contracts as a variegated phenomenon.

## **2.4 Reasons for the use of Zero-Hours Contracts**

Before moving on to look at what the research says about the wide variety of employment arrangements, it is necessary to review what is known about the reasons for using Zero-Hours Contracts. To do so, it is important to briefly revisit some of the significant changes that have occurred in the labour market over the past half a century. The crisis of the industrial order that prevailed in the first half of the last century led to the development of new production regimes and competition. In response, employers placed an emphasis on achieving greater organisational flexibility and were

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<sup>14</sup> £9.30 (UK) and £10.75 (London) at the time of writing.

<sup>15</sup> £8.21 for those over 25 at the time of writing.

supported by the government who sought to remove existing rigidities by creating a permissive regulatory climate (referred to as the “British Way”) and legislation limit the power of unions.

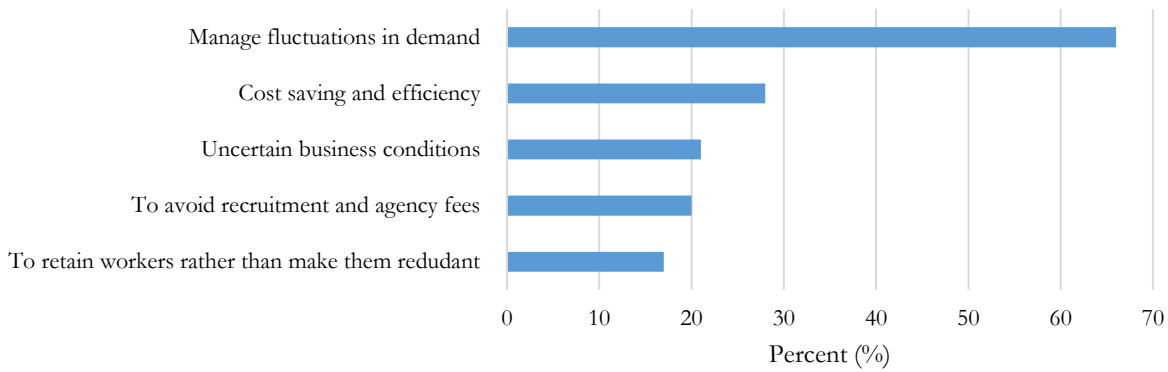
This resulted in a growth of employment forms that deviated from the standard model, Notable here, were employer strategies for the increased use of employment enabling numerical flexibility in which employers have sought to manage costs by adjusting the quantity of labour in line with changes in the level of demand. The two most well-known of these are of course temporary and part-time work.

More recently, scholars have suggested that in the ongoing absence of constraints on employers there has been a shift towards a more employer-led system of managing working time with an increased pursuit of temporal flexibility. Here, employers faced with new service developments and other pressures are increasingly unwilling to pay for labour that exceeds patterns of demand and schedule work without regard to the needs and preferences of employees (Rubery et al 2005). In this literature it is widely regarded that the most extreme way of achieving this is through Zero-Hours Contracts.

Some have maintained that this has process has been compounded by the economic uncertainty brought about by the global recession of 2008 while others point to the actions of the state in changing systems of procurement funding and a hardening of welfare policy in such a way that has led to increased commodification in the supply of labour in “Anglo-Saxon” countries (O’Sullivan et al 2017).

What, then, does the research actually say about employers use of Zero-Hours Contracts? The actual empirical evidence very thin but it does give some support to their adoption by employers as a means of achieving greater numerical or temporal flexibility in the challenging economic climate. The figure below charts the reasons organisations gave for using ZHCs, and at over two thirds the most common answer is to manage fluctuations in demand. The remaining reasons are also closely related - for example, the reported use for cost-saving and efficiency and to manage uncertain business conditions.

**Figure 2.11. Reasons given by organisations for using ZHCs**



Source: CIPD (2013a)

So what of the situation in specific areas of the labour market? The research is extremely limited at this level but there are some insights available from public and public-related sectors. In line with some of the points raised in the first section of the review, the literature on Zero-Hours Contracts emphasises that the underlying drivers of use in these areas are different from the wider labour market in the sense that they relate to significant pressures associated with changes to procurement and funding regimes.

### 2.4.1 Social Care

In social care, the extensive use of these arrangements is linked to developments in the market orientated delivery of services. In particular, it has been attributed to a move from local authority (LA) commissioning through bulk purchasing to new framework agreements for competitive tendering. In the new system, LAs operating with increasingly strict budgets sell care packages to bidding providers on the basis that they will only provide payment for contact care time only (Bessa et al 2013). This system exerts pressure on providers to use employment arrangements such as Zero-Hours Contracts so that they have maximum flexibility to match labour closely to the demand for care and avoid incurring additional costs. Some scholars have shown how this has led to the total fragmentation of working time even within the confines of the working day (Rubery et al 2015; Moore and Hayes 2017).



## 2.4.2 Higher Education

Unlike areas such as social care, there is no specific event in the HE sector that provides a clear link to the emergence of employment that can be defined as being Zero-Hours Contracts. It was noted earlier within the chapter that the label could actually apply to employment forms that existed in the sector prior the popularisation of the term. If this is indeed the case, it is therefore likely that well-established reasons for use of non-standard and flexible employment will continue to apply and, as such, we must consider a brief history of the changes that have occurred in the sector in recent decades. The most important of these has been the unprecedented expansion in student numbers or the “massification” of HE. This began with the publication of the Robbins Report and the creation of new institutions in the 1960s before being furthered by the awarding of university status to polytechnics in 1992. The process continued unabated after this time and following the introduction of targets set by the Labour Government the proportion of school leavers entering higher education reached a sizable 30 percent.

As this occurred, the government sought new approaches to the role of the state in HE that lined up with wider public sector changes. Many commentators noted that the expansion and growth in student numbers was not met with a concomitant increase in per capita funding through existing institutional block grants (Bryson and Barnes 2000a). In order to take the strain off the public purse, this system was reduced to more targeted and selective funding regimes. Most importantly, however, was that, following the recommendations of the Dearing Report, legislation in the form of the Teaching and Higher Education Act 1998 extended private-sector mechanisms to HE by instigating a process of marketisation. In this system, students were encouraged to become consumers of education with access to student loans while universities were permitted to charge annual tuition fees (Brown and Carrasso 2013) at a rates that have increased from an initial £1000 to a sizable £9000 at the time of writing.

This placed the expanded number of universities in direct competition with one another in order to secure these new sources of income. Some insights have been provided into the nature of this competition. In an analysis of the situation over the past decades, it has been shown that it has clearly not been based on cost. Indeed, on the whole, fees across the sector became standardised as HEIs

charged the maximum rate at every interval at which they increased, mainly to compensate for overall reductions in government funding. Thus, Musselin (2018), for example, notes that competition is based instead on the quality the service being provided. Since parents and prospective students cannot judge this on the basis of different tuition rates, they have come to rely on other indicators. There is, as such, a widespread pre-occupation with the status of universities that is now gauged by an extensive measurement infrastructure including the Times Higher Education ranking tables and, in more recent years, the annual National Student Survey (NSS) (as emphasised by Jones-Devitt and Samiei 2010).

The new forms of funding are inherently unstable since they are either subject to government reductions or the new competition means that demand for services from the recruitment of fee paying students is liable to change. To manage this situation, there has been an adoption of new managerialist approaches seen in the public sector that involve a strong commitment to cost efficiency and accountability (Deem 1998 and Deem et al 2008). While the purpose of this is to sustain the operation of HEIs, it is also to accumulate capital that can be invested to improve the marketability of institutions.

These developments have had a profound effect on the nature of employment within the academy. Though the changes are many, one notable way that this occurred is an increase in levels of work intensification as part of a productivity squeeze intended to avoid the cost of further recruitment. In a similar way to the situation elsewhere in the economy, it has also led to an adoption of the mantras of employment flexibility involving significant restructuring characterised by a shrinking proportion of permanent employees (AUT 2000) and an marked increase in the use of non-standard employment. This has been designed to serve the needs of the institutions and, interestingly, is something of a paradox given the emphasis on service quality and more general HRM sensibilities on ensuring high performance though secure employment. Nevertheless, it has occurred and poses an ongoing dilemma.

The main theme over the past few decades has been the extraordinary growth of temporary, or more specifically, fixed-term employment. Indeed, this has occurred at a higher rate than the labour market. A key area where there has been a major uptake is for research roles, with HESA data showing that

around 60-70 percent of all researchers have been employed on this basis over the past decade. In leading studies in the UK, Bryson (1999) and Bryson and Barnes (2000b) show that the essential reason for this is linked to changes in the funding system. In the absence of steady government grants there is a much greater reliance on research councils who provide short-term funding for projects. Thus, academic managers and other grant holding staff have sought numerical flexibility (in a loose conceptual sense) by bringing in assistance from qualified individuals who are not available in the workforce. Once the project is finished and/or the funding ends, these employees can be released without incurring ongoing costs. The growth is also attributable to increasing emphasis on research across the sector as well as the greater supply of qualified researchers. Given the traditional research function of older universities, it is also something that disproportionately applies to pre-92 institutions. These scholars note this shift has come about not as ideal strategy but a pragmatic response to wider determinants.

As seen in the previous section, universities make extensive use of nonstandard employment for academic teaching roles which have become increasingly separated from research positions in recent years. Here, there has also been a heavy reliance on temporary or fixed-term contracts. The evidence has shown that between 40-50 percent of teachers have been employed in this way over the last two decades and this is confirmed in recent published HESA data. The reason for this is also directly associated with the wider changes. The new competitive conditions expose institutions to uncertainty in student demand by way of enrolment and module registration year to year. In order to respond to this, managers make use of temporary contracts to avoid committing to the costs of a permanent member of teaching staff who could eventually become surplus to future requirements (Bryson 2004).

The majority of these arrangements are what are widely described as hourly-paid contracts, which, as the name suggests, involve payment provided by the hour. These tend to involve a relatively small number of agreed hours that are either fractional (as a portion of FTE) or do not stipulate minimum hours. They are used to facilitate relatively small inputs to teaching where a full-time contract is not required. The use of these contracts for all academic roles also enables management to match work closely to demand in the form of individual lectures and seminar sessions and to keep labour costs to

a minimum (Bryson 2004). In this sense it could be said to reflect a wider trend in employer or manager-led flexibility and has been shown to result in a fragmentation of working time across the day or week.

In the literature, commentators (for example Husband and Davies 2000) have distinguished between a number of categories of such teachers, two of which are of note. In the first instance, many are individuals with particular skills and specialities that make limited contributions to teaching in order to enhance and to expand the overall academic product. These are made up either of people employed in other professions or those for whom teaching is a primary form of employment. With regards to this broad group, research from Bryson and Blackwell (2006) has documented the presence of a continuum of strategic approaches to their management. Some HEIs opt for one based more on “integration” which seeks a broader role for employees with an emphasis on inclusion and commitment. Others, however, pursue a goal of “differentiation” involving a dual strategy of protecting permanent employees and using hourly paid teachers as a buffer with little inclusion in training and other benefit schemes. This is said to more of defensive action that poses threats to quality and pre-dominates where an institutions financial situation is poor and there is a motivation to pass risk onto the workforce.

There is one group that tends to sit outside of these considerations but whose use is very much consistent with the second of the two approaches. It is documented that institutions with extensive research capacity such as those belonging to the Russell Group have adopted a strategy of utilising PhD students to undertake demonstration and seminars. Though it is suggested that this is to provide experience to post-graduates, it is explained primarily by the fact they offer a large supply of human resource that can be used to deliver service to the increasingly vast numbers of students while freeing up other staff to concentrate on research output. The employment of this group which has been described as a “reserve army of academic labour” is also relatively inexpensive since they command lower wage rates compared to skilled individuals drawn from the external market and are not required to be included in higher grades established through collective agreement on the national pay spine (JNCHES 2004). Moreover, UCU note that these make up the bulk of what they call “atypical academics” who have the legal status of worker. The union argues, on the basis of their engagements

with universities, that classifying individuals in this way is an intentional manoeuvre to save costs by avoiding any payments associated with the accrual of employment rights (see UCU 2018 and 2019b).

It was noted above that the use of non-standard employment also extends to roles that are non-academic in nature but which exist in order to ensure that the core academic service can function effectively and that HE institutions can enhance their competitive appeal by offering a range of convenience and other leisure facilities. There has been little, if any, academic research into the use of non-standard employment for these roles, though some insights can be provided from other sources.

There are three main groups of note here that involve different NSE practices and reasons for their use. In the sector there are academic-related and non-academic services that are not delivered by traditional colleges and schools and are not paid for via the tuition fees system. One area of note is learning and disability services funded through Disability Support Allowance (DSA). There has been persistent change in this regime over the years including the numbers of students eligible and several turbulent shifts in providers (IES 2019). Here again, uncertainties in financial streams and the need to facilitate student choice in delivery has spurred an increased use of forms of non-standard employment.

In other areas of universities the situation is far more commercial in nature, involving outlets such as retail and hospitality units. Though much of this is private sector provided, many remain within the operation of HEIs. In these examples, NSE practices reflect those in comparable product markets in the wider economy where there are more cost-based concerns. This includes the use of part-time and variable hours contracts for services that are continuously provided but where working time can be matched to demand that is higher at certain periods and unpredictable week to week (JNCHES 2015).

Many institutions have long been found to make use of highly atypical or casual arrangements where the need for assistance is very irregular and may only involve one-off tasks. To resource this, many HEIs can make use of individual members of the local community but very often they will do so by drawing on the immediately available and extensive supply of willing student labour (JNCHES 2015).

Asides from these, in the last decade the HE sector has also seen the use of outsourcing involving competitive tendering for contracts to cover low-paid routine activities such as cleaning and security. In 2011, the representative organisation for HEIs, Universities UK (UUK), began to encourage this to in order to “drive efficiencies” and ensure “value for money” amid grant reductions linked to austerity measures (UUK 2011 updated 2019). Moreover, it was boosted by the governments removal of VAT tax barriers and new exceptions for collaborative and shared services. This kind of work is not included in official HSEA statistics, but available data from a UNISON FoI request to 133 universities show spending on agencies increased by two thirds between 2010 and 2016. They specifically point to use by HEIs as a means of saving on HR functions and avoiding NI and pensions contributions (ibid 2016).

We have very little, if any, research that looks at the reasons why HEIs make use of Zero-Hours Contracts. This is recognised by Hopkins and Fairfoul (2014: 2) the leaders of the employers association in the sector who note that: “[t]he data on zero hours contracts and the use of casual labour are not only limited but provide no indication as to how or why these contracts are used in the first instance”. In order to provide some insights they undertook some information gathering interviews with HEIs. The authors make explicit reference to the need for flexibility by noting that the contracts are used across a range of roles where existing funding streams and student demand are unpredictable and subject to change. These basic insights suggest that the reasons for the use of “Zero-Hours Contracts” reflect those given for existing employment and could be seen being as part of a much wider approach within the sector. How far their use involves continuity or a break from the recent past remains unclear within the existing debate.

## **2.5 Operation of Zero-Hours Contracts**

This review can now move on to what is known about the operation of Zero-Hours Contracts. It does so by summarising the available evidence in relation to three aspects of the employment relationship.

- Working time.
- Employee obligations.
- Rights and entitlements.

A key thing to note here is that the existing research does demonstrate the variegated nature of Zero-Hours contracts in relation to each of these areas of interest. However, the work is overwhelmingly focused on the general labour market and, as such, we have very little insight on the situation in specific sectors. As noted in the previous chapter, one area where there is extensive use but a dearth of information on these matters is HE. In the following discussion an outline is therefore given of what is currently known about the variegated use of ZHCs in HE and the scope for a research contribution.

## **2.5.1 Working Time**

This is arguably the most important aspect of the employment relationship since it is here that the negative impacts underpinning much of the debate are most acutely felt. As seen in the previous section, achieving control of working time – either through numerical or temporal flexibility – is the main reason that employers make use Zero-Hours Contracts. It therefore follows and should be established before proceeding that varieties of practices are largely determined by the nature of the product market demand. Here, we consider several of the main issues that have been outlined in the literature.

### **2.5.1.1 Quantity**

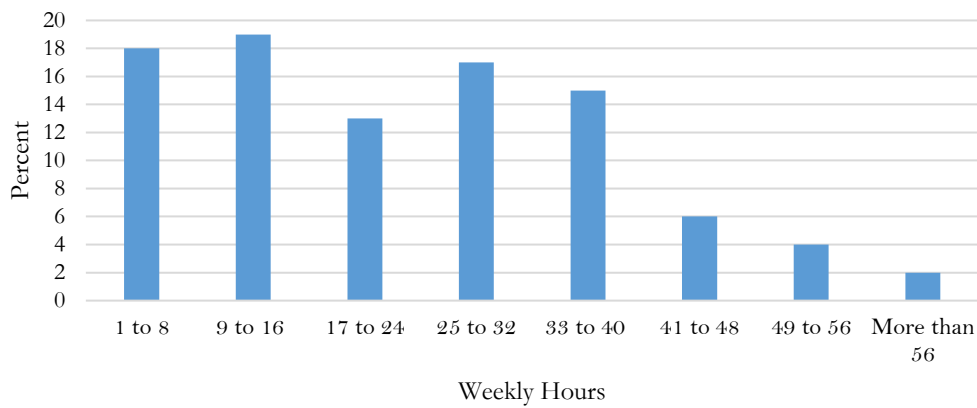
The first way the literature shows employers make use of the arrangements is by controlling volumes of labour input in terms of the quantity or number of hours. Much of the available research calculates this over the standard duration of a week and the table below shows that average hours for this time is over 20. This suggests a significant amount of work is undertaken by those on Zero-Hours Contracts.

**Table 2.7. Average weekly hours worked for ZHCs**

Source	Average
ONS (2018)	21.18
CIPD (2013a) and CIPD (2015)	24 and 19.4

This overall picture of averages at the labour market level can be broken down further using the CIPD (2013a) research below. This shows that employers provide a considerable range of weekly hours which are distributed relatively evenly among the categories, with the exception of those over 40 per week.

**Figure 2.12. Distribution of typical weekly hours for ZHCs**



Source: CIPD (2013a: 19)

More recent survey research has been undertaken by De Bond et al (2018) on behalf of the Low Pay Commission. This provides some insight into the quantity of hours that employees work in low paid sectors of the labour market, the key findings of which are presented in Table 2.8. Again, we can see that the overall average is similar to above and that there is also a large range reaching up to 40 hours.



**Table 2.8. Average and range of weekly hours for ZHCs in low paid sectors**

	<b>Average</b>	<b>Lowest</b>	<b>Highest</b>
Hotels, restaurants, arts and leisure	25.5	7.0	47.7
Public and not for profit sectors	10.1	1.3	33.1
Retail and wholesale	12.0	1.5	22.5
Other private sector	20.4	1.5	40.4
<b>Overall</b>	17.2	3.3	38.4

Source: De Bond et al (2018: 22)

### **2.5.1.2 Schedule Notification**

In order to match labour to demand, schedule arrangements need to be made which notify employees of their when they are required to work. Though there is no official data on this dimension of working time from ONS, survey research does exist at the labour market level – most notably from CIPD (2013a). Table 2.9 documents the percentage of employees in the labour market and public and private sectors who say that they receive a certain amount of notice when work is made available to them.

There is a great variety of practices here. A significant minority of a fifth of employees receive more than one week’s notice and in some cases will know what they are working as far as a month or more in advance. This suggests that Zero-Hours Contracts cannot be seen purely as extreme casual arrangements as they tended to be viewed in the 1990s and continue to be seen in some quarters of the debate. However, the most common practice by some distance is for under 12 hours’ notice to be given, and when combined with 12 to 24 hours, this accounts for over half of all respondents. One can infer from this they are used to respond to highly unpredictable demand involving significant flexibility.

**Table 2.9. Employees view on how much notice they receive when work is available**

	<b>All</b>	<b>Private</b>	<b>Public</b>
Up to 12 hours	42%	44%	36%
More than 12 hours up to 24 hours	10%	11%	9%
More than 24 hours up 48 hours	9%	11%	9%
More than 48 hours up to 72 hours	4%	3%	5%
More than 3 days up to 7 days	13%	12%	12%
More than 7 days up to 2 weeks	7%	7%	6%
More than 2 weeks up to 4 weeks	5%	4%	11%
More than 4 weeks	9%	7%	12%

Source CIPD (2013a: 21)

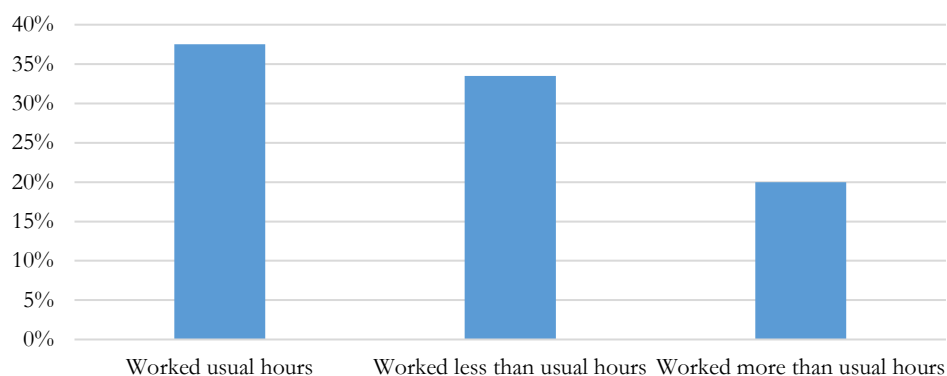
In the work undertaken in low paid sectors by De Bond et al (2018) there is also a range of schedule notice. Again there is evidence of advanced scheduling but more flexible practices involving under 48 hours' notice were found to be the most common, although less so than in the wider labour market. This could be because many respondents said they 'do not know' or notice 'varies too much to say'.

### **2.5.1.3 Variation**

The need to match labour to demand is an ongoing process that requires continual adjustment and this means that the hours allocated to employees are liable to change from week to week. Together with schedule notification, variability in hours is arguably the most important dimension because of its association with negative impacts on employees, particularly when they have no input into the process.

Data from ONS included in the figure below shows that some workers say that they worked their usual hours, implying some degree of regularity. However, two thirds either worked less or more than their usual hours which suggests that the majority experience flexibility in the form of weekly variations.

**Figure 2.13. Comparison of usual and actual hours for ZHCs, LFS Oct- Dec 2017**



Source: ONS (2018)

In the CIPD research presented in the table below, there is also evidence to suggest there is a degree of regularity in working patterns with 20 and 14 percent of employees saying that their hours are broadly the same each week. Here, only one in ten report change to their hours, but this lower figure could be attributed to the fact that other degrees of change are omitted – for example, ‘a bit’ or ‘some’ variation.

**Table 2.10. Changes to working hours each week for ZHCs**

	CIPD (2013a)	CIPD (2015)
Hours broadly the same each week	20%	14%
Hours vary greatly each week	10%	10%

In research from low paid sectors by De Bond et al (2018), we also see some employers reporting relatively steady weekly hours. But again, the tendency points toward far more flexible practices with just under half of the employers surveyed reporting some weekly variation and as many as 25 percent saying that hours are highly variable week to week due to the need to respond to unpredictable demand.

### 2.5.1.4 Cancellation

The literature has also shows us that another aspect of working time concerns the ability of employees to adjust or to remove working hours that have been previously allocated. This tends to be in response to unforeseen upturns of downturn in demand that occur during the week. It has also been flagged up as potentially problematic because of its impact on employees. In leading survey research on the general labour market, most employers say they have a policy for cancelling hours. However, when the question is asked to employees 40 percent say they receive little or no notice in when cancellation occurs.

**Table 2.11. Employees view on the notice they receive if work is no longer available**

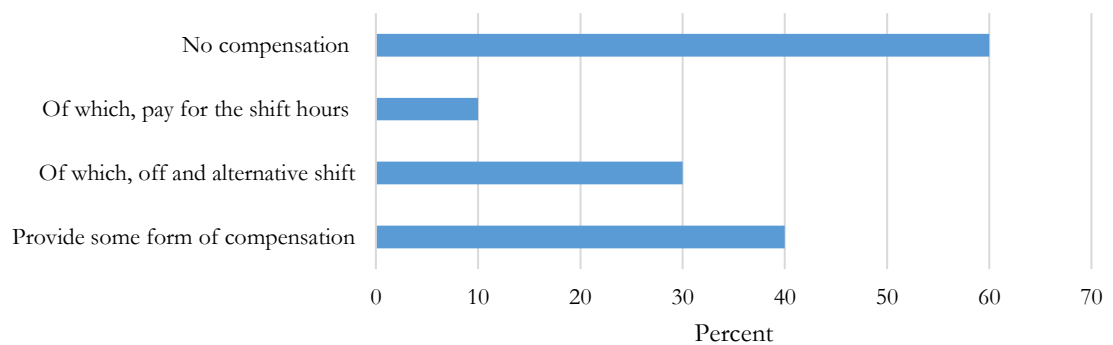
	All	Private	Public
None	40% <sup>16</sup>	43%	33%
At the start of a shift	6%	4%	9%
Up to 12 hours	9%	10%	4%
More than 12 hours up to 24 hours	10%	10%	12%
More than 24 hours up to 48	5%	5%	7%
More than 2 days	30%	30%	35%

(Source: CIPD 2013a)

The research from De Bond et al (2018) on low paid sectors explored the issue in more depth and found it to be commonplace, with nearly 90 percent of employers surveyed saying that cancellation of shifts does occur. In this situation, the vast majority said that they provided more than 24 hours' notice although very many maintained that less will be given. Of particular interest is employers' responses in relation to the issue of compensation. In the figure below we can see that two thirds do not provide any compensation, confirming some of the concerns raised in recent governmental reviews. The remaining 40% do, but only a quarter of these offer payment while the rest prefer to re-arrange shifts.

<sup>16</sup> The fact that a significant majority of 40 percent say that no notice is provided is curious. If this was the case, employees would presumably attend work and would therefore find out at the start of that shift that work was cancelled, but this option is accounted for so it unclear what "none" actually means.

**Figure 2.14. Whether employers pay compensation for cancelled shifts in low paid sectors**



Source: De Bond (2018: 36)

When looking at the evidence on working time overall we do have quite a detailed picture. The evidence shows us that there is a wide variety for different dimensions of working time across the labour market. On the basis of this macro evidence we are not able to tell a great deal about the distribution or concentration of certain practices within the labour market. However, there is plenty of research from think tanks and trade unions based on anecdotal evidence from employees which shows that the most extreme practices tend to be very common among the low-end sectors. Included below is a selection of accounts to illustrate the point at hand:

**Unite (2013)**

*I wouldn't find out until the Sunday before the working week began how many hours I would have for the week – never more than 30 sometimes as few as 13. My hours were often changed at very short notice and you would be sent home if it was quiet (Hospitality)*

*The number of hours I receive week to week varies hugely, from around 6 to 15 hours a week. Having such unstable hours, means I never really know how much money I make from one week to the next. The worst part is, if I come in to work for an evening and the shop is quiet my boss can send me home after 1 hours work... [which]...means that I only get paid for that one hour (Retail)*

**Trade Union Congress (2017b)**

*I get called into work last minute and can go one week with 40+ hours and the next three weeks with 8/9 hours (Hospitality)*

*I'm often not sure when my work will start until 9pm the night before and sometimes work random shifts and hours...[and] my hours are often changed at very short notice, which means my earnings for the week can suddenly be cut in half* (Hospitality)

In summary, the research discussed here is useful in that it gives us an overall picture of use but it does not constitute a detailed or rigorous analysis of the varieties of working time practices in particular areas of the labour market. One sector that makes extensive use but where there is limited understanding is Higher Education. Though early work from UCU broke ground on the topic, it was only concerned with estimates of prevalence and while we do have some insights on these matters for other forms of non-standard employment there is nothing for arrangements clearly defined as “Zero-Hour Contracts”. As such, there is scope for research to explore the variegated nature of working time practices for ZHCs in the sector and to consider how these are shaped and determined by specific contextual factors.

## **2.5.2 Employee Obligation**

The literature review now moves onto the second major aspect of the employment relationship – namely, the obligations on employees to accept work when it is offered to them. As discussed so far in the thesis, the few past decades have witnessed a move towards an employer-led approach to the management working time that has been enabled by factors including the lightly regulated labour market and the diminishment of trade union power. This shift in the balance of the employment relationship is perhaps most profound where obligations are placed on workers to accept work that is offered, despite the fact that there is no guarantee that any work will be provided. Such practices have featured in the academic literature on flexible scheduling and are also prominent in the debate on ZHCs.

### **2.5.2.1 Accepting Work**

As was discussed in the previous chapter, there has been some inconsistency of opinion as to whether obligation to accept work is a necessary defining feature of Zero-Hours Contracts. Some conceptions from the 1990s suggest that this is what distinguished them from other casual work – much as it is in Ireland and New Zealand. Although some in the UK tend to assume that this is the case, a recent

convergence around the broader definition of no-guarantee means that multiple scenarios are in fact possible. This is reflected in the thin body of existing research with the most detailed insights coming from the CIPD (2013a). As seen in the table below, they find that the majority of employers do not place any obligation on employees to accept work, but this changes significantly in practice. At this level, around half of all employers say that there is at least some obligation for employees to accept work, which suggests that some inherent imbalance of power is present within many ZHCs.

**Table 2.12. Obligation to accept offers of work in contract and practice**

	<b>Contract</b>	<b>Practice</b>
No obligation	61%	50%
Obligation in some circumstances	17%	21%
Obligation	15%	23%

Source: CIPD (2013a: 18-19)

It is important to consider how obligations to accept offers of work can manifest themselves. The same research from CIPD (2013a) also found that 20 percent of employees say they are either sometimes penalised or always penalised for turning down work (similar to proportion to those who report obligation). This could take a number of forms, but we are not told exactly what penalisation entails. However, much of the literature points to the practice of “zeroing-down” the future hours of employees if work is declined.

The research that we currently have on employee obligation focuses on the general labour market. It is not possible to use these findings to determine where certain practices tend to be found. However, anecdotal evidence from reports seem to indicate that there is a greater likelihood of obligation existing in lower paid sectors where power imbalances stem from the poor bargaining position of employees.

In the Higher Education sector there is reason to believe that the conditions exist for issues of employee obligation to be a matter of interest. It has previously been noted that wider labour market trends toward an employer-led model of working time have been reflected in the sector and that this has occurred alongside the imposition of greater managerial control over aspects of academic life. However, our understanding of the issue of employee obligation for Zero-Hours Contract in HE is limited due to its relative absence in the existing empirical work in the sector. Insofar as the matter is discussed, there is only a brief recognition that there will be different practices in HEIs. As such, there is scope for systematic research in the HE sector to explore variegated nature of employee obligations to accept work and the implications this has in terms of the balance of power within the employment.

### **2.5.3 Rights and Entitlements**

The third and final aspect of the employment relationship to feature in the review pertains to rights and entitlements. In order to make sense of the available literature on Zero-Hours Contracts we must first look at some of the essential organising concepts and principles in the law of England and Wales.

#### **2.5.3.1 Organising Concepts and Principles**

The legal institution of contract is central to employment law and has developed as the key mechanism through which employment status is conferred upon the working individual (Deakin 1998). Until the end of the century there existed a binary division between:

- Contracts *of* service which designated the status of employee and full protection.
- Contracts *for* services which gave the status of self-employed and no protection

To distinguish between the two, a number of case law tests have been developed based on a consideration of both the formal contract and the reality of the employment relationship. The first



concerns whether the individual is required to undertake work personally for the employer or if they are permitted to send somebody else in their place. In the former instance, employee status could be said to exist, while in the latter, a client-based relationship would indicate that the relationship is one of self-employment.

The second relates to the issue of control, which in the case of *Ready Mixed Concrete [1968]* is defined as: *...the power of deciding the thing to be done, the way it shall be done, the means to be employed doing it, the time when and the place where it shall be done*<sup>17</sup>. Where a contractual right of control is present the subordinate status of individuals is likely to result in employee status but self-employment in the event that it is not.

The third and arguably most significant test concerns that of mutuality of obligation. This refers to a set of promises, one on the part of the employer to provide the employee with work and another on the part of the employee to accept that work when it is offered. A seminal and decisive case on this matter is *Nethermere [1984]* where mutuality was considered to be the *sine qua non* of the presence of employee status.

At the end of the century, the proliferation of flexible employment forms that deviated from the standard model led to concerns that increasing numbers of people fell outside of the strict criteria for employee status but could neither be regarded as genuinely self-employed. Instead of extending the definition of employee status to bring these individuals within the scope of full protection, the government introduced a new intermediate category of worker in the Employment Rights Act 1996 which provided a subset of the available rights. Section 230(3) of the act defines the worker concept:

*In this Act "worker"... means an individual who has entered into or works under (or where the employment has ceased worked under):-*

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<sup>17</sup> *Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance [1968] 2 QB 497*

*a) a contract of employment<sup>18</sup>, or*

*b) any other contract, whether express or implied...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.*

Questions have been raised as to what makes this distinct from employees and the matter is the subject of ongoing debate. A.C.L Davies (2015) has suggested that worker is not a “low-fat version of employee” and should in fact be seen as a different concept all together (ibid: 114). However, Adams and Prassl (2018) maintain that the leading dicta on the interpretation of worker status - found in *Byrnes Bros* [2002]<sup>19</sup> – suggests that the difference between employee and worker is one of degree rather than kind and will be worked out on the basis of the same considerations as the traditional distinction between employee and self-employed (ibid: 28). Because of these different employment statuses, the UK working landscape therefore involves a range of available protections. These are mapped out in Table 2.13 below<sup>20</sup>:

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<sup>18</sup> Those on contracts of employment are also workers but have employee status since they meet the narrower criteria, particularly of mutuality of obligation.

<sup>19</sup> *Byrnes Bros (Formwork) Ltd vs Baird and others* [2002]

<sup>20</sup> The table includes a selection rather than an exhaustive list of statutory rights and entitlements.

**Table 2.13. Employment status and statutory employment rights**

Employment Right	Employee	Worker	Self-Employed
Protection from discrimination	✓	✓	✓
Rest breaks	✓	✓	
National Minimum Wage	✓	✓	
Paid Annual Leave	✓	✓	
Statutory Sick Pay (Q)	✓	✓	
Part-time (no less favourable treatment)	✓	✓	
Fixed-term (no less favourable treatment)	✓		
Maternity and paternity pay (Q)	✓		
Minimum notice periods (Q)	✓		
Protection from unfair dismissal (Q)	✓		
Statutory redundancy pay (Q)	✓		
Transfer of Undertakings	✓		

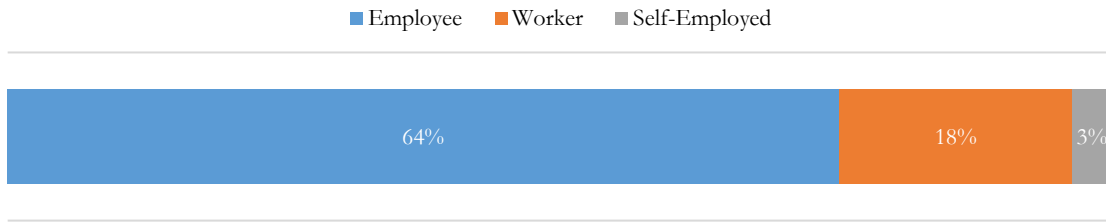
\* 'Q' denotes that the individual employment right is subject to the satisfaction of qualification criteria

### 2.5.3.2 Status and Access

In the previous chapter, it was established that legal scholars such as Adams et al (2014) (also Freedland and Prassl 2016) are keen to stress that label “Zero-Hours Contracts” cannot denote a singular form of contract. Instead, it has come to represent a wide spectrum of personal work arrangements leading to different classifications and different levels of statutory protection. The available research on Zero-Hours Contracts does not delve into the factual complexities of law in the way that these authors do, but it does confirm that a range of employment classifications are possible. The figure 2.15 below shows that a majority of two thirds of employers regard their staff as employees, while a fifth reported that they are workers and 3 percent self-employed (this contradicts suggestions made by Acas 2018)<sup>21</sup>.

<sup>21</sup> An additional 6% said “a combination of workers and employees” and 7% said no classification given.

**Figure 2.15. Employment status of individuals on ZHCs**



According to the data, the vast majority of people will receive full coverage of rights but the situation is not that simple in practice. The table below presents employers’ and employees’ views on eligibility to different rights and entitlements. It shows that the proportion reporting eligibility is noticeably lower than it is for employee status, particularly in the responses of employees (also see this in Unite 2013).

**Table 2.14. Employers and employees views on eligibility to rights and entitlements**

	Employers	Employees
Paid Holiday (annual leave)	59	46
Maternity and Paternity (Q)	41	16
Statutory Sick pay (Q)	49	-
Statutory Minimum Notice (Q)	52	-
Unfair Dismissal (Q)	55	18
Statutory Redundancy (Q)	31	10

\*‘Q’ denotes that the individual employment right is subject to the satisfaction of qualification criteria.

A key reason for this noted by Adams and Deakin (2014) is that acquiring the status of ‘employee’ is often the first hurdle when it comes to claiming rights. This is because of the existence of qualifying criteria in the form of National Insurance earning levels and continuity of employment. It means that there will be different levels of access with many excluded from the coverage promised (TUC 2017b)

Much of the well-established legal literature and recent writing on Zero-Hours Contracts also raises concerns about the fact that individuals who are classified as workers will lose out on key employment rights and entitlements all together. Many do not fall uniformly in to one status or the other and the considerable legal complexity involved has resulted in a number of unresolved disagreements and inconsistencies in case law. This either a) causes misunderstanding among employers which can lead to the wrong classification being awarded or b) enables employers to game the system by arranging contracts and working relations in a such way that excludes their staff from employee status. In these situations some workers will not be afforded the rights that they are due in law.

When looking at the totality of research evidence on rights and entitlements it is clear that we are restricted to a general understanding in much the same way as the previous two aspects of the employment relationship. Again, there is no work which systematically explores the situation in specific sectors. Although we are not short of insights into the issues that are important in terms of rights and entitlements, we also have no research on varieties of practice for employment defined as “Zero-Hours Contracts” in HE. As with other aspects of the employment relationship there is scope for research.

## **2.6 Research Agenda**

Where once a colloquial term for some casual work, the label Zero-Hours Contracts is now much more broadly defined and encompasses a wide variety of employment arrangements. Despite this, there are many unspoken assumption which tend to view ZHCs as a simple or homogenous category of employment. It has been argued that this not helpful in terms of policy and legislation and that a more progressive approach is required based on an understanding of the variegated nature of Zero-Hours Contracts. This chapter has shown that the existing research is useful and informative. However, the obvious thread that runs throughout is that we do not fully understand the distribution of the different practices and, relatedly, that there is no systematic research which looks at the variegated nature of Zero-Hours Contracts in specific sectors of the labour market. One area where there is extensive levels of use and clear scope for further enquires is the HE sector.

Given the well documented problems surrounding terminology and definition in HE, research of this kind must first clarify what employment arrangements can actually be labelled as Zero-Hours Contracts. After this essential task, there is also a need to review the use by determining how many of the contractual arrangements are used within HEIs as well as the kinds of occupational roles and payment levels involved. The following research questions are developed to meet these objectives:

- *What arrangements can be labelled as Zero-Hours Contracts in the HEIs?*
- *How many Zero-Hours Contracts are being used within the HEIs?*
- *What employment roles are Zero-Hours Contracts being used for in the HEIs?*
- *What is the payment level provided to those on Zero-Hours Contracts in the HEIs?*

Once this is established the research can move onto the third objective. This is to understand the variety of ways that arrangements identified as Zero-Hours Contracts are used for academic and non-academic roles. The following exploratory research questions have been developed to meet the objective for the different aspects of the employment relationship outlined throughout this review:

- *How is an absence of obligation to provide work used to manage working time for academic and non-academic roles in HEIs?*
- *How does obligation for employees to accept offers of work operate for academic and non-academic roles in HEIs?*
- *How is employment rights and entitlements coverage provided for academic and non-academic roles in HEIs?*

Having reviewed the existing literature and provided an outline of the research focus, the thesis can now move on to explain the chosen methodological approach and the research procedures involved.

# 3 Methodology

## 3.1 Introduction

This chapter explains the methodological approach for the research. It begins by reviewing some of the ways that the study could have been conducted by drawing on the existing ZHC literature. It is then argued that case study research involving different forms of data is the most appropriate design. The remainder of the discussion takes the reader through the procedures and methods involved at each stage of the research process, from sampling through to data analysis and ethical considerations. Before the chapter begins, however, it first useful to include a recap of the research objectives. It was noted at the close of Chapters 1 and 2 that the research objectives (and the questions that go with them) have been designed so that they have a logical order, with one informing the next. These are as follows:

1. To clarify what employment arrangements can be labelled as Zero-Hours Contracts in HEIs.
2. To review the use of Zero-Hours Contracts in terms of numbers, roles and pay levels in HEIs.
3. To understand the variety of ways that Zero-Hours Contracts are used in relation to the following aspects of the employment relationship for academic and non-academic roles in HEIs.
  - Working time.
  - Employee obligations.
  - Rights and Entitlements.

## 3.2 Research Design

It is customary to begin by considering some methodological approaches that could have been used to address the research objectives. An attempt could have been made to follow in the vein of existing work on Zero-Hours Contracts by basing the research on a distinctively quantitative methodology.

### **A) Undertaking analysis of existing secondary data.**

In the past, Labour Force Survey (LFS) data was considered to be insufficient to conduct a sophisticated analyses of the use of Zero-Hours Contracts due the low number of valid cases in the dataset. Since then, a growth in the number of respondents saying they have a ZHC (potentially due to an increased awareness of the label) has helped to resolve this issue and some academic research has begun to use the data to map patterns of use across the labour market (Adams and Prassl 2018; Farina et al 2019; Koumenta and Williams 2015). The situation becomes more difficult when looking at particular sectors, however. While it is possible to disaggregate data for the HE sector from the category Education (SIC 2007), we are left with a very small number of respondents and this ultimately restricts the extent to which a detailed analysis can be undertaken. Furthermore, even if the numbers were in place, the available variables in LFS do not provide the kinds of information required to address the main research objective of understanding variegation for aspects of the employment relationship.

Other secondary data are available from within the HE sector from UCU (2013) and HESA (2019). These provide overall numbers for the use of Zero-Hours Contracts in individual institutions and the sector as a whole. There are more data to work with here, but just as above there are no available variables that provide the information required to address the objective of understanding variegation.



## **B) Undertaking primary quantitative survey research.**

Much of the limitations of the existing data could be resolved by undertaking primary quantitative research. This design could be based on a survey of HEIs from across the sector and could involve the development of questions to address each of the research aims and objectives. In terms of the third of these, specific questions could be tailored to understanding how Zero-Hours Contracts are used in relation to working time, employee obligations and rights and entitlements.

This is a plausible choice of design and was considered carefully. However, a decision was made not to produce a survey of this kind for a number of reasons. If a survey was conducted, it is likely that the research would encounter similar problems to those faced in much of the HE research to date. For example, in its FoI request, UCU (2013) noted that there was considerable uncertainty about the definition and label “Zero-Hours Contracts” and that this may have affected the reliability of the eventual data due to HEIs failing to report use (also in EIS 2013). By consulting the original dataset, we can see that this is indeed the case. When looking at the responses as to how institutions manage the need for flexibility if they do not use Zero-Hours Contracts, there are plenty of descriptions of employment that would clearly fall within accepted definitions but have not been reported. This is seen in the following examples from some English and Welsh HEIs.

*Have a pool, with no mutuality, from which staff are offered a contract/ hours if any become available.*

*Use variable hours, although no guaranteed hours there is an expectation of work and minimum hours agreed annually.*

*Using temporary staff which include casual workers (with no mutuality of obligation) and external agency staff<sup>22</sup>.*

(Responses to the UCU FoI request on ZHCs in 2013)

The issue of under-reporting goes beyond instances where these kinds of responses are given. For example, it is known that working arrangements for Postgraduate Tutors in Cardiff University can also

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<sup>22</sup> This information was taken from UCU FoI data received from UCU Wales as explained later in the chapter.

be considered as a ZHC within the scope of the definition used in the UCU FoI request. However, the institution reported no use and continues to deny that any of their employment could be labelled in this way. This is despite the fact that the term Zero-Hours Contracts is now widely used by students.

The lesson from this is that even when a clear definition is offered to institutions, they may still fail to register that they use Zero-Hours Contracts. This could either be because they harbour their own narrow views on what constitutes a ZHC, they use different terminology, or because they wish to avoid reporting use in order to escape bad publicity due to the contentious nature of the topic. These problems are likely to be re-encountered if more surveys were issued to different institutions. Furthermore, even if this could be resolved with people such as those in HR, similar issues may be encountered with other respondents whose input would be required in order to gather information on how contracts are used. Ultimately, it could create a methodologically dubious situation since this thesis intends to maximise understanding of the full range of arrangements that fall under the label in HEIs.

Given all of these issues with quantitative research, a decision has been made to adopt a case study design for this thesis. A case study is essentially an empirical study of a bounded system or real-life context (HEIs) but which confines attention to particular issues that are relevant to the research problem at the time (the use of ZHCs) (Yin 1984). It integrate multiple sources of evidence including:

- Documents.
- Numeric staff data.
- Interviews.

The bulk of the data used to address the thesis's main objective of understanding the variety of ways Zero-Hours Contracts are used comes from semi-structured interviews. Interviews provide a means of overcoming conceptual issues surrounding what is or is not a "Zero-Hours Contract", especially with the aid of documents. With the correct procedure, they can also be used to gain an understanding of the variegated use of Zero-Hours Contracts for all three aspects of the employment relationship. This can be done in a way that helps to illuminate context specific processes and explanations involved.

It is important to reflect momentarily on the philosophical implications of the case study design. In this particular research, it is possible to make ontological assumptions that are realist in nature. This would involve seeing the use of Zero-Hours Contracts as an objective reality that exists independently of social actors. This makes sense if one considers that ZHCs are something that is external to or imposed upon individuals – for example, in the case of HR who have no direct involvement in day-to-day operation of employment or employees who exert no control over their working provisions.

However, given that the research is aimed at understanding the variegated use of ZHCs it is necessary to speak with those who oversee and manage the use of the employment arrangements. Importantly, the phenomenon is not independent of these social actors but is instead contingent upon and continually produced by their actions. Furthermore, for those such as employees there are parts of the employment relationship that cannot be viewed as entirely objective but which exists in the realms of perception (as will be seen in Chapter 6). Overall, this means that assumptions on the nature of reality should be viewed as being more in tune with the tenets of social constructionism. The epistemological implications of this is that one should adopt an interpretivist approach which seeks to know the social world through meanings people attribute to their actions (Berger and Luckman 1991).

### **3.3 Secondary Data**

While the existing survey data are not sufficient to satisfy the research objectives, they can be used to provide some context and to position the cases studies within the wider HE sector. The first type of data are taken from HESA which covers a range of information on general employment. A request for the data was placed with an individual in Cardiff University's Strategic Planning and Governance Department. It asked for data which included the following variables for all HEIs within the HE sector:

- Academic year.
- Provider short name.
- Mode of employment.
- Academic employment function.

- Academic employment marker.
- Terms of employment.

In August 2018, the data were provided in two Excel spreadsheets for Full-Time Equivalent (FTE) and Full-Person Equivalent (FPE) and were presented in a series of pivots which enabled some exploration of the relationships between variables. Rather than exhausting this data, a selective analysis was undertaken in order to present background on the two case study institutions. In the previous chapter of the thesis, it was noted that since 2017 HESA has also collected data on the use of ZHCs in HEIs. This occurred after the data described above had been received, but a later attempt was made to gain access to the new figures via the same individual. Below is an excerpt from the email correspondence. It shows that while some insights have been published by HESA, the data were not available in raw form in order to enable analysis for specific HEIs. As a result, it is not used in the research.

*I did a direct refresh of the data I sent over previously and can't see any flag for zero-hours contract or any way of calculating such in the data sets I have. It does seem like this is something they just started collecting and HESA has a new table re this [HESA 2019], but that doesn't have the same granularity and isn't something I can reproduce in HeidiPlus at the moment.*

(Data Analyst in Strategic Planning and Governance 30<sup>th</sup> September 2019)

The second major form of secondary data is from the UCU (2013) FoI request on Zero-Hours Contracts. An initial approach was made to members of the UCU Anti-Casualisation Committee who I met during the 2015 annual conference. For reasons unknown, no data were forthcoming from these individuals but a copy of the dataset was discovered and downloaded as an Excel spreadsheet from the following website <http://helpmeininvestigate.com/welfare/zero-hour-contracts-data-fe-ucu-survey>. In the summer of the year, another copy was provided by staff at Wales UCU and this included additional information on how institutions manage flexibility if not through ZHCs.

Due to the severe methodological problems associated with underreporting to the UCU FoI, no extensive analysis was performed on the data. However, it has been used to report the number of contracts disclosed to UCU and to position the case study HEIs in terms of levels of use within the sector (although it must be remembered that this is not an entirely reliable picture). It also represents the point where the major insights on Zero-Hours Contracts in Higher Education end and where the empirical contribution of this thesis begins.

### **3.4 Case Studies**

The discussion can now turn to the case study HEIs. This starts with sampling and the definition of Zero-Hours Contracts used before moving on to the methods involved in the research process.

#### **3.4.1 Sampling**

In reaching a decision on how to select HEIs to participate in the research, it was necessary to consider what different kinds of case study work could be conducted. In the classic literature from Stake (1994), a distinction is made between i) *intrinsic* case studies where the researcher wants a better understanding of that those cases in their own right and ii) *instrumental or collective* case studies where cases are examined because the researcher wants to gain insights into a social process or phenomenon more generally. The latter of these is most in tune with the desired function of this research which is to use individual HEIs to shed some light on the variegated use of ZHCs in the Higher Education sector. In order to enable the research to achieve this, purposive (or theoretical) sampling can be used selecting cases which represent common types of HEI (Stake 2005; Patton 2002).

It was therefore necessary to consider what types of HEI exist. The most notable in this sense is the division between pre-92 and post-92 institutions. This refers to those HEIs that received university status before and after the Further and Higher Education Act 1992 and is the most prominent kind of categorisation in existing research on ZHCs (and related forms of employment) in the HE sector. The only available information through which to select potential institutions belonging to each kind were

data from the UCU Freedom of Information request. Given the issue of underreporting, using the greatest number of Zero-Hours Contracts as a guiding principle when selecting HEIs was somewhat redundant. Instead, it was felt that any pre-92 and post-92 universities with 300 or more would suffice since this would ensure that there would be plenty of subject material for the research (Denzin 1978). During this process, time was spent contemplating the number of universities that should become case studies in the research. Eventually, a decision was made to include one of each kind. The reason for this was because of the physical practicalities involved having such large organisations as case studies, in particular the length of time needed to engage with data and the number of interviews needed to gain a sufficient understanding. These considerations also informed a decision to begin recruitment of HEIs within my locality. Both of the institutions that were approached to participate in the research eventually agreed and have been given the following pseudonyms (more discussion on this as an ethical issue is included later in the chapter):

South Valley University (SVU) – Post-92

North Coast University (NCU) – Pre-92

It should be noted that, owing to the constraints of practicality and resource, neither of these are Russell Group universities, which could be seen as an additional major type of Higher Education Institution. Admittedly, this is an omission that gives some limitation to the research and may inhibit the applicability of its findings to the sector as a whole. However, it is worthwhile noting that NCU does in fact share several common characteristics with the Russell Group – not least, a significant research output and the employment of many students with teaching responsibilities.

### **3.4.2 Access**

In the summer of 2015, contact was made with a UCU representative at South Valley University (SVU). A meeting was then held in which the individual expressed an interest in helping me to secure access to the institution. They proposed to do so by harnessing their co-opted member status and close relations with Human Resources. As the gatekeeper undertook these discussions, a letter was sent to

the Head of Human Resources outlining the purpose of research (see Appendix C). A reply was received a few weeks later and a meeting was arranged to discuss matters in more depth and to respond to any questions or concerns. Some central themes emerged which in many ways confirmed issues discussed so far in the thesis and provided a clear motivation for permission being granted. This is illustrated by the following extract from an email sent to management throughout the university in order to inform them that the research would be taking place and that they may be approached to participate.

*“A couple of years back the University completed a UCU Freedom of Information request about Zero Hours staff. We were probably too honest in our response and we came out looking like we employed far more ZHC staff than any other University – which is unlikely to be the case. Since that time, we have been trying to manage the situation and the perception of our use a little better.*

*ZHCs (also called non-guaranteed hours) is of course a hot potato at this time and this project could be a way of removing some of the stigma and promoting them as an effective tool when properly applied. We are not a McDonald’s in the way we use them, but we do seem to fit the definition.”*

(SVU Head of Human Resources 28<sup>th</sup> August 2015)

Access to North Coast University (NCU) also began by contacting a UCU representative who held the position of Anti-Casualisation Officer in the institution. Given the geographical distance, this was followed by a telephone conversation in which the individual informed me about the situation in the institution and responded positively to my suggestion of using the university as a case study. The individual proposed to act as a gatekeeper by raising the prospect during a meeting of a working group into Zero-Hours Contracts attended by HR and representatives of each of the trade unions present at the institution. During this time, a letter was prepared and sent to the Head of Human Resources. A reply was received via email and in January 2016 a Skype meeting was arranged with the Head and Deputy Head of HR. In some ways, the discussion was very similar that held with to HR in SVU. However, greater emphasis was placed on what they considered to be unfair assumptions and stigma

surrounding the use of Zero-Hours Contracts and whether there could be any implications for the University's reputation if it was to participate in the research.

I therefore provided assurances of my neutrality and my balanced perspective (more on this later in the chapter). Once satisfied, agreement that the research could go ahead was reached on the condition that a report was produced so that the relevant parties to the working group could improve their understanding of the use of Zero-Hours Contracts in the institution. However, the start of fieldwork was then subject to a five-month delay. This appeared to be due to apprehension on the part of the Head of HR who had purportedly expressed concern to my UCU gatekeeper that “the devil is in the detail”. Two further emails were necessary to reassure them, along with evidence of ethical approval that was assessed and separately granted by an academic school in NCU (see Appendix D).

### **3.4.3 Profiles**

In 2013, South Valley University was formed from the merger of two post-92 institutions that can trace their history back 100 years. As is the case with many such institutions, SVU is not a research-intensive organisation. The core activities of its staff are focused on the provision of teaching to over 30,000 students. To accommodate this sizable student population, there are 4 academic faculties consisting of 18 academic schools as well as a range of service departments. These operate across five campuses within a 15-mile area.

North Coast University was founded as a University College in the late 19<sup>th</sup> century. It gained independent university status as a red brick or civic institution in the 1960s following publication of the Robbins Report and eventually assumed its current name in 2007 (Committee on Higher Education 1963). NCU has more of a research-intensive focus at both a national and international level that extends across disciplines. The institution currently sits within the top 40 in the UK for research excellence according to the Research Excellence Framework (REF). It also provides teaching to over 10,000 students through 3 academic colleges – reduced from 5 following a merger in 2017 – and 23



academic schools. NCU has a range of service departments and facilities some of which operate in service to the surrounding region.

### 3.4.4 Definition

Before turning to the different methods of data collection, it is first necessary to account for the definition of Zero-Hours Contracts that was used in the research. As noted, issues surrounding the definition of Zero-Hours Contracts featured in the process of access negotiation. The Head of HR in South Valley University appeared to offer some resistance to the idea that their academic employment could be seen as ZHCs, despite the fact the institution reported high levels of use to the UCU FoI exercise<sup>23</sup>. In contrast, HR in North Coast University had appeared to reach some consensus over which employment can be labelled as ZHCs, although they were unsure as to whether other forms of atypical work should be included.

There are many different definitions of Zero-Hours Contracts, but no hard and fast rule as to which to use in the current research. However, it was decided to follow the decision made by ONS (2014a) in its Business Survey and adopt a one that included the common element of all existing definitions – that is, all arrangements where there is “...a lack of a guaranteed minimum number of hours work”. Another reason for this decision is because there is some evidence of no-guarantee being accepted as the key defining feature of ZHCs within the HE sector. This can be seen in the following extract taken from the UCU campaign literature (UCU 2014).

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<sup>23</sup> The response to the FoI request was completed by another individual which shows how different understanding and interpretations of what constitutes a Zero-Hours Contracts can exist within the same HR Department.

 **THEY SAY**

 **WE SAY**

**We don't really have zero-hours contracts here**

**Are you sure?**

The most fundamental common feature of zero-hours contracts is the absence of any guaranteed working hours. If your college or university is using any form of contract that does not guarantee to provide hours of work, it is using zero-hours contracts, whatever the job title claims.

UCU's Freedom of Information request asked for data on the number of staff employed on contracts under which the employer has no obligation to offer work and guarantees no minimum hours of work. The results showed that this kind of contract is in fact very widely used across the university and college sector.

It useful here to give some commentary on what kinds of employment this definition covered. In SVU and NCU, it included a range of different employment arrangements overseen by HR and payroll. While it was quite straightforward to include these, a decision needed to be made as to whether agency employment should also feature. The public and political debate does not provide a great deal of guidance on the matter. However, it is recognised by some scholars that there are considerable overlaps between Zero-Hours Contracts other contractual forms such as agency work (e.g. Bessa et al 2016) and many of these are reported by ONS (2014a) to have been included in their figure of 1.7 million NGHCs. In applying the definition as broadly as possible, some employment agencies were therefore included. In SVU, this took the form of an agency operated by the Students Union. Another agency providing cleaning services was also identified in the institution but insufficient access was secured and there was some ambiguity as to whether or not an element of guaranteed hours was present. In NCU, no employment agencies are used since the HEI prefers to contract all service functions “in-house”.

### **3.4.5 Documents**

After access was agreed in both of the case study HEIs, one of the first actions undertaken was to ask for copies of different contractual documents and their associated terms and conditions. During the first interview with a member of HR in South Valley University, documents were requested for each

of the employment arrangements described during access negotiations (3 in total). As the fieldwork progressed further documentation were collected in the form of employee handbooks which contained key additional information. In North Coast University, contracts for any employment that HR and the working group recognised as Zero-Hours Contracts were sent via email before fieldwork began (2 in total). As previously noted, there was also a set of atypical employment arrangements in use within the institution and relevant documentation for these was gathered during the course of holding interviews.

Besides from contracts and terms and condition, assorted documentation relating to other matters was collected from online sources and a range of participants in both of the case study HEIs. These included:

- Role descriptors (NCU).
- Pay scale and grades (NCU).
- Payment multipliers (SVU).
- Timesheets (SVU and NCU).

### **3.4.6 Staff Data**

Requests were also made in both case study HEIs for staff data covering the number of contracts in use and the quantity of hours worked by individual employees over the academic year. In South Valley University a request was made during the first interview with HR in 2015. In the following week, data collated from HR's central system were received via email. This included an overall number for each type of contract and was presented in a series of pivot tables broken down by occupational roles. It should be noted that the figures are only a snapshot and do not cover overall numbers within the year or during the time after the data were received.

Despite continued efforts to acquire data on hours, no such information was forthcoming. Separate requests were therefore made during interviews with managers across the University. It was believed

that this information would be more readily available to these individuals, meaning it would require less effort to produce. The sources and details of this data are included in the table below.

**Table 3.1. Sources and details of staff data received in South Valley University**

Source	Details of Data
Departmental Manager in an academic college	Excel spreadsheet detailing of all the separate engagements for individual employees across one of four academic colleges for the year 2015 to 2016 including number of semesters, weeks worked and hours per week.
Departmental Manager in Student Services	Excel spreadsheet detailing the number of hours worked and pay for individual employees each month for the course of one semester spanning October to December 2016.
Departmental Manager in Campus Services	Excel spreadsheet detailing the number of hours worked each week for individual employees for the year 2015 to 2016.
Departmental Manager in Academic Registry	Table embedded into an email detailing the number of individuals employed during periods of work and the average weekly hours for the year 2015-2016.

A request for staff data in North Coast University was made to a member of HR during a meeting expressly arranged for this purpose. This data were eventually received in Excel format in September 2016 and were far more extensive than those provided by SVU. The data included a number for each individual employee and line for each month of the year where they had worked between July 2015 and June 2016. On each line, the following range of detailed information was entered:

- Pay Grade<sup>24</sup>.
- Occupational Role.
- Type of Contract.
- College or Service.
- Number of Hours.

There are some practical issues with these data which required attention. Most notably, the generic names for occupational roles taken from role/job descriptors were often not recognised by management who tend to use more specific local terms. Some of these managers also suggested that different numbers of contracts were being used than the staff data claims and, as such, a few amendments to the data have been made on the basis of information given in interviews.

A second major form of staff data was also provided by the same member of HR in NCU. This was the same data for atypical arrangements that was prepared for HESA and covered the period between August 2014 and 2015. The data included a list of academic and academic-related employees in specific service areas, the grade and payment level, and their Full-Time Equivalent (FTE) for the academic year.

### **3.4.7 Interviews**

The institutional case studies involved extensive use of semi-structured interviews. These were needed to address each of the research objectives but, in particular, to gain an understanding of the variety in ways Zero-Hours Contracts are used in the case study HEIs. The interviews were undertaken with four different kinds of participants following a purposive sample. It was believed that each of these were capable of contributing levels of insight that others were not and would therefore ensure holistic coverage of issues.

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<sup>24</sup> Based on the nationally agreed HE single pay-spine JNCHES (2004) (see Appendix B)

First among the different kinds of participants were Human Resources Personnel. These were selected in order to gain a preliminary overview of the use of Zero-Hours Contracts. It was assumed that these individuals would not have a great deal of knowledge as to how the employment operates 'on the ground'. However, they were also considered indispensable in relation to matters of employment status and rights and entitlements. In SVU, no official interview was held with the Head of Human Resources, but instead with other members of HR whom were thought to be sufficiently competent. In NCU, the Head of Human Resources did agree to be interviewed.

The majority of interviews in both case studies were undertaken with Departmental Managers. It was believed that these were the individuals who would be able to provide the best understanding in terms of the variety of ways in which the employment arrangements operate in practice. This is because they have a direct responsibility for overseeing and managing staff on Zero-Hour Contracts. It was recognised that individual managers would not be able to provide reliable information outside of their particular area of the institution. As such, multiple participants were therefore needed across the two HEIs. The decision on which managers to contact was informed by early interviews with Human Resource Personnel as well as staff data which showed where the different contracts were being used in the institutions. Relevant individuals were then identified from webpages and were sent an email with an information sheet and a short note on the reason why they were contacted for a potential interview. Although Departmental managers in some academic schools and other service areas proved inaccessible, participation rates for this group were high at approximately 70% of those approached. Most areas of the HEIs using Zero-Hours Contracts for academic and non-academic roles have been covered meaning that some comparisons can be made both within and across the case studies.

The third group of interview participants were individuals who are (or have recently been) employed on Zero-Hours Contracts in the case study institutions. It was thought that these participants could provide insights on the variety of practices for the three major aspects of the employment based on experiential evidence. It was also believed that their views could balance out the perspectives of

management who may have tendency to present a one-sided or overly positive picture. Since no direct line of contact was available with employees, three methods of recruitment were adopted:

1. Through people with whom I am personally acquainted.
2. Through approaching employees on university campuses.
3. Through a call-out for participants issued by departmental management to their employees.

A number of trade union officials were also interviewed which ensured a further balance to the sample. It was believed that they could also offer insights into the research objectives, either through anecdotal evidence based on case work or reflection on any information gathering exercises that may have previously been undertaken in the HEIs. In each case study, trade union participants were the individuals who had acted as gatekeepers, although some additional representatives also participated. In SVU, interviews were held with UCU and Unison while in NCU the only union that was included was UCU since the representative for Unite declined.

Table 3.2 documents the number of different participants that made up the sample in the two case study institutions. Overall, the sample is satisfactory. However, the number of employees eventually recruited is relatively low in both of the HEIs. Indeed, it is much lower than was originally intended. While the reasons for this can be put down to practical misfortune, one might also speculate that some employees were reluctant to respond to management calls for participation given the sensitivity of the topic and the precariousness of their position. A resulting caveat is that in some instances where managers have been interviewed there is no equivalent view from employees, meaning that a balance of perspectives is sometimes lacking.

**Table 3.2. Number of interview participants by type and case study institution**

Type of Participant	South Valley University	North Coast University
Human Resource Personnel	4	2
Departmental Managers	13	20
Trade Union Representatives	3	2
Employees	7	6
<b>Total</b>	<b>27</b>	<b>30</b>

The interviews lasted between 30 minutes and 1.5 hours depending on different factors including the knowledge that each participant had and the amount of other material such as documents and staff data that were relevant to the discussion. The interviews were digitally recorded so that they could be transcribed and analysed thoroughly. In both case studies, around two-thirds of meetings took place on campus, either in the offices of participants or in quiet areas such as coffee shops. Given the distance to the HEIs, the remainder were undertaken through video calls and telephone conversations.

A number of different kinds of interview exist, but it was felt that semi-structured interviews were the most appropriate for the research. This ensured that key matters of interest could be covered while enabling sufficient scope for participants to develop meaningful accounts of the phenomenon under investigation (Fielding and Thomas 2008). The interviews followed a schedule that was broadly the same for each kind of participant, although some questions applied more to some and less to others (this can be found in Appendix E). Interviews began with questions on the following matters which were designed to address the first two research objectives:



- The participant's responsibilities in the institution.
- Clarification on arrangements as Zero-Hours Contracts.
- Overview of number of contracts and occupational roles.

After an ice breaker in relation to the participant's responsibilities, there was a short discussion which sought to clarify which arrangements could be labelled Zero-Hours Contracts and the reasons why they were being included in the research. This was a necessary undertaking because some participants still tended to resist the label and may not have responded sufficiently to questioning had the issue not been settled at this point. Once this was done, questions were put to HR Personnel and Departmental Managers on the number of contracts and the roles for which they are used within their remit of responsibility.

The interviews then moved on to explore the third objective of understanding the variety of ways that Zero-Hours Contracts are used for three aspects of the employment relationship. Questions for each of these were developed so that they corresponded with key issues and concerns raised in the literature. This ensured that the findings would be able to relate directly to the public and political debate:

- Working time.
- Employee obligations.
- Rights and Entitlements.

These were explored with Human Resource Personnel and Departmental Managers who play an active role in producing and shaping the use of Zero-Hours Contracts. In the spirit of Rubin and Rubin (1995) main questions were asked in relation to the practices for each of the three aspects, while follow-up questions and probes were required to produce detailed explanations for their answers. As part of the questioning of employees, an additional attempt was made to elicit stories as this was thought to be an effective way of exploring their experiences of working on ZHCs (e.g. Mishler 1986).

## **Reflexivity in the Interview Process**

A distinctive feature of qualitative interviews is that the interviewer plays an active role in the generation of data. It is necessary to provide some reflexive account of how the things that the researcher said or did may have shaped the accounts of the social world provided by participants (Finlay 2002). An important issue in this regard was the way in which I managed my identity both prior to and throughout the process of different interview interactions. In terms of Departmental Managers, I recognised that there was a very real possibility of being perceived as a threat. This could be due to the stigma associated with Zero-Hours Contracts and pressure from union campaigns such as UCU's *Stamp out Casual Contracts* (UCU 2019a). It was considered that this could have implications in terms of arranging interviews, but also for the willingness of participants to provide sufficiently detailed or accurate answers in the response to questioning. As in the process of gaining access, I therefore emphasised that I hold a balanced perspective on the use of ZHCs, while appreciating the benefits of arrangements for the HEIs. This was legitimised further by providing proof of permission to conduct the research.

The rapport achieved in this way gave rise to a feeling that managers saw me as somebody who was trustworthy and “on-side”. In every instance where this was the case, management responded in an overwhelmingly open and positive way. However, there were some exceptions. In one instance, a Departmental Manager demonstrated obtrusion throughout the interview. On more than one occasion, following a very reserved response, she suggested that “...I know that’s not what you wanted to hear”. Despite my best efforts, a clear assumption was being made about my position – namely, that I was expecting or hoping for information which painted the employment in an exploitative light. Whenever this occurred, the information gathered from the participant was severely limited.

In terms of employees, it was recognised that there was potential for those on ZHCs to view my research with suspicion if I was seen to be approaching them from the upper structures of management. Therefore, it was believed that I should make myself as directly relatable to them as possible, in order to assuage any negative thoughts which could lead to non-participation and retention of information. To do so, I foregrounded my identity as a doctoral student who is also employed on what could be

regarded as precarious contract. A genuine attempt was also made to offer sympathy to the general situation that many people on ZHCs find themselves in. Much like above, it is believed that the rapport reached in this way facilitated a positive and open response from participants. In a couple of cases, participants appeared eager to provide information because they saw in me an opportunity to tell their stories and to act as a potential conduit for change both in the HEIs and in regard to the general debate.

### **3.4.8 Data Analysis**

As discussed earlier in the chapter, the research began with the collection of documents in the form of contracts and other information such as employee handbooks. No sophisticated forms of content or discourse analysis were applied to these data and instead, they were used as a key source of relevant information. A starting point was to examine clauses (or information in handbooks) pertaining to hours and whether there was anything to suggest that they were not guaranteed. This enabled me to begin to address the first research objective by clarifying what arrangements could be labelled as Zero-Hours Contracts. Beyond this, the remaining documents such as role descriptors and pay scales were also examined for information enabling an overview of the use of Zero-Hours Contracts in the institutions. They were particularly useful for the following matters.

- Occupational roles.
- Payments levels (mapped onto the HE pay spine).

The second major form of data collected were staff data which came in different numeric forms. As above, the data were not subjected to more sophisticated analysis such as multivariate regression (indeed, the form in which it was received was not conducive to such an undertaking). These data were very useful for the second objective in terms of mapping out numbers in use and providing a breakdown for different academic and non-academic roles. In SVU, the data received had already been compiled in way that could be directly used, but in NCU the excel spread sheet was far more detailed. As touched upon earlier, this required that I make a series of adjustments involving the collapsing of

categories and calculation of total numbers. Where work of this kind has been done and the data are used in the findings and analysis chapters, footnotes will direct the reader to fuller explanation and rationale included in the appendices.

The third form of data gathered through semi-structured interviews was the main source of insight when addressing the research aims and objectives. In order to enable a detailed analysis, transcripts of the interviews were produced. This was mostly done in the days immediately after the interviews took place so that emerging themes and varieties of use could be identified and used to guide enquires.

The data were subjected to thematic analysis which can involve a number of possible procedures. A key thing to note when deciding how this should be done was that the aims and objectives of the research have in mind specific areas of interest for which interviews questions were developed. Following one of the techniques described by Coffey and Atkinson (1996), it was decided that the coding of transcripts should be carried out in an *a priori* fashion, enabling analysis to start from the top down rather than the bottom up (also favoured by authors in HRM such as Boyatzis 1998). Table 3.3 shows the manual coding framework that was applied to the data alongside a note of the contract used.

**Table 3.3. Main coding framework for analysis of textual data in South Valley University and North Coast University**

Research Objective 1	{	UCU FoI Definition (No Guarantee)
Research Objective 2	{	Numbers Roles Pay
Research Objective 3	{	<p><b>Working Time (WT)</b></p> <p>WT (Period) WT (Quantity) WT (Sched + Change) WT (Cancel)</p> <p><b>Employee Obligation (EMP OB)</b></p> <p>EMP OB (Accept) EMP OB (Exclusive)</p> <p><b>Right and Entitlements (R +ENT)</b></p> <p>R + ENT (Status) R + ENT (Access)</p>

The analysis followed Mason’s (2002) suggestion that main codes are not end-products in a way that one might associate with survey variables, but are instead ”unfinished resources” that facilitate further analysis. Particular thought should be given here as to how this procedure was used to address the third objective of understanding variety in relation to the three aspects of the employment relationship. Within the main code – for example for WT (or Working Time) – a series of practices were identified. These were then noted down and comparisons were made between the interviews. This revealed a considerable variety of practices across employment arrangements and occupational roles. A way of organising this was required and, with some inspiration from the literature, it became clear that the practices could be mapped onto series of continuums for each aspect of the employment relationship. Once this was done, additional analysis could be conducted into the reasons and explanations involved.

## **Reflexivity in Data Analysis**

As with the process of interviewing, there is also a need for researchers to account for their own subjectivities in the process of analysing data. I have for many years considered myself an advocate of the interests of labour and the pressing need to redress growing power imbalance in the nature of employment. My approach to the issue of Zero-Hours Contracts when starting this PhD was consistent with this position. Some assumptions that I had were challenged during the process of reviewing the literature, but a principled opposition to ZHCs was still carried into the fieldwork and subsequent analysis. As the study progressed, it became apparent that large amounts of the data did not fit with many preconceptions that I once had, especially in relation to working time. It was felt that this was something that needed to be accepted rather than resisted or overlooked. Moreover, ongoing reflection was undertaken to steer against any subconscious tendency to shape the data and its presentation in ways that would be consistent with my general opposition to Zero-Hours Contracts.

### **3.4.9 Ethical Considerations**

Ethical approval was received from the Cardiff University Ethics Committee on the 8<sup>th</sup> June 2015 (a copy of the relevant document for this is included in Appendix F). Here an account is given of the key ethical considerations that were made prior to the fieldwork and any unexpected ethical challenges that arose as the fieldwork progressed (or “situated ethics” as emphasised by Piper and Simmonds 2004).

The first concerns the issue of informed consent which needed to be acquired both at the level of the HEIs and for individual participants. It was felt that the most appropriate authority capable of giving permission for the case study HEIs to take part was the respective Heads of Human Resources in SVU and NCU. Information on the research was provided through several means beginning with a letter requesting a meeting to secure access. During each of the meetings, I was questioned in some depth over the purpose and practicalities of the research and responded with information in an open and honest manner. In SVU, consent was provided verbally, while in NCU it came through an official letter of approval.

Further informed consent needed to be acquired from individual participants. Information sheets were issued to these individuals prior to interviews and these outlined the nature of the research and any expectations involved of the participants (see Appendix G). To account for any details that were not included and to ensure that participants were at ease, opportunity was also provided for these individuals to ask questions or express any concerns that they may have before proceeding with the interviews. Consent was then registered in the form of a written consent form (see Appendix H).

The second major consideration is the need to ensure confidentiality and anonymity. Indeed, the issue of protecting the identity of both HEIs was a key point of discussion in access negotiations and clear assurances needed to be given that the name the institutions would not be revealed. This can be attributed to the stigma associated with the label Zero-Hours Contracts and the potential implications for the universities. The name of each institution has therefore been replaced with pseudonyms, as discussed earlier in the chapter, and has also been obscured in any documents used. Efforts have also been made to adjust the names of academic and other service departments in order to prevent indirect identification.

Anonymity in relation to individual participants first needed to be observed in relation to staff data. When requesting the data, I avoided compromising the universities' interests by insisting that it did not include the names of any individual employees. In addition to this, the names of all interview participants have been omitted. This was something that more than three quarters of the sample were keen to see implemented and was so often a critical issue in securing participation in the study. Where any quotes are used in the coming chapters the following schema is used to indicate the source and will be preceded with the initials of the institution (either SVU or NCU):

HR	=	Human Resources Personnel
DM	=	Departmental Manager
EM	=	Employee
TU	=	Trade Union Representative
SU	=	Students Union Agency

Other steps were also taken to protect the identity of employees, a couple of whom expressed concerns over possible reprisal for participation. In the main, this involved an avoidance of holding interviews in places where they might have been seen by management. With regards to management themselves, confidentiality and anonymity was less problematic, especially when it came to their colleagues. There was a tendency among some managers to recommend that I disclose their identity as means of helping to secure the participation of other managers. This was an ethical quandary, but a decision was made to accept their permission and waver some anonymity in the hope that it would benefit the research.

Before bringing the chapter to a close, it is worth saying a few words in regard to political issues and the responsibilities of the research. The subject of the thesis is undoubtedly topical and has drawn a great deal of debate. Given the potential for the research to impact on policy and discourse - and thus upon HEIs and its employees alike - it is important to ensure that the use of Zero-Hours Contracts in the case study institutions is represented accurately. It is hoped that the methodological discussion included within the chapter has shown that sufficient steps were undertaken to ensure that this is the case. Finally, although implications for employees is not a key focus of the research, I believe that I have some responsibility to give voice to any problems caused by the use of Zero-Hours Contracts in the course of presenting the findings.

### **3.5 Summary**

This chapter has explained the methodological approach that has been adopted to address the research aims and objectives. It was decided, after some deliberation, that the most appropriate research design was not quantitative but case study research involving different forms of qualitative data. The chapter then outlined its approach to sampling which led to two HEIs – one post-92 and one pre-92. It was also decided, in line with precedent in the area, that the definition of Zero-Hours Contracts to be used would be as broad possible. The remainder of the chapter then discussed in detail the rationale for the different methods of data collection. How the resulting data were analysed was also delineated in considerable depth along with an explanation of how the data was used in order to address the research



aims and objectives. As part of this, the epistemological approach necessitated the inclusion of some reflexive account of the role of the researcher in data collection and analysis. Finally, the steps taken to ensure good ethical practice were outlined. With this framework in place, the thesis now moves on to the first findings and analysis chapter which will address the opening two objectives of the research.

# 4 Institutional Overview

## 4.1 Introduction

This is the first of four findings and discussion chapters. It begins with an analysis of existing secondary data in order to position the institutional case studies and to prepare the ground for the thesis' empirical contribution. This involves looking at data from the Higher Education Statistics Agency (HESA) on all employment within the two institutional settings. The chapter then examines data taken from the UCU FoI request, including some reflection from the HEIs on which employment arrangements were reported and the rationale behind their reporting decisions. Attention is paid to problems with definition and terminology that have caused inaccuracies and distortion in the sectoral data (UCU 2013).

The chapter then attends to the first research objective by clarifying what employment arrangements can fall within the scope of the definition of ZHCs being used within the thesis. These cover a great range of contractual forms that have previously been known by different terminology and have been used within the HEIs for a considerable period of time. Once this is done, the chapter addresses the second research objective which is to determine how the employment arrangements identified are used within the workforce of the two case study institutions. For this, the following questions are posed:

- *How many Zero-Hours Contracts are being used within the HEIs?*
- *What employment roles are Zero-Hours Contracts being used for in the HEIs?*
- *What is the payment level provided to those on Zero-Hours Contracts in the HEIs?*

Drawing on the different data collected in order to map out the number in use, it is argued that there may be more Zero-Hours Contracts in HE than current measures of prevalence suggest. To end the chapter, occupational roles and payment levels associated with the arrangements in the HEIs are shown to be highly variegated with some contrast to Zero-Hours Contracts within the wider labour market.

## 4.2 HESA on the Case Study HEIs

HESA collects workforce data on an annual basis covering academic staff and non-academic staff and is compiled either in relation to Full-Time Equivalent (FTE)<sup>25</sup> or First-Person Equivalent (FPE)<sup>26</sup>. Both of these are of interest. However, in order to provide a general overview of employment in the two case studies, the latter has been chosen because it gives an indication of the actual numbers of individual workers employed.

Beginning with South Valley University, the institution employed a total of 2910 people in 2016/17. Figure 4.1 charts the overall number of people employed in academic and non-academic roles over a period of six years from 2011/12 to 2016/2017. With the exception of the first entry, most people are working in academic roles although rates appear to have dipped and then increased in recent years. Though fewer overall, the number in non-academic roles has remained relatively steady throughout the period.

**Figure 4.1. Total number of individuals employed in academic and non-academic roles in South Valley University, HESA staff data 2011-2017**

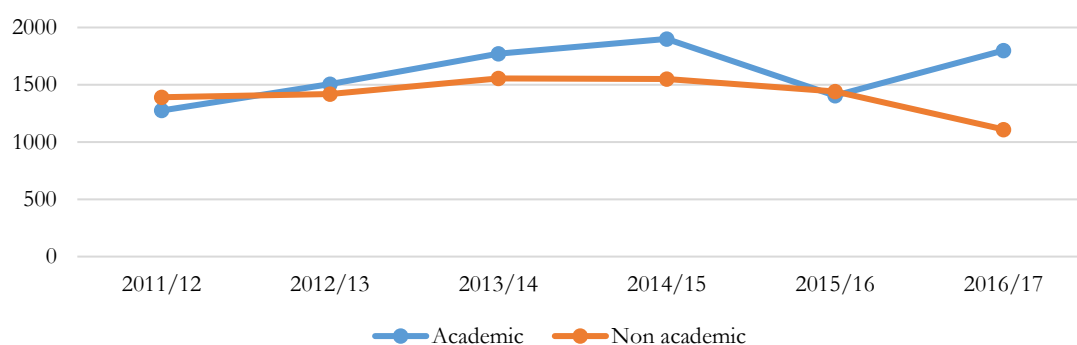


Table 4.1 presents a breakdown of these academic and non-academic employees by terms of employment. As can be seen, an overwhelming 90 percent of staff in both kinds of roles are employed

<sup>25</sup> FTE indicates the workload of an employee in a way that make workloads comparable to the standard full-time contract.

<sup>26</sup> FPE looks at how much of the (whole) person's working time is engaged in a particular activity (HESA 2016).

on open-ended or permanent contracts. For academic employees, there is a fairly even distribution of full-time and part-time contracts but non-academic staff are more likely to be employed on a full-time basis within the institution.

**Table 4.1. Distribution of academic and non-academic staff in South Valley University by terms of employment, HESA staff data 2016/17**

	Academic		Non-Academic	
	Number	Percent (%)	Number	Percent (%)
Open-Ended	1675	93.1	1010	91.0
Fixed-Term	125	6.9	100	9.0
Full-Time	820	45.6	785	70.7
Part-Time	980	54.4	325	29.3

The same analysis can be performed for North Coast University. The institution employed a total of 2200 people as of 2016/2017. Figure 4.2 shows that unlike SVU, the majority of staff are employed in non-academic roles which floats at around 20 percent more than those in academic positions. However, it is also clear that for both academics and non-academics the total number has remained steady across the time series which suggests that there is greater workforce stability within NCU.

**Figure 4.2. Total number of individuals employed in academic and non-academic roles in North Coast University, HESA staff data 2011-2017**

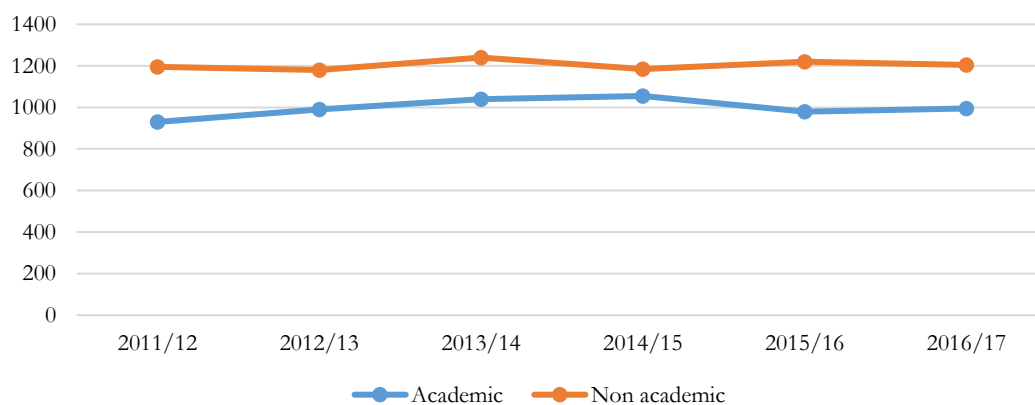


Table 4.2 provides the breakdown for these academic and non-academic staff by terms of employment. Employees are mostly engaged on open-ended or permanent contracts, although it is clear that for academic positions there is a greater use of fixed-term contracts in North Coast University. A clear majority of people in both academic and non-academic roles are employed on a full-time basis.

**Table 4.2. Distribution of academic and non-academic staff in North Coast University by terms of employment, HESA staff data 2016/17**

	Academic		Non-Academic	
	Number	Percent (%)	Number	Percent (%)
Open-Ended	585	59.8	1020	85.6
Fixed-Term	410	40.2	185	15.4
Full-Time	625	62.7	690	57.3
Part-Time	370	37.3	515	42.7

While the numbers working on these terms of employment are useful in presenting a picture of employment in the sector – and by extension the institutional case studies - they exclude an important part of the workforce which HESA calls atypical staff. These are defined as those individuals:

*“...whose working arrangements are not permanent, involve complex employment relationships and/or involve work away from the supervision of the normal work provider. These may be characterised by a high degree of flexibility for both the work provider and the working person, and may involve a triangular relationship that includes an agent...”*

(HESA 2017)

Data are also collected on these atypical staff, although reporting has become voluntary since 2012-2013 and excludes instances where staff are in non-academic roles. As explained in the previous chapter, this information could not be acquired so no analysis can be performed.

There are some limitations with the available HESA data that have been outlined in the literature. For example, UCU (2013) and JNCHES (2015) have noted that no data are available for particular forms

of employment such as Hourly Paid Contracts and Zero-Hours Contracts. It is likely that these are included in the existing records but it has, until this time, been impossible to identify an exact number. HESA have since dealt with this matter by collecting the relevant information from HEIs. However, as previously noted, no detailed analysis has been undertaken and data remain unavailable.

### **4.3 UCU Freedom of Information Request**

As it stands, the only available sectoral data on the use of Zero-Hours Contracts across HEIs comes from the UCU Freedom of Information request in 2013. This section examines this data in order to gain an appreciation of levels of use reported by the case studies and how they place within the sector.

#### **4.3.1 Findings**

Analysis of the original dataset showed that South Valley University reported a considerable 640 Zero-Hours Contracts used for academic and academic-related roles. In the table below we can see that the total number puts the institution among the heaviest users in the UK's 130+ universities.

**Table 4.3. List of UK universities reporting the highest number of Zero-Hours Contracts to the UCU Freedom of Information Request 2013**

Institution	Number of Zero-Hours Contracts
1. University of Edinburgh	2712
2. University of Bath	1596
3. University of Plymouth	1167
4. City University	1125
5. Kingston University	1069
6. University of Kent	960
7. University of Sussex	896
8. Royal College of Art	777
9. University of Wolverhampton	773
10. University of Lancaster	747
11. Sheffield Hallam University	684
12. Nottingham Trent University	642
<b>13. South Valley University</b>	<b>640</b>
14. Royal Conservatoire of Scotland	635
15. Royal Holloway, University of London	599

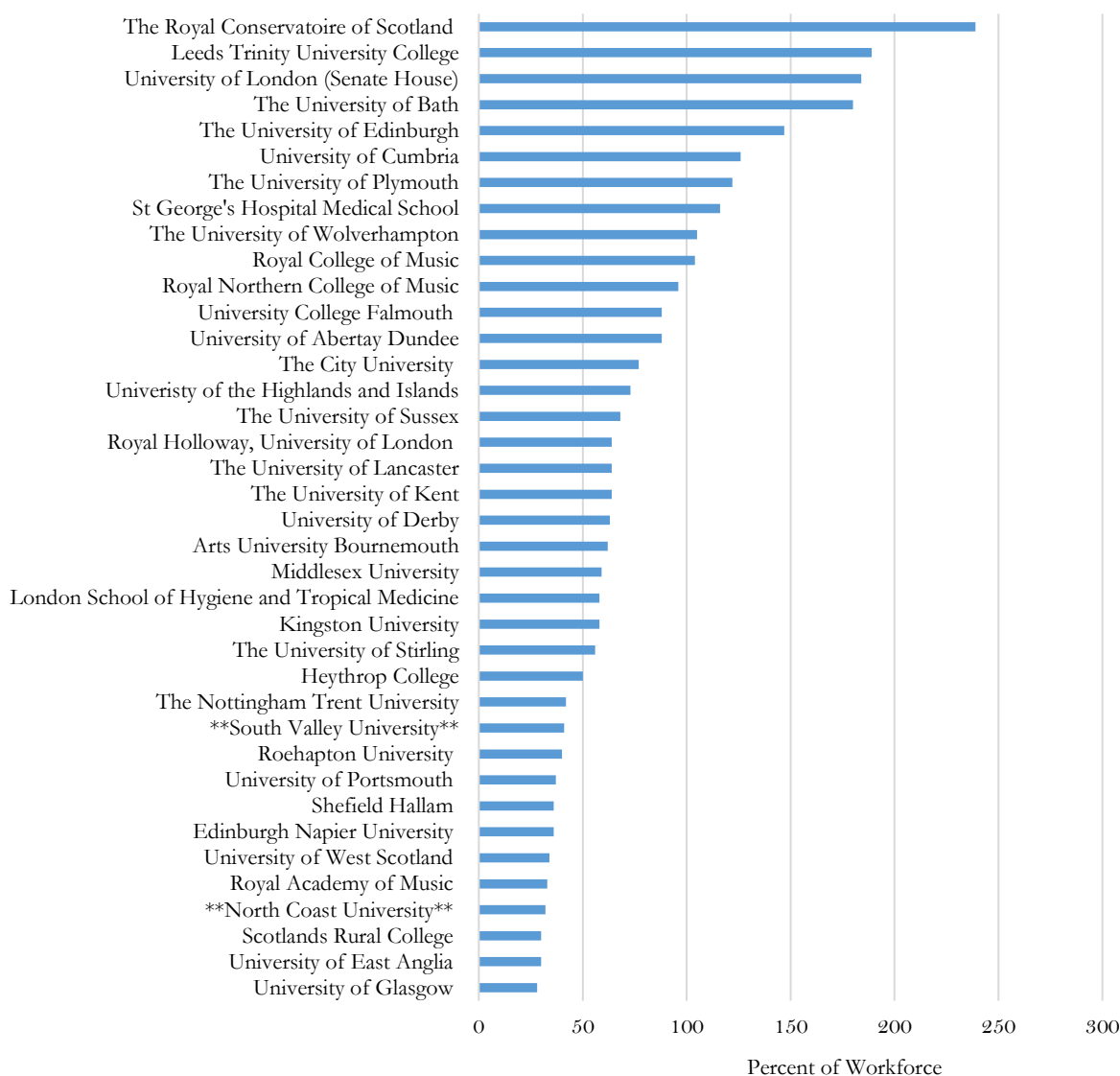
Meanwhile, North Coast University reported a total of 223 Zero-Hours Contracts used for academic and academic-related roles which puts the institution in 33<sup>rd</sup> place within the sector, as seen below.

**Table 4.4. List of UK universities reporting the highest number of Zero-Hours Contracts to the UCU Freedom of Information Request 2013 (continued)**

25. Loughborough University	351
26. St George's Hospital Medical School	290
27. Royal Northern College of Music	276
28. Royal College of Music	266
29. Edinburgh Napier University	251
30. University of Teesside	248
31. Anglia Ruskin University	242
32. Leeds Trinity University College	237
<b>33. North Coast University</b>	<b>223</b>
34. Swansea University	213
35. The University of Oxford	205

Ranking by total number can be misleading given that institutions differ in terms of the size of their workforce. The figure below therefore presents the top 30 institutions according to the proportion of the workforce employed on Zero-Hours Contracts. Following the method used by UCU (2013), this is calculated by comparing the number reported to the FoI and the total number of relevant staff in data from HESA 2011/2012. On the basis of this measurement, the use of Zero-Hours Contracts in South Valley University constituted 41% of the workforce, placing it 28<sup>th</sup> within the entire sector. NCU has a smaller overall payroll and, accordingly, the contracts make up 32% of the total workforce.

**Figure 4.3. Top 30 universities reporting highest proportion of workforce on Zero-Hours Contracts to the UCU Freedom of Information Request**





As explained in Chapter 2, there are a number of problems with the UCU FoI data. In the main, these stem from definitional and terminological issues. They also relate to missing information on the number of contracts that are currently active and actually provide work. Some institutions reported old Zero-Hours Contracts that remain on the system but are obsolete, and this explains why some of proportions in the figure above exceed 100%. Because of these issues, the positioning of the case study institutions on each of the measures above may not be an accurate reflection of the real situation in HE. Although impossible to resolve this issue, some enquires were made into the rationale for the case study HEIs responses, as well as some reflections on the pitfalls of the UCU Freedom of Information exercise.

### **4.3.2 Responses**

In South Valley University, the individual responsible for responding to the request was no longer a member of the Human Resources team, but a few participants were able to provide some insight. One member suggested that they generally do not regard their employment to be commensurate with the label Zero-Hour Contracts because of how much it differs from the way they are commonly portrayed in the media. However, it is believed that the uncertainty surrounding the definition may have led the individual responsible to report all contracts on the system that involve a hint of no-guarantee.

What came out of that, and I think you've identified very well, is the different definitions of Zero-Hours Contracts. If we look at it rigidly, or how I would see definitions, we wouldn't categorise some of our employment [as ZHCs], whereas I think our initial response to UCU did. I think it was a case of here's everything on the system that's a casual or non-guaranteed regular hours basis.

(SVU Human Resource Personnel 2)

As discussed in the previous chapter, the Head of Human Resources copied me into an email during access negotiation. In this correspondence, it was claimed that the institution was probably too honest in its response and came out looking that they use more ZHCs than other universities. The interviews

were able to shed some light on this matter in relation to other institutions. A Trade Union Representative spoke of their surprise with the findings by offering some evidence that another local HEI had underreported to the UCU FoI request:

We were surprised by that report and we were a little bit perplexed that certain institutions down the road appeared not to employ any people Zero-Hours Contracts. The reality is, we knew people had left here under the voluntary severance scheme to take hourly paid posts down there [ZHCs].

(SVU Trade Union Representative 1)

This claim is consistent with evidence of under-reporting within the UCU data. Rather than using Zero-Hours Contracts the institution mentioned by the participant claimed to be using contracts with no obligation to provide work, but these have not been declared to the FoI. On the basis of this evidence, the reflection of the Head of Human Resources in SVU may be correct and it is likely to be the case that the UCU sectoral figures do indeed involve significant inaccuracy and distortion.

In North Coast University, I was also unable to speak to the particular individual responsible for processing the institution's response to the FoI Request, but interviews also offered some reflection. Unlike in SVU, there was no objection to the fact that their employment can be labelled as Zero-Hours Contracts and it was suggested that the figure reported probably included all academic and academic related arrangements where there is no guarantee of work. Human Resources in NCU therefore did not have the same amount of concern over levels of use and did not show a desire to massage the figures downward. However, some interesting points were raised in relation to the definitional uncertainty and the nature of employment in HE, along with the effect this may have had on reporting:

I think the definitions do need some clarification and what is meant by Zero-Hours Contracts in the wider employment scenario [sic] is different perhaps to how they are used in the HE

sector...there are so many different ways of looking at [what a ZHC is] that you can see how it might cause universities to misreport if they aren't making the link with what they're using.

(NCU Human Resource Personnel 1)

This exercise confirms what is evident in the literature on statistical measurement (ONS 2014a), namely that “Zero-Hours Contracts” as a labour market construct are extremely difficult to pin down.

#### **4.4 Contracts Identified**

The chapter can now attend to the first research objective which is to clarify what employment arrangements can be labelled as Zero-Hours Contracts in each of the case study HEIs.

At the beginning of the fieldwork, leading Human Resource Personnel in South Valley University identified a number of contractual arrangements that they believed could be of relevance to the research. There was some reservation as to whether certain forms of employment could accurately be defined as Zero-Hours Contracts due to a disconnect between the perception of their own practices and the way that ZHCs are commonly portrayed. Nevertheless, it was agreed that the following arrangements could feature in the research:

- *Hourly Paid Contracts of Employment*
- *Casual Contracts of Employment*
- *Casual Worker Arrangements*

As can be seen in Box 4.1, Hourly Paid Contracts of Employment in SUV are technically permanent contracts. The clauses explicitly state that there may be occasions where no activities are required of the employee and in such a cases hours will be reduced to zero. This clearly confers an absence of institutional obligation to provide work while the remaining information also shows that this extends to additional work.

#### Box 4.1. Hourly Paid Contracts of Employment in South Valley University

##### 6. HOURS OF WORK

- 6.1 This is a permanent contract (terminable in accordance with clause 21 below) but you are normally required to work during term time only. The hours you work may vary according to the demand for the contracted activities as described in clause 4 above. This will enable the University to respond to fluctuations in demand. You agree that there may be occasions where no tutoring activities are required of you by the University, in which case your hours will be reduced to zero.
- 6.7 There is no mutuality of obligation upon either you to accept additional work offered by the University, nor for the University to offer work to you.

In SVU Casual Contracts of Employment are also permanent contracts and are based on a generic template. These are subject to slight variation depending on the area of the university in which they are used. Within the formal documents seen in Box 4.2, the issue of an absence of obligation to provide work is not as explicit as above. Both clauses indicate that hours are subject to arrangement with the relevant service department, but the only written suggestion that this is the case comes in the form of a clause which states that SVU can discontinue classes. Given the limited contractual information, further clarification was sought as to whether there is in fact an absence of obligation to provide work:

My understanding of these contracts is that there isn't an obligation because that is something we can't guarantee in our responding to student need, so we can't conjure the student need where there is no timetable or support required.

(SVU Departmental Manager 7)

Technically, I suppose it could be construed as being a Zero-Hours Contract because you're not guaranteed the work. For example, if the classes don't go ahead you won't get the work.

(SVU Departmental Manager 9)

**Box 4.2. Casual Contracts of Employment in South Valley University**

**3. Working Hours**

3.1 By arrangement with the Student Services Department and your client student (s).

**3. Working Hours**

3.1 By arrangement with the Campus Services Department.

3.2 The University reserves the right to change the date or time of or to discontinue any class or classes on which you run.

The third form of Zero-Hours Contracts in SVU are Casual Worker Arrangements. These are not contracts of employment but confer instead the status of worker as outlined in the Employment Rights Act 1996. The arrangement can be described as permanent in the sense that individuals are added to a register or pool in which they remain indefinitely. Box 4.3 contains relevant clauses which clearly indicate that there is an absence of obligation to provide work – for example, “no guarantee of hours is given”.

**Box 4.3. Casual Worker Arrangement in South Valley University**

Further to your recent offer of appointment as an Exam Invigilator, I am writing to confirm that your name has been added to Exam Invigilators casual register.

In agreeing to join the exam invigilator pool no guarantee of hours is given nor is there a requirement for you to accept the hours offered by the University.

In addition to those included above, employment agencies are used to staff areas of the University’s service, but they fall outside of Human Resources direct responsibilities. These involve a more complex contractual framework. As seen in Box 4.4, work is undertaken through assignments that cover the period for which the student is engaged to render services. In clause 2.2 it is stated that there will be no relationship between the parties after the end of one assignment and the start of any subsequent assignments. This is underlined by noting that there is no obligation on the part of Students Union.

There is a question here as to whether registration with the agency outside of assignments constitutes an ongoing contract capable of being defined or labelled as a Zero-Hours Contract. However, when these assignments are active, it is relatively straightforward. Clause 9.1 states that assignments can be ended at any time without liability which shows that there is no obligation to continue to provide work.

#### **Box 4.4. Students Union Agency in South Valley University**

##### **"The Assignment"**

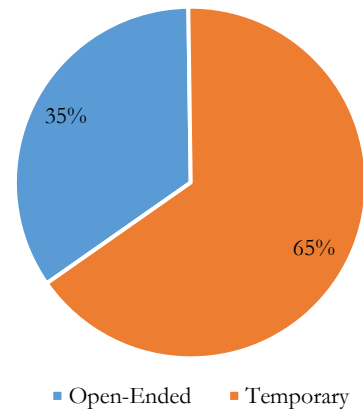
The period during which you are engaged to render services to the Union.

- 2.2 These Terms and Conditions constitute a Contract for Services between the Union and yourself upon being signed by the Casual Worker and they shall govern Assignments undertaken by you for the Union. However, there shall be no relationship between the parties after the end of one Assignment and before the start of any subsequent Assignment.
- 3.2 The failure of the Union to offer Assignments to you shall not give rise to any liability on the part of the Union and you recognise that the Union is not under any obligation to offer an Assignment and is under no obligation to provide reasons for any failure to offer Assignments.
- 9.1 The Union may at any time without notice and without liability end an Assignment. You will be paid for all work carried out during an Assignment up to the time it is terminated.

At the beginning of the research, Human Resource personnel in North Coast University identified two types of contracts of employment that they and the working group accepted to be Zero-Hours Contracts. As noted in the previous chapter, there were a third group of arrangements whose status was more unclear. All contracts that pertain to the research are listed below:

- *Academic Contracts of Employment*
- *Support Contracts of Employment*
- *Pink Form Casual Worker Arrangements*

Academic Contracts of Employment in NCU are underpinned by a formal written contract. These can be open-ended or permanent but the chart to the right shows that over two-thirds are in fact temporary contracts which span the period from one summer to the next. In this sense, they follow a well-established practice within the sector.



Box 4.5 presents a generic clause contained in the contracts which states that the University does not specify terms on hours due to the nature of the work, thereby leaving scope for a different arrangements to be made across the institutions. There is some suggestion that a standard working week will be 36 to 48 hours, but the key information of interest is that employees are required to work “as and when required”. Discussions with Human Resource Personnel and Departmental Managers provided clarification that this phraseology essentially means that employees are not guaranteed a minimum number of hours. This is relevant during the academic year, but for those on permanent contracts it also pertains throughout the summer months.

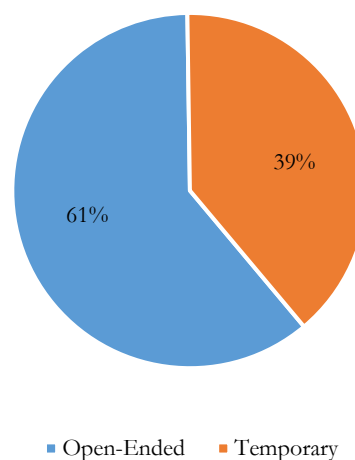
**Box 4.5. Academic Contract of Employment in North Coast University**

**HOURS OF WORK:**

Because of the nature of the work, the University does not specify any terms and conditions relating to hours of work within the meaning of employment legislation. Hours shall be such as are necessary to carry out satisfactorily the duties associated with the post; and on average a normal weekly commitment will mean between 36.25 and 48 hours per week. **However, in this post you will be required to work as and when required on completion of authorised timesheets.**

Support Contracts of Employment in NCU are also underpinned by a formal written contract and can be both permanent and temporary. However, it is more likely that they are permanent, which reflects the HESA data for general employment in the HEI discussed earlier in the chapter.

In the generic clause included in Box 4.6 below, the employee is again informed that they will be required to work “as and when required” and this will be agreed with management in the relevant service area. Discussions with Human Resource Personnel and Departmental Managers provided clarification that this equates to no contractually guaranteed hours, either during the academic year or periods of service intermission.



**Box 4.6. Support Contracts of Employment in North Coast University**

**HOURS OF WORK:**

Working-Week

Your standard working-week will be on an as and when required basis working five (5) days out of seven (7) in any one week (excluding unpaid meal breaks). The actual attendance times will be agreed with the Head of Section or his/her nominated representative. **Payment will be made on the submission of authorised timesheets.**

Pink Form Casual Worker Arrangements in NCU are unique in terms of their contractual characteristics. Unlike any of the contracts seen thus far, there is no written contract that underpins the employment relationship. Instead, verbal or informal arrangements are made for work to be undertaken and workers complete and submit the documentation provided in Box 4.7 below<sup>27</sup>. Defining all of these atypical arrangements as Zero-Hours Contracts is not straightforward and there are some questions as to whether the label could be applied. The main issue is whether there is some form of ongoing relationship either during an agreed period work or between offers of work, such that an

<sup>27</sup> In this sense they may be reminiscent of “non-contractual zero hours arrangements” as included in clause 27B of the Small Business, Enterprise and Employment Act 2015, although its meaning is unclear.



absence of any guaranteed minimum hours becomes a relevant factor. A decision has been made to include all instances except for situations where there is a short one-off piece of work and where there is no evidence of any form of ongoing relationship.

**Box 4.7. Pink Form Casual Worker Arrangements in North Coast University**

The image shows two pages of a 'Fee Claim Form' from North Coast University. The left page is the front side, titled '- Fee Claim Form' and includes sections for 'PAYEE DETAILS', 'STARTER DECLARATION', 'PAYMENT DETAILS', 'THE FEES', 'MILEAGE CLAIM', and 'OTHER EXPENSES'. The right page is the back side, titled 'Fee Claim Form' and includes sections for 'CLAIMANTS SIGNATURE', 'STUDENTS DECLARATION', 'EMPLOYING DEPARTMENT', and 'AUTHORIZING SIGNATURE'. The form contains various fields for personal information, payment details, and declarations, along with several tables for recording fees, mileage, and other expenses.

In the Table 4.5 below, the employment arrangements that has been identified as Zero-Hours Contracts are presented along with an indication of their equivalents across the case studies. In both of the case study HEIs, the label covers a variety of arrangements ranging from formalised contracts of employment right through to highly informal worker arrangements. It is worth pointing out that in each of the case studies, some HR and management prefer to use more traditional terminology. However, this research shows that these arrangements are capable of meeting the broad definition of ZHCs adopted in the thesis. This confirms suspicions that existing forms of employment such as those seen in work by JNCHES (2015) can indeed be re-labelled as “Zero-Hours Contracts”.

**Table 4.5. Contracts identified as ZHCs and their equivalents across the case study HEIs.**

South Valley University		North Coast University
Hourly Paid Contracts of Employment	↔	Academic Contracts of Employment
Casual Contracts of Employment	↔	Support Contracts of Employment
Casual Worker Arrangements Student Union Agency	↔	Pink Form Casual Worker Arrangements

In each of the HEIs, members of HR Personnel and other Departmental Managers could not provide a great deal of information on the history and development of these different kinds of employment. However, there was some suggestion that they had been around in their current forms for at least 10 years prior to the interviews. On the basis of this, the appearance of the label Zero-Hours Contracts and the available figures for prevalence from UCU (and HESA) should not be regarded as representing a new or distinctive shift in casualisation and the nature of employment in HE since 2010.

## 4.5 Total Number

Having considered the above matters, the chapter can now begin to look at the second research objective which is to determine how these arrangements are used within the workforce of HEIs – beginning with the with the total number of Zero-Hours Contracts in use. In November 2015 a request was made to Human Resources in South Valley University for a numerical overview of all employment defined as ZHCs according to the definition outlined in the previous chapter of the thesis. The original data suggested there were 694 Hourly Paid contracts of Employment. However, 391 of these had not been asked to work at some point during the 2015-16 academic year. Although some of these contracts may belong to individuals who have some form of ongoing relationship with the institution, most are obsolete, as a member of HR explained<sup>28</sup>:

<sup>28</sup> It is impossible to give a definite figure on how many belong to each of these categories.

We don't necessarily remove somebody from Harbour [the University's recruitment system] if they've had a previous engagement, it's a historic system as well, so that will be building and building...the number that don't have a current engagement is going to grow year on year anyway because we don't remove their data from the system, even though they may not be engaged.

(SVU Human Resource Manager 4)

This was in part attributed to management in localised areas of the institution who had not cleansed the records on an ongoing basis. Given this situation, the individual suggested that the figures are artificially inflated and went on to explain the steps taken to resolve the issue:

We've brought in a new HR payroll system, and what we're currently looking at are the numbers of individuals who are engaged on HPL contracts where they haven't been paid in the previous 12 month period and we are cleansing those...in some cases we've found there were people who have not had any pay for over 12 months with the institution.

(SVU Human Resource Manager 4)

When no distinction is made between these contracts the original figure is akin to that in the UCU FoI and may account for the large number reported during that exercise. However, since they are not in use, these contracts have been excluded from the count here. The total number of all people on ZHCs is included in the table below and shows that there were 671 in use across South Valley University. Of these, Hourly Paid Contracts of Employment are the most numerous at 301 (44%) while the remaining Casual Contracts of Employment and Casual Worker Arrangements number at 194 (30%) and 176 (26%) respectively.

**Table 4.6. Number of contracts identified as ZHCs in South Valley University**

<b>Contract Type</b>	<b>Number</b>	<b>Percentage</b>
<i>Hourly Paid Contracts of Employment</i>	301	44%
<i>Casual Contracts of Employment</i>	194	30%
<i>Casual Worker Arrangements</i>	176	26%
<b>Total</b>	<b>671</b>	<b>100%</b>

Source: Data provided by participant HR1 and compiled from Human Resources Central Records.

Human Resources in SVU could not provide equivalent figures for the Student Union Agency given that it exists outside of its immediate sphere of responsibility. However, a general picture of the numbers in use could be provided by Student Union Manager (SU1) who suggested there were approximately 300 students registered and eligible for work across the institution and its associated outlets as of 16<sup>th</sup> November 2015.

In North Coast University a numerical overview was pieced together using the following sources:

1. Data on Academic and Support Contracts of Employment for the period July 2015 to June 2016<sup>29</sup>.
2. Data for Pink Form Casual Worker Arrangements that were reported to HESA as atypical work.

Table 4.7 documents the total number of employment arrangements based on this evidence. It shows that the fewest number are used for Academic Contracts of Employment at 137 (12%). In addition to this, there are three times as many Support Contracts of Employment at 410 (35%) some of which would have been reported to the UCU Freedom of Information request.

The number of Pink Form Arrangements is by far the most numerous within the institution. It should be noted here that the actual figure in use is in fact larger since the number 629 is based on HESA

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<sup>29</sup> Unlike above the data covers a longer period rather than being a snapshot at a given point in time.

returns for atypical staff which excludes use for non-academic roles. The high figure should also be read with the caveat that many of the arrangements do not establish a relationship between the university and the worker. This raises questions regarding their ZHC status (these are unquantifiable).

**Table 4.7. Number of contracts identified as ZHCs in North Coast University**

<b>Contract Type</b>	<b>Number</b>	<b>Percentage</b>
<i>Academic Contracts of Employment</i>	137	12%
<i>Support Contracts of Employment</i>	410	35%
<i>Pink Form Worker Arrangements</i>	629	53%
<b>Total</b>	1186	100%

Source: Data provided by participant NCHR1 compiled from HR and HESA records

When all things are considered, there appears to be a floating rate of around 800 to 1000 people employed on Zero-Hours Contracts in each of the institutions for the time frame in which the research was conducted. This shows that a) when a broad definition is thoroughly applied and b) non-academic roles are included in the analysis, the resultant figure comfortably exceeds numbers reported to UCU and HESA. On the basis of this, it can be said that existing measures of prevalence may significantly underreport the extent to which Zero-Hours Contracts are used within Higher Education.

## **4.6 Occupational Roles**

Having established these matters, the chapter continues to address the second research objective by looking at how the Zero-Hours Contracts identified in the HEIs are used in terms of occupational roles. In order to map this out, the discussion draws on the framework provided by the Standard Occupational Classification 2010 (SOC2010) which groups jobs by skill content and the nature of qualifications and training required. The overall findings are presented in Table 4.8 (see page 135), along

with an indication of the number in each role where it is possible to discern a figure<sup>30</sup>. Much like the general literature, it is found that the use of Zero-Hours Contracts in both HEIs covers the entire range of occupational levels, from knowledge workers to those in low-skilled positions (Brinkley 2013).

### **Academic Roles**

As in the UCU (2013) Freedom of Information exercise, there is extensive use in academic roles that have teaching functions. In both SVU and NCU, formal contracts of employment tend to be used for these positions, the first two of which are included below. People in these roles provide cover for sickness or research related absence as well as specialist input where there is no existing capacity within the permanent workforce:

- Lecturers
- Tutors

There are also other academic roles in North Coast University which either provide a support role or are engaged in delivering programmes of language teaching to the wider community. These are:

- Graduate Teaching Assistants (GTAs) (NCU)
- Language Tutors (NCU)

In North Coast University, informal Casual Worker Arrangements are also used for some of the academic roles above when working contributions are limited to individual days. They are also the principle way of employing PhD students as Demonstrators to support activities in laboratories. This lines up with UCU's recent claims on the presence of atypical academics in HE (UCU 2018 and 2019b).

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<sup>30</sup> Sometimes the generic name for the occupational roles in the data provided was not recognised by management who tend to use more specific local terms. As such, it is difficult to calculate an exact figure.

There are differences between the HEIs in terms of the types of contracts that are used for academic roles. A key reason for this lies in their respective statuses as pre-92 and post-92 institutions. South Valley University operates with a more streamlined managerial approach involving one contract for all academic roles. However, North Coast University retains a legacy of college/school autonomy that gives rise to particular cultures of practice and preferences for different kinds of contracts.

It's different here [NCU] and I think that probably is the case because the post-92s came from a very institutionalised background whereas ours is a very different culture and I would imagine that post-92s have been given the instruction to do things in a certain way whereas in the colleges they've evolved their own way of dealing with things.

(NCU Human Resources Personnel 1)

I guess it's the way they've just set up their teaching and learning and the way they've done it forever, so they've got their own custom and practice. They were completely independent until 8 years ago and there were 24 schools in the University and they all ran their stuff the way wanted – differently, of course.

(NCU Departmental Manager 16)

### **Non-Academic Roles**

In both institutions, the kinds of non-academic roles for which the Zero-Hours Contracts are used are very similar to those seen in existing research by JNCHES (2015) on different forms of hourly paid and casual employment in the HE sector. Just like for academic roles, many of the non-academic positions are also covered by formal contracts of employment. This tends to be for instances where the work requires greater levels of skill according to the SOC 2010 and where it is intended that there will be an ongoing relationship between the employee and the institution:

- Study Skills Tutors
- Support Workers
- International English Language Testing (IELTs)

In both of the case study HEIs, informal contracts are used for non-academic roles that tend to belong to lower SOC classifications and which mostly involve work for short periods, with some exceptions. In many cases within NCU, the work that is processed in this way can be so unspecified and assorted that it is perhaps better to describe the roles by using the more generic term Manual.



**Table 4.8. Occupational roles undertaken on ZHCs grouped according to Standard Occupational Classification (SOC2010) (SVU and NCU)**

SOC 2010 (Selected Major Groups)	South Valley University				North Coast University		
	<i>Hourly Paid Contracts of Employment</i>	<i>Casual Contracts of Employment</i>	<i>Casual Worker Arrangements</i>	<i>Student Union Agency</i>	<i>Academic Contracts of Employment</i>	<i>Support Contracts of Employment</i>	<i>Pink form Casual Worker Arrangements</i>
Professional occupations	Lecturer (265) Tutor (28)	Study Skills Tutors (27) Mentors (9)			Lecturer (20) Tutor (82)	Language Tutors (79) IELTs Examiners Language Therapists	Lecturer
Associate professional and technical occupations	Demonstrators (8)	Health and Fitness Instructors (36)				G. T. Assistants (20) IELTs Markers Technicians (4)	Demonstrators Research Assistant
Administrative and secretarial occupations				Receptionists		IELTs Invigilators	
Caring, leisure and other service occupations		Support Workers (56) ENTs (31)				Sport Assistant (5) Gym Instructor	
Sales and customer service occupations				Sales Assistant Catering Assistant (14)		Catering Supervisor Catering Assistant (121)	
Elementary occupations			Ex. Invigilators (155) Life Model (3)	Bar Attendant S. Ambassador			S. Ambassador Scribe and Reader Ex. Invigilator Manual

There is a further dimension to occupational roles that can be considered alongside the job requirements approach above. This concerns the extent to which individuals are able to exercise control or autonomy over their work and can be operationalised through the concept of task discretion (this level of analysis is absent from the ZHCs literature to date). Two key markers of task discretion are provided by Inanc et al (2013) and relate to the extent to which employees have personal influence in deciding what tasks to do and how those tasks are done. These can be expressed in four broad categorical levels based on the data from the case studies:

1. High level of influence deciding what tasks to do and how tasks are done.
2. Some level of influence deciding what tasks to do and how tasks are done.
3. No influence deciding what tasks to do but some level of influence over how tasks are done.
4. No influence deciding what tasks to do no influence over how tasks are done.

In Table 4.9 (overleaf), occupational roles are mapped according to which of the levels of discretion they involve. In both case studies, academic roles span the three highest levels. Some such as Lecturers and Tutors enjoy the most discretion, while GTAs and Demonstrators are restricted to the basic delivery of pre-determined content with some degree of freedom to deciding the most appropriate way that this is done. Non-academic roles in both HEIs also span all four levels with some employees enjoying full discretion. However, most involve no influence in deciding what tasks to do. Although there is some difference in the level of influence over how they are done, many of these workers are expected to carry out tasks following set procedures in which discretion does not extend beyond basic judgement.

The findings show that work on Zero-Hours Contracts involves various levels of discretion and that these tend to reflect the general ordering of roles in the previous analysis. As such, data from the HEIs therefore support some of the literature based on the Skills and Employment Survey which shows that there is a correlation between the complexity of jobs according to content and skills, and the level of discretion afforded to workers (Gallie et al 2004).

**Table 4.9. Levels of task discretion for occupational roles by ZHC (SVU and NCU)**

Task Discretion	South Valley University				North Coast University		
	<i>Hourly Paid Contracts of Employment</i>	<i>Casual Contracts of Employment</i>	<i>Casual Worker Arrangements</i>	<i>Student Union Agency</i>	<i>Academic Contracts of Employment</i>	<i>Support Contracts of Employment</i>	<i>Pink form Casual Worker Arrangements</i>
High level of influence deciding what tasks to do and how tasks are done.	Lecturer (Specialist)	Study Skills Tutor Mentor			Lecturer (Specialist)	Language Therapists	Lecturer (Specialist)
Some level of influence deciding what tasks to do and some level of influence over how tasks are done.	Lecturer Tutor	Health and Fitness Instructor			Tutor		Research Assistant
No influence deciding what tasks to do but some level of influence over how tasks are done.	Demonstrator ENT Support Worker					G.T Assistant IELT's Examiners Technicians Catering Supervisor	Demonstrator
No influence deciding what tasks to do no influence over how tasks are done.			Exam Invigilator Life Model	Sales Assistant Catering Assistant Bar Attendant S. Ambassador		Catering Assistant	S. Ambassador Scribe and Reader Ex Invigilator Manual

## 4.7 Payment

In both of the case study institutions, hourly payment rates are linked to the nationally agreed pay spine established within the sector in 2004 (a copy covering annual salaries for grades 1 to 10 is provided in the Appendix B). For academic roles in both of the HEIs, pay derived from the grading structure also involves a system of multipliers to the hourly rate. In South Valley University, this differs by occupational role depending on the amount of duties involved, but all roles appear to be linked to grade 7 and provide a flat rate of £16.93 per hour (as of 2016). The table below shows how multipliers are applied to this rate for Lecturers. For these, the 2.35 multiplier is composed of several duties and ultimately results in a payment of £39.48. Tutors generally receive a multiplier of 2 for preparation giving a total of £33.86, while Demonstrators are on the flat rate for contact time only (all roles are entitled to incremental increases).

**Table 4.10. Multipliers to hourly rate of pay for Lecturers on Hourly Paid Contracts of Employment in South Valley University**

Duty	Multiplier
Formal schedule teaching hour	1.00
Preparation and keeping up to date with knowledge of the subject	1.00
Administration (including meetings)	0.10
Assessment	0.20
Pastoral guidance	0.05
<b>Total</b>	<b>2.35</b>

In North Coast University, academic work spans the top grades though there is some differentiation depending on the nature of the role. The box below shows where those on each role sit in terms of the grading system. Specialist Lecturers are highest (8) followed by Lecturers and Tutors (8 and 7), while Graduate Teaching Assistants and Language Tutors are placed at grade 6. Also visible within the box is the multiplier system used and the resulting level of pay for each of the roles when these are applied.

In addition to this, the University also pays its Demonstrators an agreed rate of £12.86 per hour at grade 5, although multipliers are not applied due to the comparably limited nature of the work.

**Box 4.8. Information on grades and payment for academic roles in North Coast University**

**Post-Framework PTL rates (From 1st August 2016)**

spine point	from 1st Aug 2016	grade	Basic hourly rate	Without Annual Leaves Allowance				
				Weighting				
				1.25 hourly rate	1.5 hourly rate	1.75 hourly rate	2.00 hourly rate	
	51		£31.43	£39.28	£47.14	£55.00	£62.85	
	50		£30.51	£38.14	£45.77	£53.40	£61.03	
	49	grade 9	£29.63	£37.03	£44.44	£51.86	£59.26	
	48		£26.77	£35.96	£43.16	£50.34	£57.53	
Lecturer (Specialist)	47	Ac 4	£27.93	£34.91	£41.90	£48.88	£55.86	
	45		£26.33	£32.92	£39.80	£46.08	£52.67	
	44		£25.57	£31.96	£38.35	£44.76	£51.14	
	43		£24.83	£31.03	£37.24	£43.45	£49.65	
	42	grade 8	£24.11	£30.13	£36.16	£42.19	£48.21	
	41		£23.41	£29.26	£35.11	£40.96	£46.81	
Lecturer	40	Ac 3	£22.73	£28.41	£34.09	£39.77	£46.45	
	39		£22.07	£27.58	£33.10	£38.62	£44.13	
	38		£21.44	£26.80	£32.16	£37.52	£42.88	
	37		£20.81	£26.01	£31.21	£36.41	£41.61	
Tutor	36	grade 7	£20.20	£25.25	£30.30	£35.36	£40.40	
	34	Ac 2	£19.05	£23.81	£28.57	£33.33	£38.09	
	32		£17.96	£22.45	£26.94	£31.43	£35.92	
	30		£16.93	£21.17	£25.40	£29.63	£33.67	
G.T Assistant	29		£16.44	£20.55	£24.66	£28.77	£32.88	
Language Tutor	28	grade 6	£15.97	£19.96	£23.95	£27.94	£31.93	
	26		£15.05	£18.82	£22.58	£26.34	£30.11	
	25		£14.62	£18.27	£21.93	£25.58	£29.24	
	24		£14.19	£17.74	£21.29	£24.84	£28.39	
	22		£13.38	£16.73	£20.08	£23.42	£26.77	

SHES PTL RATES	
Basic	Delivery only (course material prepared by someone else). Attendance at meetings would be additional at this rate
1.25 hourly rate	Delivery and small amount of preparation.
1.5 hourly rate	Delivery, preparation and possibly marking
1.75 hourly rate	Delivery, preparation and possibly marking but the number of students would be fairly large

In both case studies, the payment system for non-academic roles is less complicated because there is no need to account for additional activities. Again, pay is generally based on the national framework though some employees are paid more to reflect market rates, while others have no equivalent grade.

Table 4.11 shows the basic hourly rates for these individuals in South Valley University listed from the highest to the lowest for each contract. In some instances, such as for professional occupations, work is remunerated handsomely but declines through the grades to a bottom level of £8.25 - though still above the National Minimum Wage (NMW). Increments are paid for each year of service for a selection of those on formal contracts (where it has not this is because pay is raised to a higher market rate).

**Table 4.11. Hourly rate of pay for Casual Contracts of Employment and Casual Worker Arrangements in South Valley University**

	<b>Occupational Role</b>	<b>Basic Hourly Rate</b>	<b>Increment</b>
<i>Casual Contracts of Employment</i>	Health & Fitness Instructor	£24	-
	Electronic Note Takers	£22.95	-
	Study Skills Tutors	£20.59	✓
	Mentors	£20.59	✓
	Library Casuals	£9.72	✓
	Support Workers	£8.25	✓
<i>Casual Worker Arrangements</i>	Exam Invigilators	£13.25 (Senior) £11.23 (Basic)	-
	Life Model	£11.00 (2013)	-

The Student Union Agency that operates within the institution is not subject to pay agreements and therefore cannot be placed on the University's pay spine. Students working on this basis can be paid a higher amount, but they mostly receive a basic rate that is in line with the National Minimum Wage.

The situation for non-academic roles in North Coast University is broadly similar to SVU. This is mapped out in the table below which has been produced by matching profiles in the grading system to localised job titles. Some high rates of pay exist to ensure a market rate, while a range of other pay levels descend to the floor of the pay spine. In the case of catering and manual roles for which Casual Worker Arrangements are used, payment can be as low as the NMW with no increments provided.

**Table 4.12. Hourly rate of pay for Support Contracts of Employment and Pink Form Casual Worker Arrangements in North Coast University**

	<b>Occupational Role</b>	<b>Basic Hourly Rate</b>	<b>Increment</b>
<i>Support Contracts of Employment</i>	Language Therapists	£28	✓
	IELT's Examiners	£27.33	✓
	IELT's Clerical Markers	£22.26	✓
	IELT's Invigilators	£12.44	✓
	Technician	£11.55- £16.63	✓
	Gym Instructor	£11-13	✓
	Sports Assistant	£9.88	✓
	Catering Supervisor	£8.12	✓
	Catering Assistant	£7.81	✓
<i>Pink Form Casual Worker Arrangements</i>	Research Assistant	£15	X
	Scribe and Reader	£10.44	X
	Student Ambassador	£10	X
	Manual	£7- £10	X

As with the occupational roles and skills, the case study HEIs use Zero-Hours Contracts with a great variety of payment levels. In most instances, payment is quite high and sits above the national average for this kind of employment in the general labour market. This is due to the nature of the service within the sector and the existence of sectoral collective bargaining agreements and pay structures that help to elevate and sustain pay levels. As such, use in the HEI is not entirely reflective of the association between ZHCs and low pay which is commonly defined as being two thirds of median hourly earnings, or £8.85 at present (ONS 2019b). However, there are some examples where it does exist.

## 4.8 Summary

In this, the first of four findings chapters, there was some initial analysis of existing data within the HE sector. It was seen that HESA data provides some indication of general patterns of use in the HEIs, but it does not enable us to appreciate the use of arrangements such as Zero-Hours Contracts. The

UCU FoI data were then analysed and the case studies were positioned within the sector. The data shows that SVU reported a significant number which places it among the greatest users, while NCU also declared a rate that placed it within the top fifth of all institutions. In recognising that there are problems with the FoI, some reflection from the case study institutions was sought on issues surrounding the definition. This confirmed the kinds of difficulties faced by ONS and UCU and points to inaccuracies and distortion in the FoI data.

The chapter then set about addressing the first objective of the research which was to clarify what employment forms are capable of being labelled as Zero-Hours Contracts using the broad definition outlined in the previous chapter of the thesis. There were some challenges involved, but several contractual arrangements were identified in each of the institutions. In both, these covered a continuum from highly formalised permanent contracts of employment through to very atypical informal worker arrangements. Of interest is the fact that these arrangements have been used in the HEIs for some time as part of push toward a more employer-led system of managing working time, but until now they have been known by a very different terminology. This implies two things i) the label ZHCs overlaps with and can be applied to employment forms already in existence and ii) re-labelling may be more likely to explain the high levels of prevalence found in research by UCU and HESA rather than Zero-Hours Contracts representing a new or distinctive form of casualisation in the Higher Education sector.

Using data acquired from Human Resources in the HEIs, the chapter provided a numerical overview of the arrangements identified as Zero-Hours Contracts. When all things are considered, the institutions use approximately 800-1000 in a given year and this indicates that existing measures of prevalence may underreport the extent of their use within the sector. The chapter also addressed the inadequacies of the literature in Higher Education by specifically exploring how employment that can be labelled in this way are used within institutions. This was first done by mapping out the variety of occupational roles in relation to the UK Standard Occupational Classification 2010 and this variety was also reflected in different levels of task discretion. In addition to this, the chapter was able to



demonstrate that payment levels are diverse, although overwhelmingly higher than in the general labour market where the use of ZHCs is concentrated in low paying sectors.

Having addressed these research objectives, the necessary overview is in place for the thesis to move on to its third objective, which is to understand the variety of ways that arrangements identified as Zero-Hours Contracts operate in relation to different aspects of the employment relationship.

# 5 Working Time

## 5.1 Introduction

The previous chapter addressed the first and second objectives of the thesis. This involved clarifying what employment arrangements fall under the label Zero-Hours Contract as well as reviewing how these arrangements are used within the workforce of the case study Higher Education Institutions. The thesis will now move on to the third objective, which is to understand the variety of ways that arrangements identified as ZHCs operate in relation to different aspects of the employment relationship. These are as follows:

- Working Time.
- Employee Obligation.
- Rights and Entitlements.

It is to the first of these aspects that this chapter turns its focus. The central feature of all employment arrangements that can be labelled as Zero-Hours Contracts is the absence of any obligation on the employer to provide work – or, as it is more commonly understood, that there is no guarantee that work will be offered to employees. According to the official statistics, this practice has become far more prevalent in recent years. The reasons for the growth in numbers are the subject of debate and cannot be separated from the issue of increased awareness. However, some have suggested that it represents an ongoing shift in the labour market towards an employer-led model of working time in which employers are increasingly unwilling to pay for labour that exceeds demand on a weekly or daily basis.

The literature review showed that the broad label Zero-Hours Contracts covers a variety of practices in relation to different dimensions of working time. However, since the existing literature is overwhelmingly focused on the labour market as a whole, the information we have is very general

indeed. We do not have a detailed empirical understanding of the variegated nature of working time practices in specific sectors. In order to help address this gap, the following research question is posed:

*How is an absence of obligation to provide work used to manage working time for academic and non-academic roles in HEIs?*

A comprehensive answer to this question requires that different dimensions of working time are explored for both academic and non-academic roles in turn. These have been selected based on existing research on working time and schedule flexibility as well as the literature on Zero-Hours Contracts.

1. Periods of work with the calendar year and the quantity of hours in the working week.
2. Scheduling of work provided and any changes to the pattern of work over time.
3. Notification and compensation provided when work is cancelled.

The chapter shows that the use of Zero-Contracts as a means of managing working time is part of a broader shift toward employer-led flexibility within the labour market and is firmly situated within processes of casualisation that have long been underway in the sector. The second dimension of working time on scheduling and change is of particular interest. Here, the chapter argues that working time arrangements can be mapped across a continuum adapted from the early literature that attempted make sense of the range of NSE used at the time. This is based on the extent to which they are either:

**Structured:** Meaning that working time arrangements involve a fixed plan.

**Unstructured:** Meaning that working time arrangements involve flexibility.

(Purcell et al 1999 and Reilly 1999)

Even though the use of Zero-Hours Contracts in the HEIs is largely employer-led, most academic and non-academic roles involve arrangements that have a significant degree of structure. This is because the management of working time is shaped and constrained by factors particular to the HE context.

Overall, it means that the situation in the HEIs contrasts with the tendency for ZHCs to involve extreme flexibility as well as many popular assumptions about their use in public and political discourse.

## 5.2 Academic

The previous chapter of the thesis highlighted which academic roles Zero-Hours Contracts are used for in the case study institutions. These will be the focus of this section of the chapter and are summarised in Table 5.1 below. It should be noted that roles which have a purely research function have not been included, either because there are guaranteed hours or because insufficient data were collected (it is worth noting that only 4% of ZHCs found in UCUs FoI exercise were used in this way).

**Table 5.1. Academic ZHCs and occupational roles in South Valley University and North Coast University**

South Valley University	North Coast University		
<i>Hourly Paid Contracts of Employment</i>	<i>Academic Contracts of Employment</i>	<i>Support Contracts of Employment</i>	<i>Pink Form Casual Worker Arrangements</i>
Lecturers Tutors Demonstrators	Lecturers Tutors	Language Tutors G. T Assistants	Lecturers Demonstrators

As discussed in the literature review in Chapter 2, one way in which employers may seek to achieve numerical flexibility is to engage people on a permanent or temporary basis from which they can then be deployed to work in response to specific periods of demand. In all of the academic roles studied, work does not take place on an entirely continuous basis. Instead, it is undertaken only during the academic year when the institutions core service is provided. It is therefore typical for hours to be reduced to zero during the summer as well as two three-week breaks for Christmas and Easter (as seen

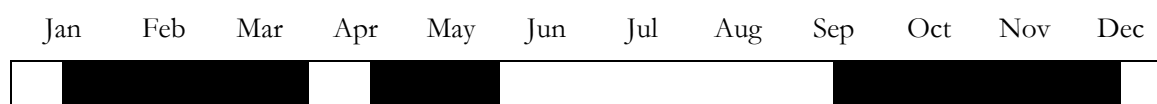
in information contained within the contracts presented in Chapter 4). During the academic year, work can then be divided into the following two broad types within both institutions. Those which are:

- Ongoing
- Intermittent

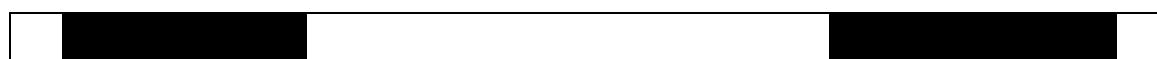
In the first of these, employees are recruited so that management can respond to demand that is ongoing week to week for the whole academic year. This is illustrated in Figure 5.1 below with the black areas representing times when work is undertaken, either for 3 or for 2 academic terms. The fact that these individuals work throughout the year shows that they make an important contribution to the pedagogical function of the HEIs.

**Figure 5.1. Periods where work is ongoing throughout the academic year for academic roles in South Valley University and North Coast University**

**a) 2 Semesters (3 terms)**



**b) 2 Semesters (2 terms)**

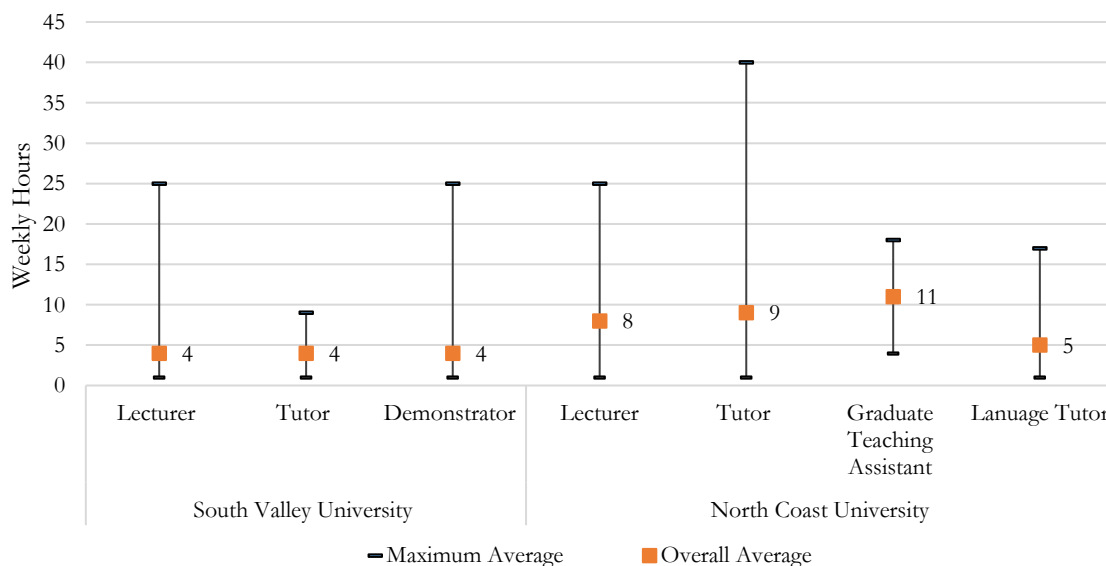


The second type of employment is more intermittent, which means that instead of working throughout the whole academic year, employees are required to work for shorter periods. It is important to note that the exact configuration of these periods in terms of their timing and length is contingent on needs in relation to the timetable demands of academic departments. This can range from one or two lectures undertaken by industry professionals to short but more substantial blocks of cover for matters such as sickness or research absence. Overall, this evidence reflects what is already known about hourly-paid and casual employment in the HE sector (JNCHES 2015), but is the first to explicitly apply the label Zero-Hours Contract.

It was also noted in the literature review that another key way employers may use an absence of obligation to achieve numerical flexibility is by setting labour inputs to match the required quantity (or duration) of hours within a particular timeframe. In line with the literature which measures hours over a working week, the figure below presents the average hours and range of average hours for individuals employed in academic roles within both of the case study HEIs.

It was mentioned in the previous chapter that work in SVU is provided through individual engagements which form part of the formal contracts. According to data from one faculty, these engagements involve a relatively low number of average hours, with over 88% not exceeding 6 hours of teaching contact per week. It should be noted, however, that employees can have more than one engagement which means that their hours could in fact be higher - for example, a quarter of employees had two engagements, while a third had three or more.

**Figure 5.2. Average and range of average weekly hours for individuals employed on academic ZHCs in South Valley University and North Coast University**



Source: Derived from faculty records provided by SVU DM2<sup>31</sup> & Human Resources records by NCU-HR2<sup>32</sup>

<sup>31</sup> See Appendix I (i) for notes on how averages and range were calculated from different data.

<sup>32</sup> See Appendix I (ii) for notes on how averages and range were calculated from data.

While averages tend to be low in North Coast University, most academic roles have an average that is more than double those in SVU. This is likely to be due to the fact that these data cover all hours processed for payment which includes multipliers. When this is accounted for, the levels for academic roles are broadly comparable across the case studies. Overall, averages for academic roles in both of the case study HEIs are considerably lower than for Zero-Hours Contracts in the labour market which are found to be around 20 hours per week (ONS 2018; CIPD 2013a and 2015).

The general consensus among the interviewees was that the quantity of hours is invariably driven by need stemming from the demands of the academic programme, while the relatively low number of hours overall is explained by the fact that people are generally recruited to make specific contributions rather than to undertake extensive roles. In South Valley University, this lower level can also be attributed to efforts aimed at curtailing use of the contracts in the form of a policy negotiated between UCU and Human Resources:

We wanted to try and curb the usage of HPLs [Hourly Paid Lecturers] so one of the things we tried to do was to have a cut-off point because the way we saw it was if you needed to employ someone over 6 hours on a consistent basis, there may be a need for a permanent post. So, we had the agreement to have 6 hours as a maximum other than when there are exceptional circumstances.

(SVU Trade Union Representative 1)

No defined policy of this nature exists in North Coast University (except in the case of PhD student Demonstrators), but a similar sentiment was echoed by management across academic departments.

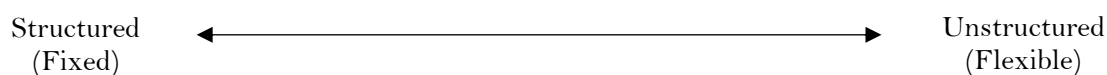
There are some exceptions in both HEIs. This applies to occasions when the academic demand is distributed unevenly throughout the academic year or for shorter stand-alone periods. When applying the policy or general principle, this wider timeframe can therefore be taken into account:

It can be looked at over a sort of annual basis so...I think we multiply the 6 by probably about 35 teaching weeks so if in one term there was more of a need, or if it was literally a short fix, then there is that flexibility to work more hours in that time provided it doesn't go over for the year.

(SVU Human Resource Personnel 2)

This explains some of the higher averages seen above. However, it should be noted that the extreme outliers involving 25 or 40 hours a week do not involve periods of work that exceed two three weeks at most. There is no evidence of academic Zero-Hours Contracts being used where it would be far more appropriate for a standard full-time employment relationship to be in existence.

As noted in Chapter 2, matching volumes of labour to demand must involve schedule arrangements and since this is often a process that requires continual adjustment, working time provisions are liable to change over time. This is the most important of the dimensions to which the reader was introduced at the beginning of the chapter because of its association with negative impacts for employees and its direct relevance to the debate on Zero-Hours Contracts. It was previously noted that the ways that working time arrangements are made can be mapped according to the extent to which they are structured or unstructured. This is a particularly useful way of encapsulating the nature of academic employment in a way that basic survey variables cannot. It is argued here that for these roles, working time arrangements are clearly positioned towards the more structured end of the continuum:





It is necessary to begin the analysis prior to the start of the academic year when those working in academic roles are not in receipt of any hours. During the summer months, academic managers across the institutions develop an academic programme for the year ahead that sets out what is going to be delivered. On the basis of this, management identify staffing needs and seek to produce a teaching timetable which forms the basis of scheduling arrangements with employees.

It is important to establish first that scheduling cannot be done in a haphazard manner like one might expect of many Zero-Hours Contracts in the wider labour market. Some advanced planning is necessary in order to ensure that sufficiently skilled and specialised employees are put in place in advance so that the service can be provided to an expected standard. This was recognised by managers across the HEIs but a TU Representative with a background in HRM summarised the issues neatly:

I don't think this employer [SVU] would be any different to any other employer in the sense that if they could have staff at their beck and call they would – but the fact of the matter is they can't always achieve that, they've got to be careful how they use flexible employment. They can't schedule work at short notice because employees with the right subject knowledge need to be in place and that requires a lot of planning in relation to the academic programme.

(SVU Trade Union Representative 1)

These constraints on flexibility are related to product market pressures concerned with the quality of service and provide a general principle to which all management in the HEIs must abide. However, advanced schedule arrangements of this nature can only be put in place as far as the exact demand is known. In both institutions, there are differences in the extent to which this is the case and this ultimately results in three main varieties of structured scheduling. These are noted below and will be examined in turn in the discussion that follows:

- 1) Academic year
- 2) Semester

### 3) Part-semester

#### **Academic year**

In the first of these, management in both institutions are able to schedule working time for the whole academic year and, as such, there is a very high degree of structure to the arrangements. In South Valley University, this practice is evident in available figures from one of the four faculties which shows that 80 percent of engagements are put in place for two semesters (though some work 2 terms and others all 3 terms)<sup>33</sup>. One participant explained that the reason for scheduling in this way is because the standard length of an academic product or module spans the entire academic year.

We tend to teach 24-week modules and as it stands in this school they're [those on Hourly Paid Contract of Employment] brought in for the whole module. So we should know when we're planning ahead that we need somebody for the entire year and we employ them on that basis.

(SVU Departmental Manager 8)

Another participant in the institution suggested that scheduling of this nature is enabled by the fact that once student numbers are confirmed, the demand tied up with the academic timetable does not change across the year. This is viewed as unusual when compared to erratic forms of demand outside of HE:

We can schedule for the year because we know the pattern that it runs. You know that you've got 30 students who are studying that module and that module will run for 2 hours a week for 24 weeks at set times. That's not going to change, so it's quite certain in that respect - it's not a normal supply and demand situation where things fluctuate all the time and you don't know week to week.

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<sup>33</sup> Provided by DM on 24<sup>th</sup> November 2015 complies from faculty records.

(SVU Departmental Manager 6)

This type of scheduling for the academic year is also found within North Coast University. Although there is an absence of specific figures on the proportion of academic work to which it applies, interviews with management did suggest that it is less common than in SVU. Where it does occur, it tends to be limited to certain areas and occupational roles in the HEI. These include but are not limited to:

- Tutors in Arts and Humanities and Lifelong Learning.
- Language Tutors providing services to the wider community.

As above, work is scheduled in this way because the pre-determined academic programme and timetable generally makes for a stable demand that can be easily foreseen by management once student numbers are confirmed. This can be inferred from the remarks made by a manager who oversees the employment of Language Tutors and again underlines the highly structured nature of the arrangements:

We don't decide [that] we'll throw a one-day class in somewhere in some place next week. The point is the programme of classes has been sold as a package for the year and the scheduling reflects that because we've planned it with the tutors, so there's a much stronger structure to it. When they [Language Tutors] see the published programme they will know "that's my course there I'm doing that one and that one" [classes] and that will last up until next June [end of the academic year].

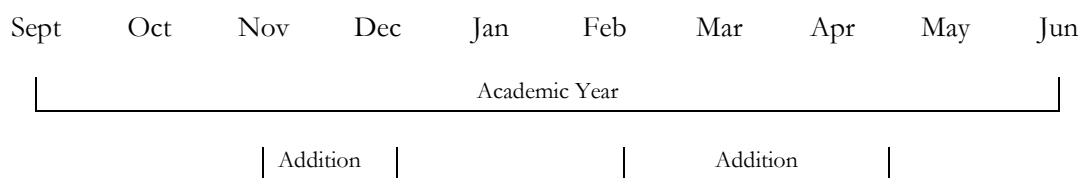
(NCU Departmental Manager 7)

The scheduling of working time in this manner means that academic employees in both institutions receive notice a month prior to start of the academic year and will know what their working pattern will be for the year ahead. Moreover, although there are rare occasions where courses or modules have to be discontinued, the arrangements remain intact throughout the academic year. There was also an

explicit recognition that it is not in the interests of the institutions to make unnecessary alterations to classes, particularly with the potential for students to lodge complaints and to threaten the reputation of the universities by providing poor feedback to the National Student Survey (NSS).

Some of the employees who experience this form of structured scheduling are also offered additional work when the need arises for things like absence cover and marking. The diagram below illustrates how additional periods can map onto the main schedule arrangements for the academic year.

**Figure 5.3. Examples of additional periods when academic work is scheduled for the year in South Valley University and North Coast University**



### Semester

The second major variety involves the scheduling of working time for the duration of a semester. In these instances, there is also a significant degree of structure to the arrangements with employees knowing what they will work for a 3-month period, but not beyond this time. In SVU, this accounts for around 20 percent of the engagements in one faculty where data are available. It was explained that the reason for scheduling working time in this way rather than for the academic year is twofold. Either because the demand for teaching lasts only one semester or because administrative issues and changes to demand from one semester to the next cannot be anticipated during workforce planning in the summer:

Sometimes we engage them [employees] for the start of their module...but it may be that because of changes to rooms or student numbers we'll have to arrange the second semester

closer to the time, say a few weeks before. It can also be because we might need to bring them [employees] back for something different in the next semester that we never initially expected at the outset.

(SVU Departmental Manager 2)

This variety of scheduling is more prevalent in North Coast University where it can be described as the standard practice for academic work. The reasons for making schedule arrangements on a semester basis in SVU also apply here, but two sub-varieties could be identified. In the first of these, management sometimes have an indication of what the demand will be in the second semester, so they can provide employees with a loose idea of what to expect before confirming closer to the time:

Ideally it's all arranged at the beginning of the year but, practically speaking, some things do change for the second semester. So we have a plan from the beginning of September, but there might be some movements...they [employees] would have a fair idea of what their minimum is, but they won't know concretely until after Christmas, probably early January a week before the semester.

(NCU Departmental Manager 15)

This interviewee was asked what kind of changes might be anticipated so that it is necessary to schedule working time in this manner. They replied by emphasising the potential need for covering absences:

For instance, we're a staff member down and we're having to cover hours, so it's possible that her hours might go up next semester if we still can't find anyone to replace the other person or we might need to put on more or less classes than we anticipated.

(NCU Departmental Manager 15)

For other instances in NCU, there is no indication of what will happen beyond the first semester. This applies most notably to PhD student Demonstrators and is again due to unknown demand associated with module changes. One Departmental Manager explained:

It's done on a semester basis usually and the reason for that is timetabling - we don't tend to know the exact timetable for the second semester because we run quite high-resolution courses, so we've got lots of 10 credit modules and students need to make choices. We don't know student numbers until they do [decide] and we'll have to wait to determine the number of Demonstrators and hours.

(NCU Departmental Manager 6)

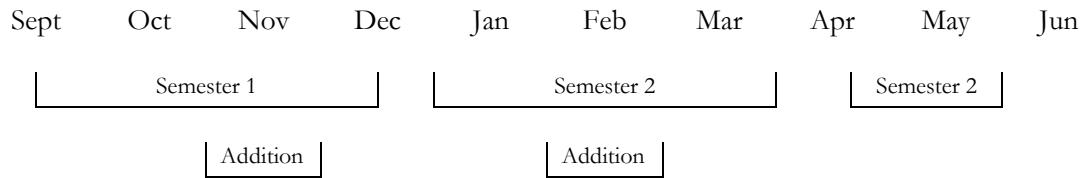
Other administrative issues were also taken into consideration when deciding to schedule on a semester basis, including the desire to ensure that new students who are not present at the start of term get equal access to recruitment opportunities. If an employee does continue into the second semester, the change in hours occurs at different rates depending on a number of factors, but can be quite significant:

That can radically shift. It's almost surely [sic] that they won't have the same number of hours or timing of hours in the second semester...and it [academic programme] does tend be frontloaded here, so it will actually reduce whereas in other schools it might go up.

(NCU Departmental Manager 14)

Much like the previous example covering the whole year, hours that have been arranged are rarely removed. However, additional offers of work may be provided during the year, as illustrated below.

**Figure 5.4. Examples of additional periods when academic work is scheduled semester to semester in South Valley University and North Coast University**



### **Part-Semester**

As indicated at the start of this discussion, there is a third mode of scheduling working time arrangements which is done on a part-semester basis. This means that the arrangements are less structured because they cover a shorter period leaving employees with less foresight over their working futures. There was no evidence among the interviews that such practice is adopted in South Valley University. However, in North Coast University, discussions with management revealed it to be more commonplace, particularly for those working as Graduate Teaching Assistants in some parts of the institution.

The reason for this is intimately tied up with the nature of the role which is concerned more with assisting delivery rather than leading lectures or seminars. This means two things. First, it is not as imperative that arrangements are made as far in advance to ensure skills human resource is in place. Secondly, the demand is not as predictable because the services provided are extra-curricular, meaning that they are an addition to the core timetable of classes sold to students. A Departmental Manager explained:

For the more support-based work, I should imagine a month in advance they will have an idea but things will be confirmed and scheduled in at different times...so, rather than knowing that this what you're going to be doing based on timetable it'll come down to other factors, like

waiting upon [sic] the lecturer to decide if they need them for particular things and how the students are progressing...[whether]...they're understanding things and if not we do need to run more sessions?

(NCU Departmental Manager 10)

Table 5.2 provides a summary of the ways that the scheduling of working time pans out for academic work in the case study institutions, and this applies to work that is both ongoing and intermittent. The use of contracts in these instances is employer-led, giving the HEIs the means to manage labour input as cost effectively as possible. However, the particular varieties of practice for academic roles are highly structured in the sense that they are pre-fixed to last for considerable periods of time. This can be explained by the nature of the product being provided which involves a set programme of academic classes that are delivered throughout an academic year. Because of this, there is a need to ensure that i) human resource with the requisite skills are in place in order to uphold the quality of the service and ii) that management in the HEIs are able to plan extensively in relation to demand that is foreseeable.

**Table 5.2. Summary of the main forms of schedule notification and change for academic roles in South Valley University and North Coast University**

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<i>Academic Year*</i>	Hours scheduled for academic year and not changed or altered.
<i>Semester</i>	Hours scheduled for semester and not changed or altered. No confirmation beyond this period and hours subject to change.
<i>Part-Semester</i> (North Coast University)	Hours scheduled for part of seminar and not changed or altered. No confirmation beyond this period and hours will be subject to change.

---

\*Refers to scheduling for a both semesters of the academic year though some might work 2 terms and others 3 terms.



Earlier in the thesis, it was noted that most of the existing research in the Higher Education sector tends to address non-standard forms of academic employment in way that uses more traditional terminology. Interestingly, and somewhat unsurprisingly given the overlaps discovered with existing forms of non-standard employment, the findings have clear parallels with scheduling practices found for “Hourly Paid” work in case studies by JNCHES (2015). Further similarities are also seen in the information gathering exercise on ZHCs by Hopkins and Fairfoul (2014) who note for academic roles:

*“...hours are generally notified to the staff member once the enrolment is confirmed and the academic plans for the coming period are known and the offer to work the hours required is likely to run for at least a semester sometimes more”:*

These combined insights appear to suggest something of a typical pattern of use within the HE sector which could be due to the fact that HEIs operate under a similar set of product market conditions. How, then, do the findings match up to what we know about use elsewhere in the labour market? It is possible to place the practices within a small minority found with the existing research. However, the general view is that flexible scheduling arrangements and ZHCs provide employers with complete flexibility to suit their needs and that their use is driven by an unwillingness to pay for any labour that exceeds demand from one week or day to the next. Indeed, this is supported by the available research which shows that the arrangements involve very short notice and changes to hours (CIPD 2013a).

The practices for academic roles in the HEIs clearly do not conform to this empirical trend since employees know what they will be working for extensive periods of time and this does not change. Instead, it can be argued that specific factors associated with use in the HE sector serve to protect against the drive towards more extreme flexibility that is common in other areas of the labour market, particularly where competition is based on cost and demand is subject to higher rates of fluctuation.

This contrast was something that occupied the minds of management who were eager to draw a distinction between the employment that they oversee and the use of the employment in other sectors. In some cases, the perceived difference was so profound that management either made no initial

association with the label or continued to resist any notion that the employment could be regarded as Zero-Hours Contracts.

I didn't realise that what we were doing would have been classed as a Zero-Hours Contract. All the negative publicity has come from bad practice in other sectors and the precariousness for people whose livelihood is based on this and they [employees] don't know whether they're working from one day to the next, but the way we're doing things in SVU is very different I think.

(SVU Departmental Manager 8)

Though it is not the primary focus of the research, it is possible to provide reflection on how these working time practices may impact on academic employees. Given that the arrangements are very structured, it appears sensible to suggest that any effects on employees are likely to be less severe than they are in other situations where the ability of individuals to orientate their working future is severely impeded (as noted by Warr 1987). However, while it is true that there is a general contentment among those employed in academic roles in the HEIs, there is also evidence of complications arising.

The first concerns uncertainty in the transition from one semester to the next. Though there was no available evidence in SVU on this matter, this appeared to be the cause of some anxiety for one recent graduate in North Coast University for whom the work is an important source of income:

It can be a bit of worry whether I'll have the same amount of work next term. It [amount of hours] shouldn't really change much, but it does prevent me from being able to plan because there no way of knowing for sure and you do hear stories where people have been let go or dramatically reduced.

(NCU Employee 4 - Tutor)

Some employees also expressed anxiety at the prospect of not receiving work or having reduced hours in the next academic year, which could result from cover no longer being needed or alterations made to degree programmes due to changes in student admissions. One employee reflected:

I think it is quite secure in the [academic] year, but there's always a bit of tension as to whether you'll get offered work in the next year – they may try and give you something, but nothing is guaranteed. That can cause some financial anxiety because you don't really know for sure.

(SVU Employee 2 – Lecturer)

It's OK during term time, but where the biggest problems can arise for people on contracts like mine is not day to day or week to week, it's what happens in the long-term. It's far from certain whether you'll be asked to work in the next year or if you'll be given a proper contract. It does cause worry. You do struggle to make commitments and plans and things like that.

(NCU Employee 1 – Tutor)

Although the highly structured nature of working time arrangements means that they are quite exceptional when compared to the situation in the wider labour market, it would therefore be inaccurate to assume that this precludes any problems arising for those employed on this basis. Indeed, these findings on Zero-Hours Contracts in the HEIs resonate with evidence on the material and psychological impacts of casualisation for academic workers that have been previously been documented in research by UCU (2015 and 2019b) and academic work by Lopes and Dewan (2015).

As discussed in the literature review, a closely related aspect of working time concerns the ability of employers to adjust or to remove working hours that have been previously scheduled. This is permitted by the absence of minimum work periods in UK law and can occur either in response to demand that has unexpectedly changed or as a way of responding to other unforeseen circumstances. Along with

the dimension of working time discussed above, it has been highlighted as a key point of interest and an area of concern.

In South Valley University, the formal documentation for Hourly Paid Contracts of Employment states that the University reserves the right to change the date and time or to cancel courses or classes on which the employee works. Interviews with management and employees suggested this is very unlikely, but there can be occasions where classes are cancelled due to inclement weather and building malfunctions. Box 5.1 shows a clause containing information in the event of a class cancellation.

**Box 5.1. Cancellation clause for Hourly Paid Contracts of Employment in South Valley University**

**13. CANCELLATION OF CLASSES**

Where the University cancels a class, you will be given as much advance notice as possible and wherever possible, the class will be re-arranged. Where it is not possible to re-arrange the class you shall nonetheless be entitled (in accordance with the Employment Rights Act 1996) to payment, for a period of up to 2 weeks.

The aim to provide advance notice and to re-arrange the class wherever possible was confirmed in interviews with management across the institution. In this sense, re-arrangement can be considered as a form of compensation and the practice clearly stems from the need to ensure that the promised academic programme is delivered to students. The employee will therefore be paid for teaching the class at a later date.

In North Coast University there is no comparable policy on what happens in the event of class cancellation. Interviews with HR did suggest that they are currently working on a policy, but in the interim there is a reliance on local custom and practice which is believed to involve compensation in the form of payment.

We just never done it [had an official policy]...we're currently working on this adverse weather policy in which those sorts of things would be formalised, but as it stands we tend to go just with local arrangements depending on what the situation has been in different places...So if we were to close the university because of snow or people unable to get in that type of thing, then it's the norm that if you're already rota'd down to work you'd be paid for that.

(NCU Human Resources Manager 1)

However, interviews with management across the institution suggested different things and this is likely to be the legacy of college and school autonomy and associated with its pre-92 status. Some evidence of local pay arrangements for those who provide one-to-one musical instruction and language tuition was found whenever sessions are cancelled by students within 48 hours. However, for all other Lecturers and Tutors there is more of an emphasis on re-arrangement of classes much like in SVU.

...it would be impossible for a module to be cancelled because we've got students on it, but if a class was cancelled then our focus would be on looking at when they could teach the same class at another time, so it wouldn't be payment, but equally they don't lose their hours.

(NCU Departmental Manager 15)

According to those who oversee the employment of PhD student Demonstrators, notice depends on the reason for the cancellation. In the event that such a situation should arise, re-arrangement is the preferred course of action with no payment being made even if the class is not held at a later date. In these instances, it could be argued that the lack of direction due to an absence of an official policy is more pronounced on account of the relative informality of the contracts:

If a member of staff wakes up ill on the morning [of the class] I guess that's when the notice will be. I mean, I've not had a situation that I'm aware of where that's happened yet...but in

the event that a practical is cancelled and they decided to reschedule or just to drop it, that's it, no pay.

(NCU Departmental Manager 14)

Table 5.3 summarises the findings on notification and compensation in the event of cancellation for academic roles in the HEI. Unlike in the wider labour market, cancellation rarely occurs. However, in the event that it does, the situation in South Valley University and North Coast University can involve short notice just as appears to be the case in the existing survey research on Zero-Hours Contracts.

**Table 5.3. Summary of notice and compensation in the event of a cancellation of work for academic roles in South Valley University and North Coast University**

	South Valley University	North Coast University
<b>Notice</b>	Dependent on reason Usually within 24 hours	Dependent on reason Usually within 24 hours
<b>Policy</b>	Institutional	Reliance on local custom
<b>Compensation</b>	Re-arrangement	Payment Re-arrangement

In both cases – and despite the stated intentions of Human Resources in North Coast University - compensation mostly comes in the form re-arrangement. This is because management are aware that the work must happen at some point in future in order to maintain service standards and to deliver a pre-paid programme. Given the nature of the product being delivered, this practice is likely to be characteristic of the sector at large. However, the HEIs are like most organisations in the sense that they do not consistently provide compensatory payment. This leaves scope for problems to arise for employee such as disruption to plans and the inconvenience of travelling to work without payment.

### 5.3 Non-Academic

The chapter can now move on to examine how working time is managed for those employed in non-academic roles with the case study institutions. Unlike the format above, this is not done in one single discussion. Instead, findings are presented first for non-academic roles where work is ongoing before moving onto roles where periods of work are intermittent throughout the academic year.

#### 5.3.1 Non-academic roles where work is ongoing throughout the year

We begin with work that is ongoing throughout the academic year. In order to re-familiarise the reader with the periods when work takes place, the diagram provided earlier in the chapter is presented below.

**Figure 5.5. Periods where work is ongoing throughout the academic year for non-academic roles in South Valley University and North Coast University**

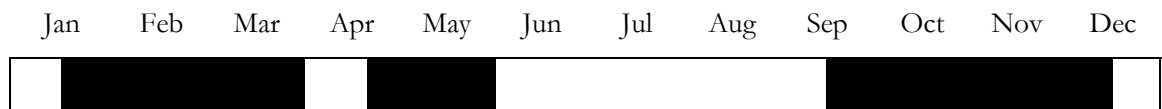


Table 5.4 below presents the contracts and the non-academic occupational roles in each institution where work is undertaken on an ongoing basis throughout the academic year. In both cases, formal contracts of employment are used in these situations. However, while most non-academic roles in South Valley University undertake work on an ongoing basis, comparably few do in North Coast University (although there could be more in areas of the HEI that proved to be inaccessible).

**Table 5.4. Non-academic ZHCs and occupational roles where work is ongoing throughout the academic year in South Valley University and North Coast University**

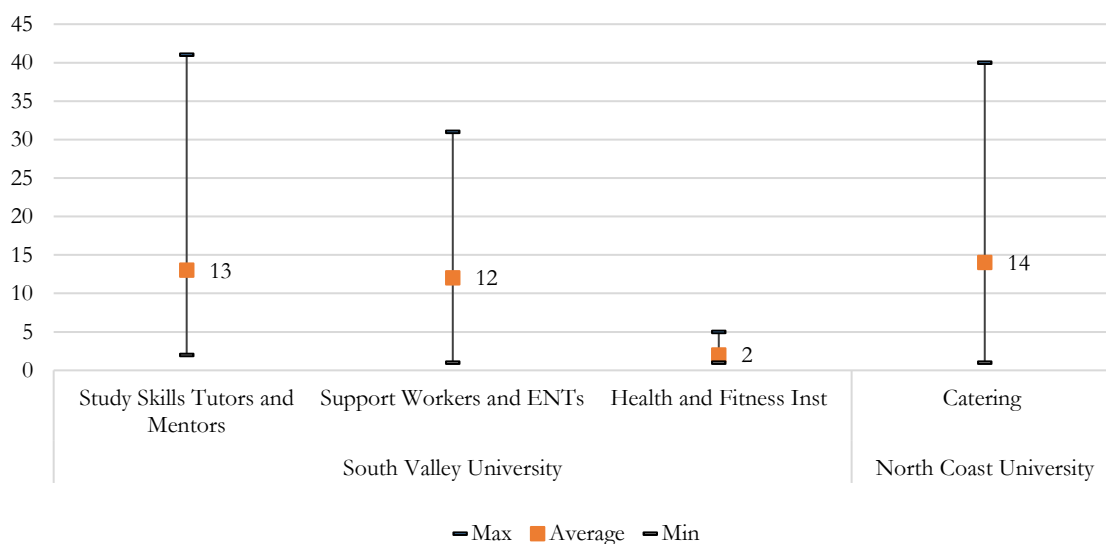
South Valley University			North Coast University	
<i>Casual Contracts of Employment</i>	<i>Casual Worker Arrangements</i>	<i>Students Union Agency</i>	<i>Support Contract of Employment</i>	<i>Pink Form Worker Arrangements</i>
Health and Fitness Instructors	-	Catering	Catering Assistant	-
Study Skills Tutors				
Support Workers ENTs				

In Figure 5.6, data are presented on the average and range of average weekly hours for these non-academic roles in the case study institutions. It shows that most employees have an average of between 10 and 14 hours per week. This is noticeably higher than the academic work, but still remains lower than averages recorded for ZHCs in the labour market (ONS 2018). There is a considerable range for each of the roles. This can be accounted for by the fact that although demand determines allocation, employees are consulted as to the number of hours they are physically able to undertake.

It should also be noted that although the figure includes averages of 1 hour per week, this is not really the working experience of any individual and is largely the result of the averages being reduced in the numerical data due to the inclusion of weeks where work was not undertaken. The only exception to this is for Health and Fitness Instructors in SVU who have a low average that is more akin to the majority of academic roles discussed earlier. This is because they also provide limited specialist input.

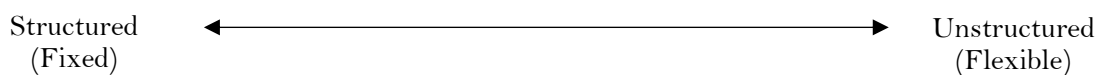


**Figure 5.6. Average and range of average weekly hours for non-academic roles where work is ongoing through the academic year in South Valley University and North Coast University**



Source: Data derived from a combination of staff figures and interviews<sup>34</sup>

We now explore the main dimension of working time in the form scheduling and changes to the number of hours worked. Discussion of the variety of ways in which this is occurs requires some organisation. As outlined at the start of the chapter, this can also be done by adapting an earlier classification of types of temporal flexibility (alternatively numerical flexibility) which is based around the extent to which the working time arrangements are structured or unstructured. Once more, this is expressed in the following diagram.



<sup>34</sup> See Appendix I (iii) and (iv) for notes on how averages and range were calculated from different data.

### ***SVU - Health and Fitness Instructors***

The first of our examples are Health and Fitness Instructors in South Valley University. Their working time arrangements can be placed at the most structured end of the continuum. This can be attributed to the nature of the product being delivered in the form of a programme of sports and leisure classes throughout the academic year. As with academic work, a similar process of workforce planning occurs during the summer months in which the staffing needs are identified. Management then seek to finalise agreements by September:

We work backwards on demand and budget so...we we'll have the programme written in August and the Health and Fitness Manager will look at it and say "right this is the programme we're going to put on this year". Then we'll see who we've got in the pool and [we'll] make arrangements in September to ensure that we've got the right people with the know how in place to take the classes because that's essential for the service to go ahead.

(SVU Departmental Manager 9)

As with many academic roles, there is a requirement for the department to ensure that human resource with the appropriate level of skills is put in place well in advance. This is because the programme cannot run without it and there would be significant implications for the service and indeed the University's reputation if poor planning meant that appropriate instructors could not be appointed further down the line when the classes are due to take place. Also critical to the nature of scheduling is the existence of a pre-sold programme of classes. This means that management can determine the exact dates and times that an employee will be required to work and enables highly structured arrangements to be made either for the duration of the academic year or for the term ahead.

When we decide to run a courses for the year in fitness coaching...you can say [to employees] "we know we're going to run this class every Tuesday between 6 and 7 in the evening because we've already sold the programme" and it has to take place because the students expect it.

There's a pattern of work that can be seen as opposed to "this could come up and we don't know if we need you yet".

(SVU Departmental Manager 5)

It is possible for classes to be discontinued due to dwindling student interest and this does occur in a minority of cases. Aside from this, no changes to the structured arrangements are made because the programme must be provided as it has been marketed and sold to students. Table 5.5 illustrates this for a cross-section of Health and Fitness Instructors. Where some change does appear this is either built into the original arrangements or indicates that an additional offer of work has been undertaken.

**Table 5.5. Weekly hours for a selection of Health and Fitness Instructors in South Valley University covering the period January to May 2016**

Week	Instructor 1	Instructor 2	Instructor 3	Instructor 4	Instructor 5
04/01	2	1	3	2	2
11/01	2	1	3	2	2
18/01	2	1	3	2	2
25/01	2	1	3	2	2
01/02	2	1	3	2	2
08/02	2	1	3	2	2
15/02	2	1	3	2	2
22/02	2	1	3	2	2
29/02	2	1	3	2	2
07/03	2	1	3	2	2
14/03	2	1	1	1	2
11/04	2	1	4	2	1
18/04	2	1	4	2	1
25/04	2	1	4	2	1
02/05	1	0	4	2	1
09/05	2	1	4	2	1
16/05	2	1	4	1	1

Source: Data provided by via SVU DM9 20<sup>th</sup> May 2016 compiled from Campus Services records

### *SVU - Study Skills Tutors and Mentors*

Further along the continuum are Study Skills Tutors and Mentors in South Valley University. Rather than being structured like many of the examples seen thus far, their working time arrangements can be described as being partially structured. In these examples, the work that employees undertake is not dependent on blocks of demand in the form of pre-developed timetables and programmes. However, it does involve some forward planning. In each academic year, students are allocated to employees with the aim of producing a bespoke relationship based on subject of study and experience with particular disabilities. The intention here is to maximise the quality of the support service provided. Each student then carries with them a number of support hours for the academic year which the Disability Service considers sufficient to meet their learning needs.

Much like many of the examples seen thus far, arrangements are structured in the sense that employees are told of the quantity of work they will get for the year ahead, but there is no specification of the exact timing of work to be carried out. One employee reflected on this:

The difference with Study Skills Tutors and the Hourly Paid Lecturers is that they [HPLs] work on a curriculum that they've [academic departments] designed and they [employees] know that they're gonna have a set number of hours week and when those will be. It not like that for us...

(SVU Employee 1 – Study Skills Tutor)

A key feature of the employment relationship for Study Skills Tutors and Mentors is that scheduling of working time in the form of support hours is incumbent on the employee and students rather than the Student Services department. In this sense, the relationship is unique among the HEIs. It is also unusual as far as the literature on Zero-Hours Contracts suggests and reflects previous research which finds a

greater likelihood of professional staff having a degree of autonomy and control over the scheduling of their working hours (Golden 2005 and Chung et al 2007). A manager explained this mechanism:

It's up to the Study Skills Tutor and the Mentors to liaise with the student to find the best time for their support. So the relationship and the responsibility for scheduling support through the year is between the student and the staff member rather than us [management] arranging everything and this is because we feel [SSTs] and students are best placed to judge their needs.

(SVU Departmental Manager 7).

There are no hard and fast ways in which tutors and students go about scheduling the delivery of support, although there are a number of guiding principles. Most notable in this sense is that the Student Services Department encourages weekly meetings between the parties in order to foster the conditions necessary for the student's ongoing development. Information on this is included below:

**Box 5.2. Departmental guidelines meetings with Study Skills Tutors in South Valley University**

**Meeting with Students**

Students are allocated a number of hours per academic year: typically, this can be broken down into one or two hours of study skills tuition per week, although some students receive up to four hours study skills support per week. We encourage students to meet with their tutors weekly, although some students prefer to space their tuition so that they receive most support when they have assignment pending.

Though the timing of support is essentially student driven, the Study Skills Tutors interviewed all showed clear efforts to adhere to this system by using initial discussions with students to put regular arrangements in place for the academic year. This is aided on a practical level by the existence of academic timetables which can be used to identify times and locations when both parties are available to meet:

I try and meet them best I can the same time and same day every week because it gives them some consistency to help their development. They also have fixed lectures which basically helps us work out the times when they can see me, like if they're on campus and have an hour free....so I'll have a conversation with them [students] when they're referred to me or at the start of the next year and we'll come to an basic agreement on when we're meeting throughout the academic year.

(SVU Employee 1 – Study Skills Tutor)

Through these loose scheduling arrangements with different students, employees have a good idea how their working time will pan out over the academic year meaning that their arrangements do have a lot of structure. The employees interviewed also revealed that these arrangements generally remain in place for the academic year. Some important factors in the form of service requirements and employee autonomy over scheduling therefore shape the nature of the arrangements. However, rather than having the kind of structural rigidity that typifies previous examples discussed in this chapter, the relationship is designed to enable more flexibility. The schedule agreements that are made can be revisited throughout the year in order to accommodate need for changes that students wish to make. This is negotiated on a week by week basis with final confirmation only coming after meetings with individual students have taken place:

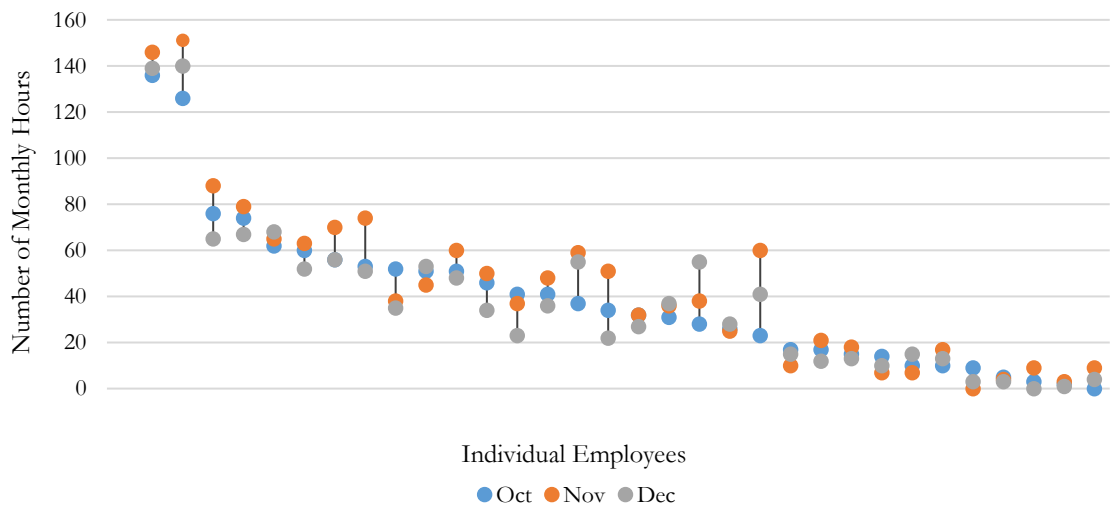
...even though I've got the agreements locked in, there will be changes as the year goes on because students might need more support around assessment time with deadlines looming, or they might want help with revision, or it could be that they can't make their usual session for whatever reason.

(SVU Employee 1 – Study Skills Tutor)

The Student Services department provided some data on the total number of hours each employee worked for three months from October to December 2016 and these are presented in Figure 5.7 below.

This gives some insight into the extent of month to month change (unfortunately weekly data were not available since records are only kept on a monthly basis for payment purposes).

**Figure 5.7. Changes in quantity of hours for Study Skills Tutors and Mentors in South Valley University covering the period from October to December 2016**



Source: Data provided by via SVU DM7 27<sup>th</sup> February 2017 complied from Student Services records

The data show that hours generally remain at a steady level from month to month which reflects the partial structure and relative fixity of the loose schedule agreements discussed. The blue dot for October is the first value for the year. From here, the number of hours for the month tend to go up largely as a result of student referrals being finalised. There is a tendency for hours to then go down due to the two-week Christmas recess before resuming a normal level at the start of the year.

***SVU - Support Workers and Electronic Note Takers***

While Support Workers and Electronic Note Takers (ENTs) share some similarities to the example above they sit further along the continuum. For those employed in these roles, there is no workload allocation in the form of student referrals and rather than permitting employees some level of

autonomy, management in the department opt to retain control of the scheduling process. This is due to the more profound disabilities of those receiving support as well as the absence of a need for a relationship in which students' development is constantly monitored by qualified professionals.

Without these factors, student choice therefore becomes a more decisive factor in scheduling and produces a greater variability in demand that needs to be managed in more of an unstructured or flexible way. The department decided that the way to do so is for employees to submit an availability sheet at the beginning of each term. This is then matched to students' availability and schedules are issued on a weekly basis:

At the beginning of the term, we ask them [employees] for their availability, so they let us know on a timetable that they are available on certain days or afternoon. At the same time, we obtain the disabled student requirements, so their academic timetables. We, then, bring those two pieces of information together to match them up and they can be updated and modified depending on student changes [to desired support times] and support staff availability.

(SVU Departmental Manager 7)

Weekly schedules for Support Workers and ENTs are issued every Thursday meaning that employees are given a three days' notice prior to the start of the next working week. Unlike the previous example, then, the arrangements involve less structure. This means that employees do not enjoy the same amount of certainty in terms of hours to be worked over the course of the academic year. Indeed, the employee handbook informs staff that it is unlikely that their timetables will be the same each week.



**Box 5.3. Scheduling information for Support Workers and ENTs in South Valley University**

**Timetable**

Timetables are sent each **Thursday** afternoon to your staff email account detailing allocated work for the following week. It is your responsibility to check your email account for the timetable on a weekly basis. Do not assume your timetable will be the same each week as this is highly unlikely. Timetables will need to be checked on a weekly basis for clashes and mistakes. Should you notice any, email the support office immediately. You are under no obligation to work more than 5 hours consecutively without a break, contact the support office if scheduled work exceeds this.

However, notwithstanding this comparative lack of structure to the working time arrangements, interviews with employees suggested that working time provisions are in fact relatively steady after the first few weeks. This is because the department is forced to make efforts to nurture a relationship of familiarity between employees and students. Ultimately, this means that the arrangements can be described as being partially structured since there is some constraint on the extent to which managers can practice complete flexibility. An employee accounted for this and reflected on their employment more generally:

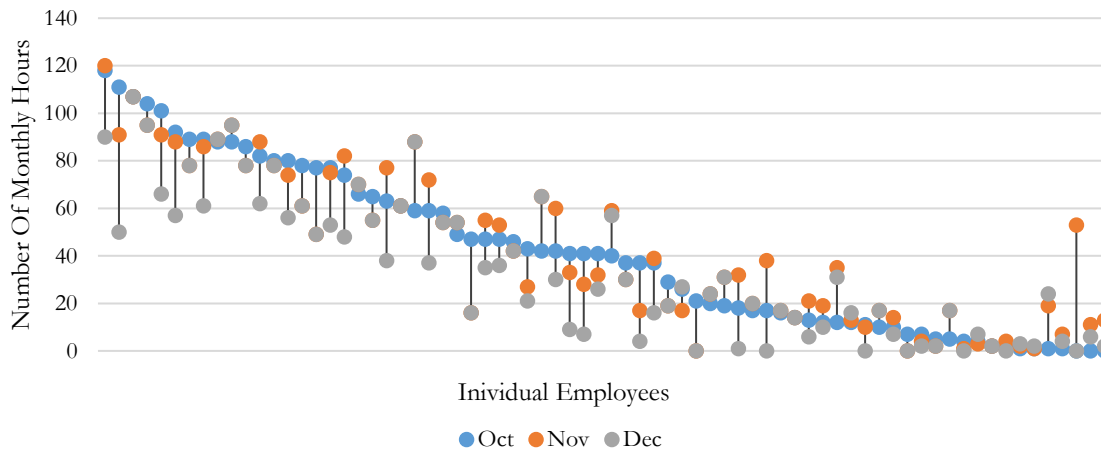
It takes a while to build up at the start because the office is still getting information on the students, but it is consistent at the moment which comes down to the students you're supporting. So if you've got students who are autistic and have a need for regularity, you'll probably be kept with them whereas your hours might change a bit more if they're not. When you see them [ZHCs] in the news it's generally quite negative. I think it's always portrayed as being really really unstable, but mine isn't so much - I never have much of a problem budgeting or planning my life around it.

(SVU Employee 7 – Support Worker and ENT)

Student Services also supplied some data on the total number of hours for the three months from October to December 2016 which gives some idea of the extent of change. The figure below shows that changes to working hours can occur both upward and downward. As noted by the participant, there is a tendency for hours to go up at the start of the year and to reduce in the month of December

because of the Christmas break, which employees are able to anticipate. An established a pattern resumes after this time.

**Figure 5.8. Changes in quantity of hours for Support Workers and ENTs in South Valley University covering the period from October to December 2016**



Source: Data provided by via DM7 27<sup>th</sup> February 2017 compiled from Student Services records

In North Coast University there are individuals who work in comparable roles to those in Student Services in SVU, namely Language Therapists and other related support staff. From the data provided, it is clear that this work is undertaken on an ongoing basis. Unfortunately, requests for interviews with management were declined so sufficient information is not available to include a discussion here. However, it is worth noting that, because of the nature of the service, there is likely to be some qualitative similarities for this dimension of working time to those for Study Skills Tutors and Support Workers and ENTs in SVU.

**SVU and NCU – Catering and Hospitality**

In both institutions, data were collected on employment in catering and hospitality, though in SVU only a handful of students are employed in this role through the Student Union Agency. As such, focus

is given instead to NCU where many more are employed in this capacity (n=121). Though there are similarities to Support Workers and ENTs, arrangements for these roles can be placed a little further down the continuum meaning that they are partially but not fully unstructured arrangements. This is down to the fact that the situation is more commercial in nature meaning that working time is not subject to any of the HE specific factors and constraints seen in the examples so far in the chapter.

At the at the point of recruitment, management are able to provide employees with a very basic indication of the work that they will receive throughout the year. This is because they have a fairly good idea of the expected pattern of custom. However, anticipation of changes to demand across the different outlets in the HEI means that the convention is for management to put schedule arrangements in place on a weekly basis:

We try to give an outline, but the way we chose to do it is to confirm the schedules week to week so that we cover the changes in amount of expected custom without having to make alterations to existing schedules all the time. So nothing is confirmed until a week before.

(NCU Departmental Manager 1)

It was suggested that hours can be relatively steady during the main part of the semester but many changes do occur as the year progresses in order to accommodate fluctuations in demand. Managers' use of the working time arrangements can therefore be regarded as being more flexible in nature:

There will be [changes] because if you imagine the University is closed for probably a 3 almost 4 week period over Christmas...then the hours will always shrink in semester 2 because we find that naturally students might not be on campus as often, and then that's followed by Easter and an exam period when not everybody is in attendance, so the hours will go down. On top of that, there will definitely be changes to weekly hours depending on business needs.

(NCU Departmental Manager 1)

Figure 5.9 provides a summary of the ways in which working time arrangements are made for non-academic roles where work is undertaken on an ongoing basis throughout the year. The different examples have been organised according to the extent to which they are structured or unstructured.

The first two examples have considerable structure to working time arrangements. Health and Fitness Instructors share many similarities with the academic roles discussed above. This can again be attributed to the fact the product is sold as a set programme of classes. It means that there is a need for sufficiently skilled individuals to be in place in order to ensure quality of service and that management can plan in relation to predictable demand. Study Skills Tutors and Mentors also represent an unusual arrangement because of the degree of schedule control afforded to employees and an insistence upon planning regular work to foster employee-student relationships. It possible to place these practices within a small minority found in existing research where there is advance notice and hours are the same week to week.

In the example of Support Workers in SVU, working time arrangements involve less structure since there is considerably shorter schedule notice. However, since management must also take account of service requirements regarding students with disabilities, arrangements retain a partial structure in the sense that there is regularity to the work. It is only in catering roles that have more of a commercial function within the HEIs that there are closer similarities with the empirical evidence on employer-led flexible scheduling and the use of Zero-Hours Contracts in lower-end sectors, which finds employees often do not know what they will be working week to week and hours are subject to frequent changes.

**Figure 5.9. Summary of scheduling and changes to working time for non-academic roles where work is ongoing throughout the year in South Valley University and North Coast University**

Structured	<b>Health and Fitness Instructors</b> (South Valley University)	Working time scheduled a month prior to the start of the academic year for the duration of the whole academic year or term and is not changed except in the case of programme discontinuation.
↑	<b>Study Skills Tutors &amp; Mentors</b> (South Valley University)	Referral of students with support allowance indicates quantity of work for year and enables loose schedule agreements to be made for the academic year which remain intact, but final confirmation of days and times is on a week to week basis and can involve some changes.
Partially Structured	<b>Support Workers &amp; Electronic Note Takers</b> (South Valley University)	Working time scheduled three days prior to the start of a working week to last the duration of a week. Some changes to hours do occur week to week but there is regularity due to the need for staff-student familiarity and alignment with the academic timetable.
Partially Unstructured	<b>Catering and Hospitality</b> (North Coast University)	Working time scheduled prior to the start of a working week to last the duration of a week but changes are likely to occur week to week.
↓	Unstructured	N/A
		N/A

### 5.3.2 Non-academic roles where work is intermittent throughout the year

The remaining non-academic roles in both institutions involve work that is undertaken on an intermittent basis. This means that work is not required throughout the whole academic year but instead occurs for shorter periods within this timeframe, and in this sense it reflects the use of hourly paid and casual employment documented in the HE sector by JNCHES (2015). In the case study institutions, work undertaken on an intermittent basis applies to the occupational roles documented in the table below. These people are mostly employed on the more informal contracts discussed in the previous chapter, although some can have a formal contractual arrangement as in the case of North Coast University. There are additional non-academic roles that could be included here, but they are not part of the analysis due to a shortage of data gathered.

**Table 5.6. Non-academic ZHCs and roles where work is intermittent throughout the academic year in South Valley University and North Coast University**

South Valley University		North Coast University	
<i>Casual Worker Arrangements</i>	<i>Students Union Agency</i>	<i>Support Contract of Employment</i>	<i>Pink Form Casual Worker Arrangements</i>
Exam Invigilators	S. Ambassadors Sports Assistant Receptionist	IELT's Clerical Markers IELT's Examiner Technician Sports Assistant	Peer Guides Manual

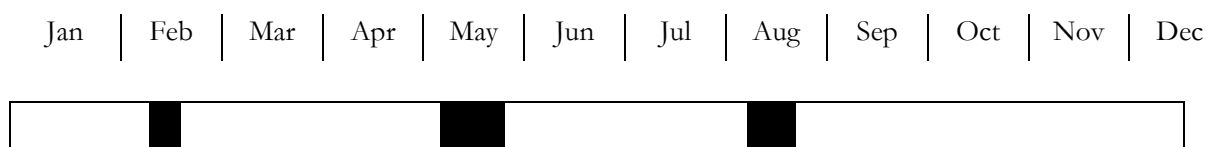
These non-academic roles can be further categorised into two broad types including instances:

- Where the timing of the demand is known.
- Where the timing of the demand is not typically known.

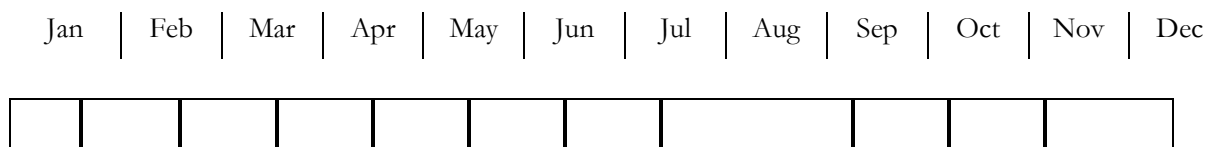
The first instance applies to three of the roles noted in the table above and the working periods for each of these are illustrated by the black marks included in Figure 5.10a to 5.10c below. In SVU, Exam Invigilators work in relation to the main academic programme and the demand for work is focused around three different assessment periods. These include a main 3-week period coinciding with the end of the academic year, as well as a significant week long period in February and a 2-week resit-period in August. A small minority may also work other periods throughout the rest of the year.

**Figure 5.10. Periods where work is undertaken intermittently throughout the academic year and the timing of demand is fixed in South Valley University and North Coast University**

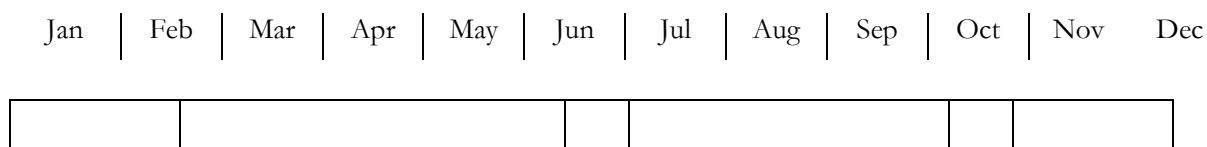
**a) SVU - Exam Invigilators**



**b) NCU - IELTSs Clerical Markers and Examiners**



**c) SVU and NCU – Student Ambassadors and Peer Guides**



In North Coast University, Invigilators and Examiners who contribute to the administration of International English Language Testing (IELTs), work for a service that is separate to the main academic function of the university. Management in the relevant department receive a steady stream of applicants throughout the year and consider that it is logistically preferable to hold the tests on one

weekend each month, with the option of increasing this at busier times such as in June – this is illustrated in 5.9 (b) above.

The final role in which the timing of demand is known in both institutions is for Student Ambassadors and Peer Guides who provide support and assistance during open days as well as for other events aimed at marketing the university and delivering outreach sessions to local schools. Periods for this kind of undertaking consist of individual days during the summer and autumn of each calendar year, although some schools may hold more events during other times. One manager noted:

It's not *ad hoc* really because we know when they are. There's always 4 university open day's year, two in summer and two in the autumn, and the 4 visit days tend to be weighted in the first semester...but the actual dates themselves could change from year to year.

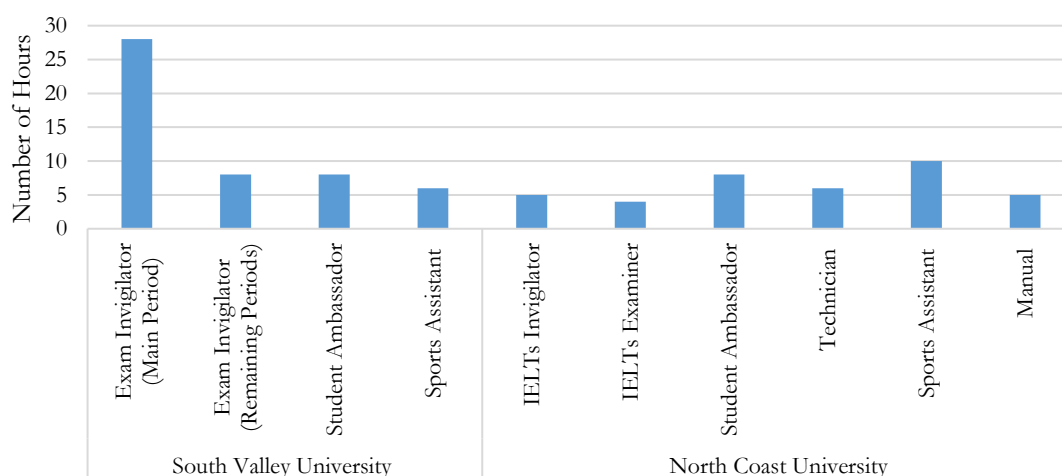
(NCU Departmental Manager 19)

In the second group of examples where the timing of demand is not typically fixed, employees can be employed at any time during the academic year. This means that the possible configuration of working periods is manifold and cannot be accurately mapped as in the examples above. However, the general pattern is that employees work a small number of days every fortnight with the possibility of some longer periods. In the case of Manual roles, working periods consist of individual days that are either one-offs or which re-occur on a much more irregular basis.

In keeping with different dimensions of working time discussed in the chapter thus far, it is possible to give some indication of the average weekly hours that individuals employed in these roles work. This is not as straightforward as the examples previously reported because i) the numerical data are either unavailable or ii) they are not compiled for the specific period of work undertaken. In the figure below the gaps have been filled in using information from the interviews to produce an average for weeks where work does occur.



**Figure 5.11. Average weekly hours for non-academic roles where work is intermittent throughout the academic year in South Valley University and North Coast University**



Source: Data derived from a combination of staff figures and interviews<sup>35</sup>

The largest number of hours belong to Exam Invigilators in SVU who work the main examination period. Since all of the remaining roles do not involve full weeks but instead tend to be for individual days, averages are considerably lower and are also well below those found for ZHCs in the labour market (ONS 2018). However, they do not fall below a minimum of 4 in both of the HEIs.

As has been the format throughout this chapter, the discussion of scheduling and change can be organised according to the extent to which work is structured (in the sense that it involves a fixed plan) or unstructured (in the sense that it is flexible). This is not as straightforward as it is for the previous examples of non-academic work since comparisons are complicated by the different working periods that are involved. Nevertheless, there are obvious markers that enable us to place the arrangements on the continuum. Both of these are intimately related to whether or not the timing of demand is known:

<sup>35</sup> See Appendix I for notes on how averages and range were calculated for each of the non-academic roles.

- How far there is clear pattern in terms of when periods of work will occur during the year.
- How far schedule arrangements are planned in advance of the work taking place.

### **SVU and NCU – Student Ambassadors and Peer Guides**

For Student Ambassadors and Peer Guides, the periods when work will occur are known to management and since they are the same year on year, there is always a degree of structure to the work. Management and course leaders within departments are responsible for engaging students for these duties. In both cases, these students tend to form a trusted group of individuals that represent different courses. A manager noted:

We know who the peer guides are because they're appointed before the start of term and it tends to be the same individuals, so you get a core of trusted students that do quite a lot of these support activities. Once we know who's registered and their backgrounds, we will allocate their support out based on their subject area and skills.

(NCU Departmental Manager 19)

Open days and visit days need to be planned in advance, so that they can be effectively marketed or fitted around the preferences of local schools in each term. Once finalised, highly structured schedule arrangements can be put in place at the start of the academic year for work to be done later in the term.

At the start of the year, we'll have a rota for the events because they've been planned ahead so that they can be advertised. When they [employees] put their names forward we'll hold briefings and meetings with them and we'll try to distribute the duties out among the group at that time. So, they will know quite a way in advance when the days they're working [will be].

(NCU Departmental Manager 2)

In SVU, scheduling is also highly structured but it occurs to a slightly lesser degree because of factors such as the amount of communication and familiarity between management and students. Although management often gauge student interest a matter of months in advance, scheduling is confirmed with 3-4 weeks' notice. As one manager explained:

There's plenty of planning but it will rest on whether we've already got students, who we're in contact with and who are [sic] willing. Usually we'll be agreeing something a month before and then it'll be a matter of confirming with a few weeks to a month before it happens.

(SVU Departmental Manager 8)

In both institutions, there was a consensus among interviewees that students will receive further work and this is largely because the familiarity and trust involved makes the process of covering the work much easier for managers. However, they may not receive the same number of days in future.

### ***NCU - IELTS Invigilators and Examiners***

In the case of IELTS Invigilators and Examiners, working periods are also the same throughout the year meaning that there is always a degree of structure to the work. However, a process must take place in order to allocate hours to employees. A manager explained what is involved:

We book the tests for a whole year in advance, so at the beginning of the September I will set all the tests for the whole of next year. Then the next step is that I have an availability document that has a list of the tests for which people [employees] indicate their availability.

(NCU Departmental Manager 13)

This indication of availability is done for a 6-month period. The department considers that this is enough to provide assurances that the tests can be covered whilst not making unreasonable demands of employees. This information is then used to schedule working time arrangements:

We ask them to provide availability for 6 months so that we make sure we have the staff there, and I feel it's probably not reasonable to do it [ask for availability] for a whole year ahead. Once they have declared themselves to be available, I have a master sheet which will show me who's available for each of the tests and I will begin to decide how many I'm going to need for each session based on the number tests that I want, and the rota is produced from that.

(NCU Departmental Manager 13)

However, scheduling arrangements are not made for the entire 6 months. Instead, they are put in place two weeks prior to each of the monthly examinations taking place. This allows for management to react to unpredictable changes in demand associated with candidate cancellations and non-attendance.

They [employees] will be notified 2 weeks before by email and they reply back to me and confirm. We don't do it for longer because it's become a real game predicting how many candidates will show up for those tests even though we've booked the materials.

(NCU Departmental Manager 13)

This form of scheduling was verified by two employees. One made a comparison between her experience of working in the role and other Zero-Hours positions that she had experienced in more commercial environments. Her stated preference for IELTSs centred on her ability to know when the periods of work take place and what her allocation is in advance (owing to the structure involved):

I preferred doing the IELTS exam invigilation for a few of reasons...I knew when the work was going to be and I knew a week ahead of the exam what time [until] exactly until what time I was working, because the exams are all the same all the time. So, I knew just by the nature of

the work when I was gonna be working on the Saturday, whereas in other [Zero-Hours Contract] jobs in the hotels I'd sometimes have to wait until a day before and even then it [schedules] might change.

(NCU Employee 3 – IELTS Invigilator)

Some changes to working time provisions are possible month to month in order to account for changes in the number of registered candidates and also the required staff-candidate ratio involved.

### ***SVU - Exam Invigilators***

For Exam Invigilators in South Valley University, periods occur at the same time every year meaning there is also some degree of structure. However, they are different to IELTS in NCU since assessment is attached to the core academic programme. Much like academic roles, management stressed the importance of ensuring that human resource is in place in order to ensure that such critical part of the academic service can function without issue. As such, it is necessary that scheduling involves some structure rather than being done at short notice:

It wouldn't be a phone call in the morning to say I need you today, there'd be some advanced planning because we have to make sure that these things [exams] are staffed without risk of any problems. It's a key part of our service and it's no good running courses if you don't make sure the [sic] assessment is managed properly.

(SVU Human Resource Manager 2)

Scheduling in advance is facilitated by the demand that is tied up with the examination timetable but the extent to which these arrangements are put in place prior to work depends when management receives this information. For the main period in May and the substantial resit period in August, this comes through with considerable time to spare. Based on this information, management operate an

availability matching procedure via an online system with hours allocated on a first come first served basis. Work schedules are then be provided approximately three weeks in advance.

The [exam] timetable is issued to students by the middle of March. At that point, then, we can start to think about allocating invigilators. We would ask them for their availability roughly 2 months before the exams and then they're given their timetable around 3 weeks before the exam period.

(SVU Departmental Manager 10)

In all instances, work schedules inform employees of the dates and times that they will be working for the entire exam period. This means that the arrangements are structured both in advance and for the duration of the time that they are required to work. There can, however, be some minor changes to schedules that may occur right up until the day that employees are due to work. As a manager explained:

It will happen and it could be a number of reasons...we could get late notice from the Disability Service about students with individual support plans, so that could mean additional hours. Some students particularly ISPs [individual support plans] might confirm in writing that they are not attending any further exams, so we will amend the duties. Or it might be that invigilators will tell us they're no longer available and if that's someone who's due to scribe we've got to make some shifts around within the pool [rearrangements].

(SVU Departmental Manager 11)

As documented in the handbook reproduced in Box 5.4 below employees are required to continuously check their online schedules in order to make sure that they are aware of any alterations. Since this practice adds an element of flexibility, the arrangements are classified as being partially structured.

**Box 5.4. Information schedule changes for Exam Invigilators in South Valley University**

**Changes can occur to both hours and locations.** Please note that it is your responsibility to check your email for the timetable information. Ensure that you check your timetable regularly as there may be changes to your timetable both before and during the examination period. Please do not assume that your hours will remain the same during the examination period. You should check the signing in sheet at the beginning of each session as changes to your allocation can occur on the day.

Once any working period ends, hours are reduced to zero and the process is reset in anticipation of the next block of examinations. Due to the primacy of timetable needs and the different variables that need to be considered, it is inevitable that hours will not be the same from one period to the next.

**NCU - Technician**

Further along the continuum and therefore more unstructured, are all those examples where the timing of demand is not generally known year to year and working periods are invariably *ad hoc* in nature.

In North Coast University, some students are employed as Technicians who provide technical support for the music department and general lab assistance in the institutions' science-based departments. In the case of the music department, employees are sometimes required to work the main examination period. However, throughout the rest of the year, the need for assistance fluctuates significantly. Instead of being structured well in advance, schedule arrangements can only be finalised as and when this demand is identified. A manager discussed this with some comparison to academic staff in NCU:

The Tutors have a clearer sense of what's needed [but] for the technician most of year it would literally be me emailing him saying "OK next week can you do Thursday afternoon at 3 please because some recording sessions have come up that need overseeing". It's usually a week before because you need to make sure the technician is around and things can run properly.

(NCU Departmental Manager 3)

This quote shows that once the demand is known, there is still a requirement to ensure that appropriate human resource is secured in advance. Since there is at least some planning, the working time arrangements should be classified as partially unstructured rather than involving unrestrained flexibility.

### **SVU and NCU - Sports Assistants and Receptionists & Manual**

The final examples involve working time arrangements that can be partially unstructured or completely unstructured. In both HEIs, Sports Assistants and Receptionists are employed to provide cover for absences among the core workforce. The extent to which working time arrangements can be scheduled prior to the work taking place depends on the level of foresight that managers have with regard to working requirements. As one in SVU explained:

It's all as and when, so we can't arrange things with buckets of notice...but it all depends on how far in advance we know, really. If we're covering for an absence that we're told about, we can tell the students up to week before what they'll be working, but if somebody phones in sick a lot of the time we'll phone them [Sport Assistants and Receptionists] up and say, "somebody's phoned up sick today can you make it tonight?"

(SVU Departmental Manager 9)

A very similar situation occurs for Sports Assistants and Receptionists in NCU. It is estimated that around half of the work undertaken in these roles is for planned cover such as holiday absence and this involves partially unstructured scheduling one or two weeks in advance. However, other work such as the need to provide sickness cover invariably occurs in an *ad hoc* fashion. These contingencies require that work is arranged in an unstructured manner within 12 hours of the work taking place:



I do it two weeks in advance because full-time permanent staff have to put in holiday forms with a 2 weeks minimum [before their absence] otherwise they don't get it...but if someone phones in sick at 5 in the morning I'll then send them [Sport Assistants and Receptionists] a text at 5.30 or 6 and say can you come in for 7 when we open. Or someone might phone in sick this morning for tonight's shift so I'll be phoning a casual saying can you work at 5 till 10.30.

(NCU Departmental Manager 18)

One final group of examples concerns the use of Pink Form Casual Worker Arrangements in NCU. These are used for a range of unskilled manual tasks, usually undertaken by postgraduate students. One manager noted how this work invariably involves very little, if any planning, meaning that the working time arrangements are also completely unstructured and extremely flexible.

We use them for students...sometimes you've got a job lot [sic] of marketing and letters to go out or say I had a lot of confidential waste in an office and we needed somebody to go in there bag it all. In terms of the hours, it could be one off project or activity and it depends on what is needed. It would be unplanned - a last minute thing, maybe a day or two before but mostly on the day.

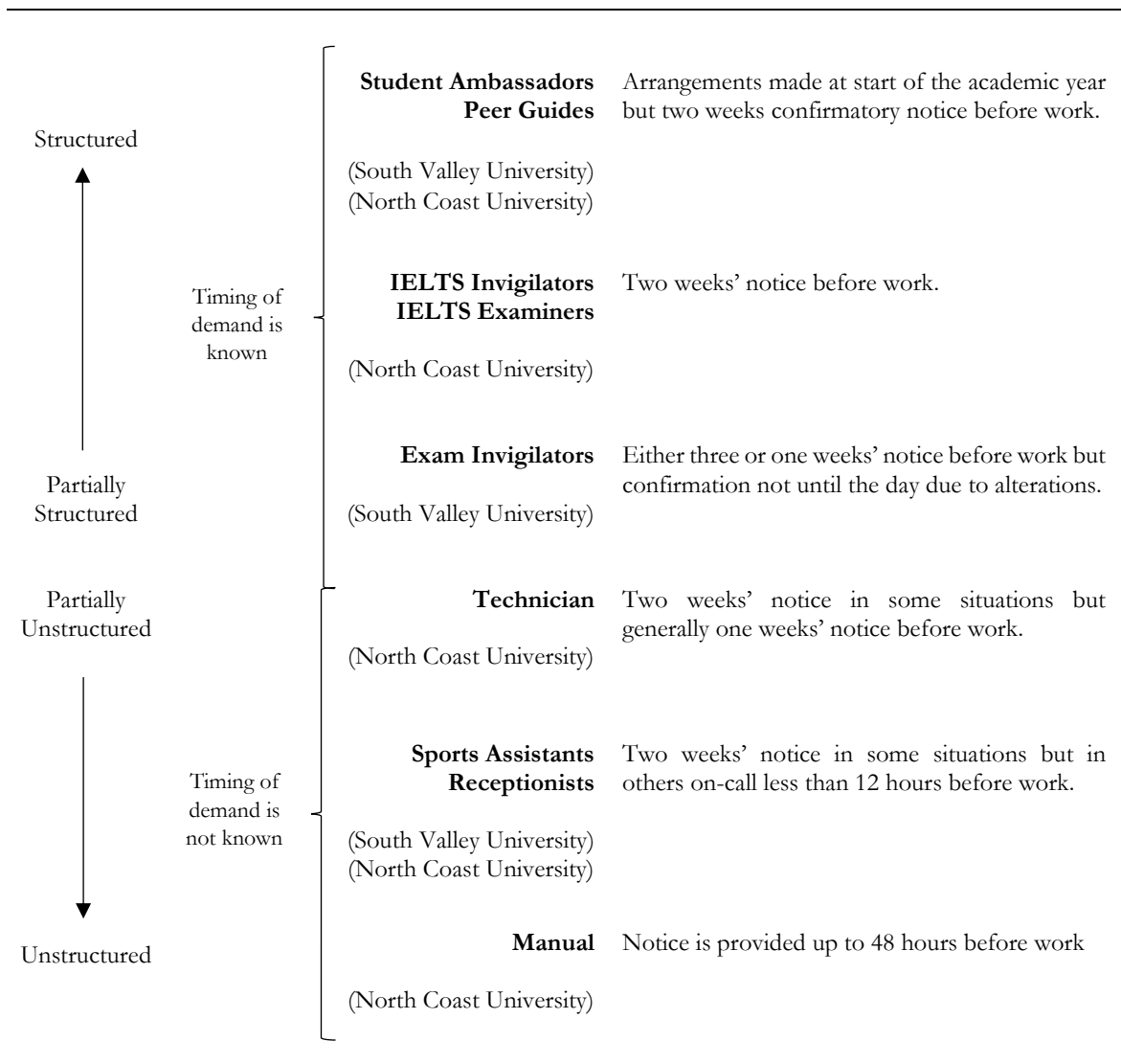
(NCU Departmental Manager 10)

The curious thing about this work that marks it apart from all of the examples seen in the discussion so far, is that there is seldom any clear official agreement that further offers of work will be made beyond the completion of each assignment. This raises some questions as to whether the employment can be regarded as a Zero-Hours Contract. However, they have been included because there is some suggestion of an implied or informal relationship in which no-guarantee becomes a relevant factor.

Figure 5.12 provides a summary of the variety of scheduling arrangements for non-academic roles where work is intermittent throughout the academic year and has been organised according to where they sit on the structured-unstructured continuum. The top entries can all be seen as being structured or partially structured because work always occurs at the same times during the year and schedule arrangements involve a lot of notice. As with other non-academic work, this occurs because management are required to plan ahead in order to ensure that key aspects of the HEIs service can be delivered. They are also able to do so because demand is known in advance, albeit to different extents.

The non-academic roles at the bottom half of the table are regarded as involving unstructured arrangements on account of the fact that the timing of demand is not known and the need for labour input work can occur at any point. In some instances, scheduling can involve an on-call component in which work is allocated to employees with under 12 hours' notice. This is far more in tune with the trend toward extreme flexibility that is found within most of the available research. It is also more closely aligned with the kinds of arrangements for which the term Zero-Hours Contracts initially became a colloquial reference in the late-1990s and as well as many common understandings that continue to pervade public and political discourse (e.g. as is still seen with the TUC and Labour Party).

**Figure 5.12. Summary of schedule notification for non-academic roles where work is intermittent during the academic year in South Valley University and North Coast University**



Before drawing this most substantial of the findings and analysis chapter to a close, some consideration can now be given to the situation regarding cancellation of previously scheduled work for non-academic roles. In South Valley University, there is a greater likelihood of work being cancelled in these instances than for the academic roles discussed earlier. As a result, management in the relevant departments have developed policies and procedures for when the situation arises. Box 5.5 below contains information on cancellation for roles overseen by Student Services. In the case of Study Skills Tutors, work that is

cancelled by students with more than 24 hours' notice can be re-arranged but for Support Workers these hours are lost.

That's the other difference, if they [Study Skills Tutors] weren't able to meet with the student, say, on a pre-arranged Tuesday, the student is still entitled to that session. Alternative arrangements can be made so that they're not losing that income, whereas for the timetable sessions [for Support Workers] if the student cancels and the Support Worker isn't needed they lose that hour.

(SVU Departmental Manager 7)

However, where work that has been scheduled is cancelled within 24 hours, full payment is made in both roles. This is an increase on a previous threshold of 2 days, which one employee appreciated:

If they cancel within 24 hours we can put it down as a cancelled session and get paid for it, which is good because before I started I think it used to be 2 days, which would really be a pain.

(SVU Employee 1 – Study Skills Tutor)

**Box 5.5. Information on cancellation of scheduled work in Student Services in South Valley University**

**You can claim for a session if a student cancels with less than 24 hours notice prior to the start of the session. For any sessions cancelled within this time you should claim for the full duration of the class**

**When the University is closed with less than 24 hours notice, all staff for who are timetabled to work, other than those who would have been absent (through previous cancellations, sickness or maternity leave, for example) will be paid their timetabled hours for that day. Over 24 hours notice, staff will not be able to claim.**

The remainder of non-academic roles that are employed in-house such as Exam Invigilators have a formal policy as is documented in Box 5.6 below. In each of the scenarios stated, workers are permitted to claim compensation of two hours if a session is cancelled within 2 hours of it taking place.

<b>Box 5.6. Information on cancellation of scheduled work for Exam Invigilators in South Valley University</b>	
<b>Cancellations</b>	Invigilation duties can change due to students no longer requiring support and examinations no longer being required. If you are given less than 2 hour's notice of a session being cancelled, you can put a claim on your timesheet for a total of 2 hours. If you are given more than 2 hour's notice this <b>cannot</b> be claimed for.
<b>No show candidates</b>	Where your scheduled session involves a "no show" of candidates, you are permitted to claim for 1 hour wrap around time plus the <b>first hour of the duty only</b> . You must stay at the venue for 1 hour after the start of the examination, and then return to the Assessment and Awards Office.

It was established earlier in the chapter that North Coast University does not have institutional level policy for cancellation despite its intention to produce one. It is therefore left to management to determine what happens and this ultimately results in variations in practice across non-academic roles. Interviews with management did not provide any evidence of clear local policies and procedures such as in SVU. In some instances, such as for Technicians, employees receive payment if work is cancelled at short notice.

I can't imagine a situation where...an exam was cancelled and or I no longer needed the technician, but we'd still be paying them for that unless there was a couple of weeks' notice that it was going to be cancelled. That would be a different kettle of fish entirely, but if it's short notice he'd get paid.

(NCU Departmental Manager 3)

Management with oversight for Catering and Hospitality outlets also found it difficult to think of a time when work might be cancelled, apart from total closure of the university due to inclement weather. In these situations, it was suggested that different management have different approaches:

I should imagine that they [management in the outlets] would vary in that respect...some might pay if we shut of the day but others might come to some other sort of arrangement.

(NCU Departmental Manager 1)

Other roles do not receive the same compensation. It is possible that IELTS Invigilators and Examiners could arrive at the premises to find that no work needs to be undertaken due to candidates not turning up. In these cases, a decision is made by management not to provide compensatory payment because expected and unexpected working time provisions are thought to balance out over the longer term:

That has been questioned by some of them actual [employees]...if they show up to do their work and people don't show up to the test do we pay them for that work? And I'm afraid I don't because the way I regard it is it's 'swings and roundabouts'. Sometimes employees may turn up and there's more [students] than expected [so more work] and I think that happened much more often than when they show up and there's no candidates.

(NCU Departmental Manager 13)

In the final example where work is undertaken on informal Pink Form Casual Arrangements (mostly by students) there also appears to be an inability to see cancellation as anything other than hypothetical. However, there seems to be an agreement that there would be no compensation if it did occur:

If they don't come in and physically do anything they don't get paid.

(NCU Departmental Manager 20)

Table 5.7 summarises the mixed findings from the case studies HEIs on this dimension of working time. In South Valley University it is fairly common for cancellations to occur at short notice much like tends to be the case in the literature. However, unlike the situation elsewhere, some areas of the institution have implemented policies to ensure that compensatory payments are provided in order to minimise the impact on employees. In North Coast University it is less common for work to be cancelled at the last minute. However, this can still occur, and in these situations a reliance on local custom ultimately results in range of inconsistent practices which either do or do not involve payment of compensation for cancellation. This means that there remains some potential for problems to arise for employees such as those that have been reported in other research and within the ongoing debate.

**Table 5.7. Notice and compensation in the event of a cancellation of work for non-academic roles in South Valley University and North Coast University**

	South Valley University	North Coast University
<b>Notice</b>	Dependent on reason Usually within 24 hours	Dependent on reason Usually within 24 hours
<b>Policy</b>	Localised policy	Reliance on local custom
<b>Compensation</b>	Payment under 24 hours Payment under 2 hours	Payment under 24 hours Re-arrangement No compensation

## 5.4 Summary

This chapter began to address the third objective of the thesis which is to understand the variety of ways that Zero-Hours Contracts are used in relation to three different aspects of the employment relationship. It has presented findings and analysis for the first and arguably the most important of these – namely, working time. Given that this is a multifaceted issue, it was necessary to look at how

working time is managed in connection to the following three dimensions for academic and non-academic roles:

1. Periods of work within the calendar year and the quantity of hours in the working week.
2. Scheduling of work provided and any changes to the pattern of work over time.
3. Notification and compensation provided when work is cancelled.

Critically, the findings in this chapter underline the main contention of the thesis that the term Zero-Hours Contracts does not constitute a single or unitary category of employment but is instead a highly variegated phenomenon which encompasses a whole range of practices through which management across the institutions aim to achieve greater levels of either numerical and temporal flexibility.

The use of contracts for academic and non-academic roles involves working periods that occur only within the confines of the academic year since this is the timeframe in which demand for such services in the HEIs are at their highest. Some work is ongoing throughout this time, while in other instances it is more intermittent and sometimes involves as little as one day of work over the course of the year. The most intriguing among the dimensions explored is schedule notification and changes to patterns of work over time. To organise the discussion, an existing continuum from the early literature was adapted and is based on the extent to which working time arrangements are:

**Structured:** Meaning that working time arrangements involve a fixed plan.

**Unstructured:** Meaning that working time arrangements involve flexibility.

The use contracts for academic roles is overwhelmingly controlled by the employer and gives HEIs the means to manage labour input as cost effectively as possible. There are three main ways in which scheduling occurs for academic roles and their key characteristic is the extent to which the arrangements are structured or fixed according to a plan for a substantial period of time. This can be explained by the nature of the product being provided which means that i) there is a need to ensure that human



resource with the requisite skills is put in place in advance and ii) that management have the ability to plan work schedules in relation to demand that is generally stable. There are some parallels in research from HE which suggests that the practices may represent a set of archetypes within the sector. However, the findings contrast sharply with evidence from the wider labour market which shows that Zero-Hours Contracts tend toward high or extreme flexibility involving little notice and significant changes to hours week to week.

There is a greater variety of practices for this dimension of working time in relation to non-academic roles. It was shown that these can be mapped across the breadth of the entire continuum. Much like academics on Zero-Hours Contracts in both HEIs, use is largely led by management but many non-academic roles involve arrangements that are structured or partially structured. The reasons for this are also tied to the HE context in which the contracts are used and the need to maintain service standards. Some management provide employees with a degree of control over scheduling and encourage forward planning, while others insist on regularity of work to foster employee-student relationships. Other managers across the HEIs plan ahead so that key aspects of the university's services can be delivered without issue and this is also enabled by the fact that they are able to anticipate demand. Just as with academic roles, there are clear contrasts with the general tendency toward extreme flexibility in ZHCs.

In the remaining instances of non-academic work in both HEIs, working time arrangements can be regarded as either partially unstructured or unstructured since work is provided at shorter notice with no regular pattern of weekly hours. The reason for this lies in the fact that demand and the need for labour input cannot be predicted as far in advance. These practices apply to lower-paid roles and are more in tune with the available evidence on extreme flexibility in the literature. They are also more closely aligned with arrangements for which the term Zero-Hours Contract became a colloquial reference in the 1990s and reflect many of the prevailing assumptions in public and political discourse.

Having explored the variegated nature of working time in the HEIs, the thesis can now address the third objective of the research in relation to the second major aspect of the employment relationship.

# 6 Employee Obligation

## 6.1 Introduction

This chapter continues to address the third objective of the thesis which is to understand the variety of ways that arrangements identified as Zero-Hours Contracts operate in relation to different aspects of the employment relationship. The previous chapter explored how an absence of any obligation for the employer to provide work (or no-guarantee) is used as a mechanism to manage working time. This chapter now turns its focus to the obligations that are placed on employees to accept offers of work.

It was explained in the early chapters of the thesis that initial conceptions of Zero-Hours Contracts in the 1990s were very narrow. It was thought that an obligation on employees to accept work was a defining feature and it is this which helped secure the status of ZHCs as an extreme form of employment. This remains the accepted view throughout the international community, including countries such as Ireland and New Zealand. However, in the UK more recent convergence around the broader definition means that the label actually applies to far more arrangements. The topic of employee obligation is a point of interest in the enduring debate and relates to the issue of whether there is an equal balance of power in the employment relationship or whether employers use the arrangements in one-sided way, reaping all of the benefits of flexibility at the expense of employees.

As has been maintained throughout the thesis, existing evidence is very general. It does not provide us with an understanding of the variety of practices with regards to employee obligations in specific sectors of the labour market. However, we do have cause to believe that employee obligations to accept work may be more common in lower level sectors. In Higher Education we do have some basic insights but there is no systematic research that maps out the variety of practices for academic and non-academic roles. In order to address this gap in the knowledge, the following research question is posed:

➤ *How does employee obligation to accept offers of work operate for academic and non-academic roles in HEIs?*

In keeping with the format of the previous chapter, the question will be addressed for academic roles first and, secondly, for non-academic positions in the case study HEIs. Literature on Zero-Hours Contracts and more established legal scholarship in the area has shown that there are two areas of importance when considering employee obligation - that is, what the formal contract says and what happens in practice.

In the discussion that follows, the presentation of findings begins with examples where there is no obligation and then develops to discuss those instances where some obligation does in fact exist. Ultimately, the chapter argues that when looking at the level of practice there is indeed a variety of ways that employee obligation is applied in the HEIs and these can be mapped onto the following continuum:

**No obligation** ←————— **Conditional obligation** —————→ **Total obligation**

The evidence suggests that for academic roles there is no-obligation to accept work, while non-academic roles involve a greater variety of practices covering both no-obligation and some conditional obligation. Within each of these, there is a significant area of interest that revolves around the nature of employment (specifically the lack of no-guaranteed hours) and how some employees actually feel about being obliged to accept offers of work. Given the overall distribution of practices in the continuum, the chapter ultimately concludes by suggesting that the situation in both of the HEIs contrasts with the most extreme examples of one-sided flexibility that underpin many of the prevailing assumptions in public and political discourse.

## 6.2 Academic

The analysis begins by looking at employee obligations to accept offers of work in academic roles. As has been noted above, in order to provide a complete understanding of how these obligation apply in the HEIs we must first consider what is stated in the formal contracts of employment.

### 6.2.1 Contract

The relevant contractual clause for South Valley University can be found in the formal documents for Hourly Paid Contracts of Employment and this is displayed in Box 6.1 below. The clause contains no information relating to the initial acceptance of work prior to the start of each academic year. Instead, the contract focuses on providing information for what happens during individual engagements. Here, it clearly specifies that the employee is not obliged to accept additional work that is offered to them.

**Box 6.1. Hourly Paid Contracts of Employment and employee obligation in South Valley University**

6.7 There is no mutuality of obligation upon either you to accept additional work offered by the University, nor for the University to offer work to you.

In all of the formal contracts issued for academic roles in North Coast University, there is no relevant clause relating to whether or not there is an obligation for employees to accept work. However, the HR team at the institution insisted that there is no contractual obligation and that the absence of information on the matter is due to the fact that the contracts are modelled on those issued to standard or permanent members of staff. It was further established that management across the institution explain the rules governing acceptance or non-acceptance of work during the process of recruitment.

In NCU, some in academic roles such as visiting lectures and PhD Demonstrators are employed on Pink Form Casual Worker Arrangements. As with more formal contracts in the HEI, there is no information on the issue of employee obligation within the available documentation. However, HR and Departmental Management were clear that there is no obligation, particularly given the informality of the arrangements:

The pinks are the same [as formal contracts], there is no obligation. If anything, there would be even less because it's just a form. There is no proper contract that we've issued which means [that] they're a proper employee on our books and which gives them all the other benefits etc.

(NCU Human Resource Personnel 1)

## **6.2.2 Practice**

Beyond the contractual level, interviews with management and employees enabled enquiries to focus on how obligation to accept work operates in practice. There is no evidence of obligation existing at this level when it is not present in the formal contract. Indeed, for all academic roles there appeared to be no obligation to accept work meaning that the practices all sit at one end of the continuum outlined earlier in the chapter. This is now explored in some detail.

### **No obligation**

The different ways that work is arranged has to be the necessary starting point for the analysis given that it is upon this basis that any offers of work are made and, thus, where the issue of obligation comes into play. It was seen Chapter 5 that academic work involves structured forms of scheduling that are put in place in the months prior to the academic year. There is nothing in SVU's contracts that deals with obligation in relation to these initial offers of work, a fact which is likely to be due to an assumption that the employment relationship is only really activated with engagements (i.e. when work is actually carried out). Nevertheless, an underpinning contract still exists during these times so inquiries were made as to whether an obligation is in place.

Well no, there's not [any obligation to accept work]. It's the same way as in any other role, you can be offered work but it doesn't mean you have to accept it. We've got an awful lot on the system which are probably wrapped up in your 300 odd number where people have been offered and just haven't accepted an engagement for this academic year [2015-2016].

(SVU Human Resources Manager 4)

This was confirmed by other managers within the academic faculties and schools. If work is not accepted for the year, employees' names will remain on the system and unless they are removed and the contract terminated, these individuals may be contacted to see if they would like work in future academic years.

In NCU, the contractual situation is slightly different in the sense that only a minority are permanent employees. In these instances, management spoke of an expectation that employees accept some work because they are given this contractual status on the basis that they will make a longer-term commitment to the HEI. This does not extend to an obligation to accept work and it was recognised that sometimes personal reasons will result in employees declining offers made to them each year.

If they are permanent I would certainly say that there would be an expectation that they would [accept work] because they would have in the past and that's the reason they're got that contract. It wouldn't be an obligation though, they don't have to [accept work] and, now and then, they will turn it down for different personal or career reasons. There's not much we can do other than cover the work and see whether they wish to remain on the system to be consulted in future.

(NCU Departmental Manager 17)

In both of the case study institutions, a more significant area of interest with regard to employee obligation is what happens when work is offered to academic employees during the course of the academic year. This is because the employment is still alive during these times whereas in the situation discussed above, non-acceptance of work is often a sign that employees are no longer interested in working for the institution. To remind the reader of what was discussed in the previous chapter, there are two ways in which work may be offered during this time. These are as follows:

- Semester to semester.
- Additional offers of work.

Offers of work provided on a semester to semester basis were shown in the previous chapter to be a mode of scheduling that is present in both institutions, but it is particularly common in North Coast University. Although there is some difference in expectation between those who are employed for one semester and those who are recruited with a view to continuing into the next semester, management in both institutions stated that there is no obligation on employees to accept work. One such participant in NCU explained:

If we only need them to work one semester but happen to offer them more, then there's no expectation. But in other times [sic] where they were employed to carry on [in the next semester], then there would be an expectation for them to take the work, yes.

Would they be obliged to accept it though? (Kyle Henry)

None of them would be compelled to, if that's what you mean. It might leave us disappointed and maybe slightly annoyed, but we'd never demand that they have to do the work we give them.

(NCU Departmental Manager 10)

Management in both of the case study HEIs also emphasised that there is no obligation to accept additional offers of work during the academic year. The recurring reason given for this was that employees are only really engaged for their specialist contribution as per the original agreements, not as a stop-gap for other contingencies. The following quote typifies the response that management gave in South Valley University:

No, because that's not the purpose of them being there. They're taken on for their skill or professional input and that's the key thing really. If additional work did come up it would be a conversation where we'd say, "we've got sickness in this subject area is there any possibility of you being able to cover it?" but there's no obligation for them to do it.

(SVU Departmental Manager 2)

We see this sentiment repeated by management who were interviewed in NCU. However, in the following quotes management show a greater deal of appreciation for the specialist work that employees have been originally enlisted to undertake, as well as an understanding that employees have other responsibilities.

In terms of not accepting additional work, it's always helpful, but it wouldn't be an issue [if declined]. The original arrangements are the main thing for us. We're happy that the work is covered so as long it's honoured and carried out. Sometimes we might say to them "would you like to do this Saturday school for an extra bit of cash?" and they often say no, and that's OK.

(NCU Departmental Manager 7)

We're fully aware that she's a part-time teacher elsewhere and she does work at the University because she wants to. She's a very good teacher for us and we're grateful for her contribution...we know that she may be available to do some extra hours, but we're also aware



of the fact that her life doesn't revolve around university, so if she says no to additional stuff that we asked her to do already then that would certainly be her right to turn [it] down.

(NCU Departmental Manager 15)

The ubiquity of this approach in both cases points to a widespread view that the specialist input of employees through their main contribution to teaching is valued in and of itself and that this should not be jeopardised by exerting undue pressure on them to accept additional work.

In both institutions, there are further instrumental factors which make for no obligation to accept additional work. As seen in the previous chapter, there are agreements in SVU and NCU that limit the amount of hours that all academic employees can work. These have been reached either with trade unions or developed by Human Resources to ensure that students are focusing sufficiently on their studies. These provide some structural influence that curbs the expectation that managers might have of employees vis-à-vis the acceptance of work offered. The following quote from NCU is instructive:

There's a University requirement about the maximum number of hours you can work while doing a full time PhD which I think is 8 hours, and that's because they don't want people over-working [employment] their way through their studies. So you have to take that into account when you're offering work out. You can't put the same demands to work on students as they [management] might in different kinds of organisations and other parts of the labour market.

(NCU Departmental Manager 14)

In the literature and ensuing debate, much is made of how obligations on employees manifest themselves – or in other words, how management react in the event that offers of work are declined. It has been seen earlier in the thesis that this can take the form of consequences or punishment, the most notable of which is the tendency among employers to reduce or to “zero-down” offers of work. All managers in the case study HEIs maintained that declining any offer of work does not impact on

future provisions from one academic year or semester to the next. There is instead a desire to build relationships with employees who are essential to the provision of a quality service rather than treating them as a disposable commodity or resource. This reflects insights from JNCHES' (2015) case study research on non-standard and flexible employment in which managers across institutions were making efforts to ensure academics are not treated as casual staff to be taken up and let go without obligation:

I think once people have started to work with us then we try and support them in the future, they're valued members of staff that we build relationships with, so it's not like wham bam thank you mam, we'd simply look to carry on working with people. If they're needed they're needed, that's what directs the decision...our big threat to HPLs would be if research funding dried up or if full time members of staff stopped being sick.

(SVU Departmental Manager 8)

This thinking was reflected in North Coast University where there was also an additional emphasis on retaining employees whose skills may be demanded by other HEIs in the competitive product market.

No I don't think so, I mean...they [Tutors] come in every year to deliver that module, so we would want that person with the expertise in that area to continue if they can. We'd be more interested in developing and sustaining our workforce than chopping and changing because they couldn't do extra work. It wouldn't make much sense in this context [HE sector] where we rely on our employees and there is a demand for their skills from other rival institutions.

(NCU Departmental Manager 10)

The interviews with management and employees did not provide any evidence of any other form of negative consequences or punishment that might be meted out to employees if they decided to decline offers of work. One of particular note is whether management might cancel any work that has already

been allocated. This was strongly rejected on the basis that it would actually harm the interests of the institution in the sense that it would undermine the quality of the service and the student experience:

We'd never think about messing about with the engagements they've already agreed....if we did, we'd be harming ourselves as well as the HPL [Hourly Paid Lecturer]. We'd end up with big gaps in delivery that are not easily filled because of the skills needed and it would ultimately impact [on the] service and the student experience.

(SVU Departmental Manager 4)

No, any work that been agreed would stay in place unless there was a serious violation [of conduct]. If we decided to alter that it would be like cutting our nose to spite our face because it's the students who would suffer, and then [North Coast University] as a result.

(NCU Departmental Manager 10)

This is reminiscent of the care that needs to be taken when using of flexible employment as discussed in the previous chapter of the thesis. It provides something of a counterbalance in the employment relationship which affords employees some protection within their structured schedule arrangements.

Table 6.1 provides a summary of the key reasons identified in interviews with management for there being no obligation to accept work in academic roles within the case study institutions. The fact that obligation to accept work is not present suggests that UCUs recent assessment that the new use of Zero-Hours Contract enshrines an imbalance of power in the HE sector is not completely accurate.

**Table 6.1. Academic roles in South Valley University and North Coast University where there is no obligation to accept work and the reasons involved**

SVU	NCU	Key Reasons
Lecturers	Lecturers	Not expected as part of the purpose of appointment
Tutors	Tutors	Limits on number of weekly hours that can be worked
Demonstrators	Language Tutors Demonstrators	Skill value of employees and the need to build ongoing relationships

While the practices for the academic roles sit at one end of the continuum there are, however, some issues which deserve attention. While declining offers of work might not effect employees' offers of work in future, there was some evidence that those who generally accepted more work would under some circumstances be more likely to be asked to work again when the need arises in future.

You kind of have a sense where people's teaching preferences lie, you'll try to divide it up that way. Obviously some [employees] tend to want more or are more available to take work than others...so yes, by virtue of that they'd probably be the first people you'd go to, especially if you're really stuck and need it [the demand or gap in the workforce] covered as quickly and as effectively as possible.

(SVU Departmental Manager 8)

Managers of Lecturers and Tutors in NCU felt the same, provided that a candidate for the work had the skills needed for the particular role. As the following quote shows, the situation applies to Demonstrators.

Yeah, I suppose, if they're at things already [in employment and showing willing], then chances are that they're gonna be at the right place at the right time when someone says you "do you want to work this and that?" I mean, I've certainly seen that happen before.

(NCU Departmental Manager 6)

These practices mean that those who decline work are, in some cases, less likely to receive additional offers of work. In this sense, it reflects some of the basic insights from research undertaken into the use of Zero-Hours Contracts in devolved public services, including the HE sector. When construed in this manner, it is possible to draw parallels with the well-known phenomenon of "zeroing-down" hours. However, can this really be considered as an obligation? There is certainly an element of expediency here which might have the effect of depriving some employees of opportunities to work, but there is no evidence of it constituting an intention to discipline or to punish individual employees.

On a different though related note, some interesting points arose in interviews with employees. None of these interviewees suggested that there is any obligation for them to accept any offers of work. However, there appeared to be disconnect between what management said about the freedom to take or leave offers of work without consequence and the ways that employees actually felt about doing so. Thus, the findings suggest a similar phenomenon to that found in the literature in which obligation can exist at the level of perception. It stems from the absence of any formal guarantee and control over hours of work which means that some employees see management as arbitrarily holding their working future in their hands. This creates a feeling of vulnerability and belief that they should accept work:

There's nothing to really say for sure what would happen, but the fact that you don't have a proper ongoing contract means that you're relying on your managers to give you work when it comes up or to renew it next [academic] year. It's best that you accept as much of that work as you can and get in their good books because it could be given to someone else.

(SVU Employee 2 - Lecturer).

It's not obvious that there is an obligation or if there will be an effect on your hours if don't accept it [additional work], but you do feel like you should take it when it comes your way. At the end of the day, there is nothing guaranteed and they control your workload so it's better if they see you favourably or it [work] might end up being given to other people who want it.

(NCU Employee 4 - Tutor)

The individual circumstances of employees also seem to play a role in disposing some to take this view. This is particularly the case for those in economic need and with career aspirations within the academy:

I guess it would depend on the person. I think you're more likely to feel this way if you have more of a financial need or some sort of career aspiration, whereas others I know just do their bit and they're not fussed. I suppose it [work] doesn't occupy the same space within their lives.

(SVU Employee 3 - Lecturer)

In the case studies, we therefore find a similar phenomenon to the literature on Zero-Hours Contracts as well as that reported in HE by Lopes and Dewan (2015) (also see Swain 2013 and Grove 2014), in which academic employees without guaranteed hours were acting in ways to appease management in order to ensure that further work is forthcoming. In the HEIs, it can therefore be said that the conditions of employment result in more subtle though no-less compelling forms of obligation. This means that there are limits on the extent to which flexibility can really be said to be working both ways.

## 6.3 Non-Academic

The analysis can now move to consider employee obligation to accept offers of work in non-academic roles within the case study institution. As above, the discussion will start by looking at what the relevant formal contracts say about employee obligation in both HEIs before exploring the situation in practice.

### 6.3.1 Contract

The main contracts issued to non-academic employees in SVU are Casual Contracts of Employment and included in Box 6.2, are the clauses for his aspect of the employment relationship. This is almost identical to the information contained in academic contracts seen earlier within the chapter. There is also no information on the initial acceptance of work but a clear statement that there is no obligation on employees to accept additional work (in some roles this information is not provided either).

#### **Box 6.2. Casual Contracts of Employment and employee obligation in South Valley University**

3.4 There is no mutuality of obligation upon either you to accept additional work offered by the University, nor for the University to offer work to you.

In Chapter 4, it was seen that the equivalent formal contract in NCU is Support Contracts of Employment. Just as is the case with academic contracts in the institution, there is no relevant clause relating to whether or not there is an obligation for employees to accept work. However, HR also insisted that there is no contractual obligation and again explained the absence of any information on the matter by citing the fact that they are modelled on standard or permanent contracts. It was also reiterated that managers will explain the situation as regarding the obligations to accept work during the process of recruitment.

In SVU, there are two relatively informal contractual arrangements used for non-academic roles. The box below includes the relevant clause for the first of these which is Casual Worker Arrangements. The

text provides the most clarity of all the contracts seen in the chapter by specifying that there is no requirement on the part of the employee to accept any hours of work offered by the university.

**Box 6.3. Casual Worker Arrangements and employee obligation in South Valley University**

Further to your recent offer of appointment as an Exam Invigilator, I am writing to confirm that your name has been added to Exam Invigilators casual register.

In agreeing to join the exam invigilator pool no guarantee of hours is given nor is there a requirement for you to accept the hours offered by the University.

The second of the less formal contracts in SVU are those issued to students via the Student Union Agency. These also include a clear statement that students are not obliged to accept assignments offered by the Union on behalf of the different service areas within the institution (see Box 6.4). This is underlined with a statement that there is no mutuality of obligation between the parties to the employment relationship.

**Box 6.4. Students Union Agency and employee obligation in South Valley University**

3.3 You shall not be obliged to accept an Assignment offered by the Union and you acknowledge that there will at no time be any mutuality of obligation between the parties.

It was established in Chapter 4 that the equivalent contractual arrangements in NCU are Pink Form Casual Worker Arrangements. As with other contracts within the institution, no information on obligation to accept work is offered in the documentation. However, HR and management were adamant that there is no obligation and cited the absence of a formal underlying contract and, often, an ongoing relationship.

Yeah there's a slightly different feel again to pink slips [when compared to other contracts], I suppose you could look at the pink slips as almost being petit cash isn't it [sic], how many hours did you do yeah OK thank you.



(NCU Departmental Manager 10)

Oh it's a different matter again [to other contracts in use] I mean there's purely verbal contract at the beginning of it and then they bill us after they've done it. It's always ongoing, so there is no contract that stays in place and therefore there can't be an obligation, can there?

(NCU Departmental Manager 3)

This also means that there is little need to inform workers of their expected conduct when it comes to offers of work in future, hence the absence of any information on obligation in the documents issued.

### **6.3.2 Practice**

Having considered the contractual level, we can now look at how obligation to accept offers of work operates in practice through interviews with management and employees. Unlike academic roles within the institutions, the evidence suggests that there is greater variegation for non-academic roles, with practices therefore occupying more points along the continuum outlined at the start of the chapter.

These include:

- No obligation.
- Conditional obligation.

The following discussion covers examples that belong to these two categories in turn.

#### **No obligation**

The employment relationship for the majority of non-academic roles in SVU and in NCU involves no obligation to accept offers of work. Indeed, much like academic roles, this is the default position within

the HEIs. The first example in which there appears to be an absence of obligation to accept work is for Study Skills Tutors and Mentors in South Valley University. This work is ongoing throughout the academic year and, as seen in the previous chapter, the process of arranging working time begins with referrals of students who each carry hours based support allowance for the academic year. This constitutes the offer of work from which employees then make schedule arrangements. Interviews with managers and employees suggested that there is no obligation to accept student referrals either at the start of the academic year or after the term has begun. Indeed, rather than having to permissively accept offers, management maintained that employees can assert personal preferences during this process and can alter the number of referrals that they accept year to year.

The [Study Skills] Tutors and the Mentors are consulted in the process. They're asked how many student referrals they can take on and sometimes that will change, they might like more or less and that's OK, as long as we know we can manage around that.

(SVU Departmental Manager 7)

A Study Skills Tutor who was interviewed provided corroborative evidence:

Yeah, so when I started I just thought well I'll take as many as I can and it got to a point that I was getting 4 or 5 referrals in one day and I thought to myself my schedule is like 10 till 5 now 10-6, I can't physically fit anybody else...so [at the start of the academic year] I said "do you mind if I don't have any more?" and they said "yeah that's fine, how many do you want?". You can do that anytime, so that's good. Different tutors have a number in their head that they want, say if they've got kid or whatever or they're doing PhDs, so they're able to fit it around that.

(SVU Employee 1 - Study Skills Tutor)

When asked about what happens in the event that work is declined, Tutors suggested that they had no experience of any negative consequences or punishment such as a possible reduction in referrals and thus working hours.

When you replied in that manner [declining student referrals], do you think that had any implications in terms of their willingness to refer you more students? (Kyle Henry)

Not really, because when some of them finished or some of them came back in September, I just sent them another letter and said, "I can take 30 this year" and then they sent me them. So I don't think so, I've never heard of that happening.

(SVU Employee 1 Study Skills Tutor)

Departmental management identified a few key reasons why employees are under no obligation and, as such, that no negative consequence or punishment is enforced. The following comment points to a recognition of the professional status of Study Skills Tutors and the fact that SVU is highly dependent on their contribution. Rather than there being a relational imbalance in which employees must yield to the working time demands of management, this necessitates that they appease employees in order to ensure that they do not lose their skills to another provider with whom the HEI is in direct competition. Relatedly, management are also keen to ensure that employees are not accepting work if it is inconvenient for them because this might jeopardise the standard and quality of the student support.

These are skilled professionals and they're a vital part of the service. It's not like anybody can just walk in off the street and do the work, so we have to be mindful of what their preferences are or we could lose them potentially to another provider. We also need to be sure that they're not taking on too many students if it's inconvenient for them [to do so] because that could affect the standard of the support they can give, which is critical from a service point view.

(SVU Departmental Manager 7)

The second example where there is no obligation to accept work are those roles in which students work intermittently via the SU Agency in SVU and on Pink Form Casual Worker Arrangements in NCU. We begin here with Student Ambassadors and Peer Guides who enjoy working time arrangements that are scheduled (or structured) in advance at the start of the year. Management in each of the HEIs were confident that there is no obligation to accept work on this basis. One manager in SVU explained:

The Student Ambassadors put their names forward and they might work one set of open-days but perhaps not the next. That's fine, it's up to them. They're volunteers at the end of the day.

(SVU Departmental Manager 4)

The same sentiment was found among managers overseeing the use of Peer Guides in NCU. In the following exchange it can be seen that there might be an expectation to accept work but this does not extend to an obligation or, indeed, any consequence for not undertaking work when provided.

Peer guides also apply and are selected in the end of their first year and then there is an expectation that they will support various activities throughout the year...[or]... at least 2 open days or visit days. But we do have some peer guides that do the 'welcome week' and then you never really see them for the rest of the year.

(NCU Departmental Manager 19)

Given you've got that expectation there and they've said they will work, if they don't accept that work when it was offered, what would happen then?

(Kyle Henry)

Nothing, if we ask for volunteers for an open day then they're volunteers and they get paid, if they turn up. If they don't volunteer we don't do anything, there's no sanctions, nothing.

(NCU Departmental Manager 19)

In SVU, Casual Sports Assistants also belong to this group, although they tend to experience working time that is arranged in more unstructured fashion with significant flexibility. The following quote shows that there is no obligation to accept work at short notice and that it is common for students employed in these roles to decline the offers that are made:

It's quite normal to have a bank of casuals [because] if you're short staffed you need to phone somebody up and say, "can you work?". Now we might have 6 people, but actually as and when we need them we've only got work for 1 or 2. So it's a case of if they're available great. If not, we'll go up and down the list to see who can do it. There's never any question of why they can't work.

(SVU Departmental Manager 9)

The absence of obligation in these examples appears to be rooted within a particular ethos surrounding the use of student labour throughout the HEIs. This involves a commitment to provide students with opportunities to gain experience alongside their studies as well as a view that paid employment should be seen as secondary to the demands of academic life. An individual from the SU Agency in SVU reflected:

The way the University sees it is they're contributing to the student experience in terms of employability. They know they're students and that they have other priorities.

(SVU Student Union Agency 1)

This was confirmed to be the case by management within in the institution. In NCU, management overseeing the use of Peer Guides also suggested that a similar ethos is very much alive within the institution and that it is instrumental in the relaxed attitude to employees declining work. As one participant intimated:

It boils down to the fact that they're students, they're not here to work [employment], they're here to study. So while they're helping us out, we're really just trying to give them a chance to participate in university life and to put something on their CVs. I guess that's why we're so relaxed about it.

(NCU Departmental Manager 20)

The ethos described is important because it nullifies any potential for management to exert power in malign ways such as reducing hours of work as a means of disciplining employees. In the following quote, a manager in SVU forged a contrast with the use of Zero-Hours Contracts in the HEI and those in some parts of the labour market (specifically the retailer Sports Direct) in which there is a clear relational imbalance and flexibility cannot be said to be working both ways. This is put down a distinct culture in HE:

I think it's a two-way process which works both ways. Whereas my understanding is in places like Sports Direct is if you say no three times, then you're out – well, that's not gonna happen for this sort of work in a university, it's a totally different culture to a lot of places to out there.

(SVU Departmental Manager 9)

The remaining instances where there is no obligation on employees are not due to the relative market value of employees or to a particular ethos and culture regarding student labour. Instead they involve more straightforward practical reasons. Thus, the third example is Exam Invigilators in South Valley University who are employed on more informal Casual Worker Arrangements.

In Chapter 5 of the thesis it was seen that individuals in this role work on an intermittent basis for two main periods in May and August, as well as other sessions throughout the year. Ahead of the main periods, emails are circulated to invite employees to provide their availability in order to enable an allocation of hours. HR and Departmental Managers suggested that there is no obligation to respond to these invitations:

The mutuality of obligation isn't on either side, so we can't say well "keep yourself free in October just in case we need an exam invigilator or a life model". Now that's not fair on anybody, how does that commit people to working for us? And actually the reality is a lot of them will probably say well I'm not available this time or not respond to the emails.

(SVU Human Resource Personnel 2)

When we recruit them we say this is the main period we would want you to be available for, but there's no obligation on them to take up any duties that we offer. Many of them often aren't available and that's one of the reasons why we need a big pool...they can take it or leave it.

(SVU Departmental Manager 10)

If Exam Invigilators do respond to the invitation, the issue of obligation also applies to the acceptance of work that is offered to them on the basis of their stated availability. Interviews provided evidence of a tendency for Invigilators to give maximum availability in order to increase chances of getting sufficient hours, only to then pick and choose the hours that they want while declining others. This is done in order to fit their allocation around other employment commitments:

I've got another job, like a permanent but variable hours...and that's different days every week so you have to tell everybody you're available for everything and then go back to people and

say well actually I can't do that one. It seems to be the only way to do it because if you say to them "well that week I can only do these two [exams]" they might give you nothing. And it doesn't help the amount of time in advance you have to do it. Nobody really knows their availability 3 months down the line.

(SVU Employee 5 - Exam Invigilator)

Other Invigilators who are not as bound by such responsibilities also select their allocated hours to suit their individual preferences. The following quote shows that some invigilators are well accustomed to using the system to their advantage:

I understand that there are Invigilators who say yes to everything knowing full well that, actually, they're going to pick and choose because...a lot of them have been doing it for years and they've got holiday homes in Spain and they want to be able to earn money to fund holidays and everything. I've been told they'll look through and go "oh I don't want to go there, no I can't do that one".

(SVU Employee 5 - Exam Invigilator)

Management described these activities as part of an ongoing "cultural issue" among Invigilators. They confessed to having a limited understanding as to why this persists and while it was said to be a source of frustration, management had little idea how to respond:

We suffer badly with people saying they are fully available and [then] they say "oh I can't do this I can't do that can't do that". My senior who is responsible for exams gets so frustrated with Invigilators. We explain the impacts and knock on effects, but they just turn around and say, "I can't do this one" and quite often there's no reason. I'm left thinking how we should respond.

(SVU Departmental Manager 11)



Despite this, no action is taken by way of negative consequences or punishment (the ongoing culture among Invigilators stands as a testament to this fact). The freedom for Exam Invigilators to decline work after it is allocated stems from an understanding that it is part and parcel of the nature of the contract as well as a realisation that asking for availability so far in advance when hours are not guaranteed is an imperfect system. Another key factor is the size of the labour pool and the availability of human resource for each exam session. This mitigates any problems for management due to the ease of replacement and removes the need to discipline employees in order to ward off future transgression.

We don't do really do anything about it because we understand that it's not perfect system which is bound to be error prone, and we always seem to manage around it OK because we've got so many of them [Exam Invigilators] on the books. There's never really a need to come down on people if they do chop and change, so we tend to just let it go [without consequence or punishment].

(SVU Departmental Manager 11)

In this sense, the reasons for there being no obligation are practical rather than offering the kind of overarching protection seen in the previous examples. Employees were asked as to whether there would be any action taken against them for picking and choosing hours in the way they described. One participant felt that there would not, since the size of the labour pool produces a set of impersonal relations which are less likely to engender ill-feelings towards employees:

I think you have to come back to the fact that they've got so many other people on their books, so they might tut, but I don't think that next time they'll think "oh well we're not giving her anything [hours] because she let us down on Tuesday afternoon" or something. There's [sic] so many people, it's so impersonal and a lot of it is done by computer anyway. They put the

availability in and it churns out the allocation, so no I don't worry about it – I don't think they'd be that petty.

(SVU Employee 6 - Exam Invigilator)

The fourth and final example belonging to the category of no obligation is Technicians in NCU. These individuals also work on an intermittent basis during the academic year and involve working time arrangements that are partially unstructured. The following quote suggests that there is no obligation:

I can think of a couple of times when the technician hasn't been able to do things and we've got somebody into do it on a pink, so yeah it does happen. There's no expectation [obligation] there, they [employees] wouldn't have to do it when we say, "or else!"

(NCU Departmental Manager 3)

The availability of other human resource is instrumental to the fact that there is no obligation to accept work. Our manager was asked if the situation regarding obligation would change if this option of bringing in other informal workers was not available. They suggested that it would and explained the value of the Pink Form Casual Worker Arrangements for ensuring that the work can be covered.

It would be a different matter wouldn't it, it might mean we would have to be tougher. I mean that's the real value of the pink forms, for getting people at short notice when you desperately need somebody to cover something, where it's a one-off piece of work and where the person who you've offered it to first on contract [sic] has turned down the opportunity.

(NCU Departmental Manager 3)

If a Technician declined work, further offers of would still be forthcoming in future since the individuals involved are contracted specifically for this purpose. There are no negative consequences.

Table 6.2 provides a summary of the non-academic roles where there is no obligation to accept offers of work along with the different product market and other organisational reasons involved. These examples are similar to around half of all Zero-Hours Contracts in the labour market according to the available literature. It should also be noted there was no evidence of a perception among employees that they should accept work when offered to them. All things considered, then, there is no obvious imbalance of power in the employment relationship and flexibility appears to be working both ways.

**Table 6.2. Non-academic roles in South Valley University and North Coast University where there is no obligation to accept work and the reasons involved.**

Periods	Role	Reasons
Ongoing	Study Skills Tutors (SVU)	A need to respect professional standards and to appease vital employees whose skills the service depends on to provide quality support.
Intermittent	S. Ambassadors (SVU) Peer Guides (NCU) Sports Assistants (SVU)	An ethos emphasising student development and an understanding that student have academic priorities.
	Exam Invigilators (SVU)	Recognition of imperfect process of allocating work The availability of other human resource Impersonal management system
	Technicians (NCU)	Availability of other human resource

### Conditional obligation

It has previously been noted that practices with regards to employee obligation are more variegated for non-academic roles within each of the case study institutions and, as such, they occupy more points on

the continuum. This is because there is evidence of there being a conditional obligation which means that instead of employees being free to turn down work at all times, obligation to accept work does exist under certain conditions. There is some precedent for this in existing literature at the labour market level as well as examples of these kinds of practices being used within the HE sector.

The first example of conditional obligation involves Support Workers and Electronic Note Takers in SVU who are employed on an ongoing basis throughout the academic year. It was seen in the previous chapter that working time arrangements for these roles are put in place on a weekly basis by matching the availability of employees with that of students. Box 6.5 contains information from the employee handbook which is part of the formal apparatus of the employment relationship. In the second paragraph, employees are requested to ensure that they keep the same availability provided at the start of the term and are informed that it is unlikely that their hours will be returned to a previous level if changes are made. This constitutes a clear obligation to accept work and a warning that there will be direct consequences if they do not.

**Box 6.5. Information on employee obligation for Support Workers and ENTs in South Valley University**

**Availability and Timetable**

**Availability**

When submitting your availability ensure that the location of prior commitments you have is considered and indicated clearly (e.g. if you have your own lecture in [REDACTED], you will only be available to work on the [REDACTED] campus immediately prior to and following your lecture).

You are requested to submit availability for work at the beginning of the academic year and for this to remain unchanged throughout the year. It is preferable that you only alter your availability due to unavoidable or exceptional circumstances, such as the requirement to attend a funeral, medical appointment or emergencies etc. **If you change your availability temporarily, it is unlikely that your regular hours will be returned to you when your availability reverts back to what it was previously.**

If you wish to alter your availability you should do so by no later than Monday at 9 am for the following week's timetable. Availability will be accepted by email or hard copy. Submitting availability is a commitment to work on the stated day and time should you be timetabled to do this.

In the following quote it is explained that the reason for the regime is because of the duty that the disability service has towards students and a desire to minimise disruption caused by altering staff-student pairings:

From a service delivery or operational point of view, we ask the Support Workers and ENTs to maintain regular availability if they can. Obviously we give scope if they've got medical appointments or something comes up, but what we try to avoid...is that they week to week change [sic] their availability because if in the first part of the term we've allocated them student Joe [hypothetical name] and the following week that support member of staff isn't available, it's disruptive to the student because they've got somebody else going there who they don't know.

(SVU Departmental Manager 7)

One employee working as both a Support Worker and an ENT said that they were unaware of any explicit rules or guidance on the matter. They suggested that work can be turned down, but drew on the recent experience of a colleague to explain that it might affect their allocation of hours in future weeks:

No, I can turn it down if I want, but then, if I turned down work, it's whether I'll get anything else offered. So say I can't do this coming Friday, I'll message the office and say "OK I can't do it" and they'll happily shift the hours for somebody else to have and say "that's fine no problem" but it's whether that appears on my timetable the following Friday, whether I get it back or not.

Is that something you've personally experienced? (Kyle Henry)

I haven't no, I know somebody that has, they shifted during the half-term week. They had their kids at home, so they shifted their 1 day of work they had that week and they didn't get it back on the timetable the following week.

(SVU Employee 7 - Support Worker and ENT)

There is a clear understanding that a change in availability disadvantaged the known individual. It could be suggested that this situation is very similar to having hours reduced or "zeroed-down" in subsequent weeks within the academic year. While the effect may be the same, however, it is not believed that this was the result of a conscious decision on the part of management to punish or penalise employees. Rather, it was felt to be something that emerged unintentionally from the way the administrative process is constructed:

I think honestly they might be copying and pasting our timetables some weeks. So next week they know my students have got the same lecturers but maybe if my Friday isn't on the timetable this week it could be copied and pasted next week which means it's still not there. I don't think it's deliberate, I think it's probably just ease and practicality.

(SVU Employee 7 - Support Worker and ENT).

Whether or not there is an intent to penalise employees for changing their availability, this situation can still have a negative impact on employees. Indeed, the system can affect their decision to alter their usual availability in order to take time off for leisure or for other, more pressing matters (despite the assurances in guidance):

I wanted an early finish on a Friday a few weeks back, so I could go away for the weekend...but I kept the shift because I wasn't sure I'd get it back the following week. It's in my mind, it might just be an anomaly that it happened to this person I know, but it's just, it's there in my

head whether I want to book time off and I can see that other people might avoid taking time just in case.

(SVU Employee 7 - Support Worker and ENT)

The second example is Catering and Hospitality in NCU. These roles also involve work which is ongoing throughout the academic year and which is scheduled on a week-to-week basis. Unlike the example above, no availability is put forward at the start of the year. The conditional obligation instead rests upon the pattern of availability that is agreed during the process of recruitment. This was comprehensively explained by a Departmental Manager who has considerable oversight for work of this nature in the HEI:

I would recruit somebody, and my managers would recruit people based on a business need and an expression of a desire for work. The manager would have to have an idea of what they were looking for, so how many hours they were looking for a person to work and the employee would give an idea as to how good a match they would be [based] on what on their availability. So if somebody came for an interview and was looking for 16 hours and recruitment was made on that basis, then I wouldn't consider it unreasonable for there to be an obligation to be available for that.

(NCU Departmental Manager 1)

The participant went on to explain further why they believe an obligation based on these conditions is not unreasonable. This revolves around the workload pressures that breaking the recruitment conditions creates for management in the different outlets across the university:

A lot of time goes into preparing rotas for people and notifying employees that there's hours available for them and [if] they're not wanting to do it, it means we've got to repeat the job

and give those hours to somebody else. If you can flex it within the existing workforce, great, but if not, you're gonna be under real pressure to ensure you [managers] can cover the demand.

(NCU Departmental Manager 1)

The conditions laid down at the point of recruitment are not entirely non-negotiable and different managers spoke of how there is a degree of tolerance for changes, provided they are not frequent and a genuine reason can be given. However, if an employee goes beyond this acceptable level, there will be a conversation to resolve the issue before management will alleviate the pressure by recruiting more staff to the position:

That's when you have to get into some kind of conversations as to how reasonable it is and how long they think it's going to be before they would be available again. If it's going to be a long period of time then it might end up in a situation where "OK we will have to review how reasonable it is for you to expect all these hours back again" if we have to recruit someone else to the workforce.

(NCU Departmental Manager 1)

If additional employees are recruited, it will result in a loss of hours for the non-compliant employee. This is a direct consequence of declining work, although rather than coming about as a form of immediate or arbitrary punishment, it is the product of a due and reasonable process (at least in the eyes of management). If no resolution can be reached with employees after other staff are recruited, management might consider terminating the employment relationship by following the appropriate procedures.

The situation was also explored with participants who are employed in the role. These individuals were able to confirm the presence of a conditional obligation, but there was no direct experience of what happens in the event that conditions are persistently breached. However, as was the case with Support



Workers and ENTs, there is evidence of a feeling among employees that they should accept work in line with their agreed availability in case anything happens to their hours in future. This stems from an awareness of the lack of guaranteed work and the possibility of being replaced either by existing or new catering assistants:

There is a bit of give and take, but I do feel that it's a risk in terms of your hours if you rock the boat. The work's not guaranteed after all and you could be replaced, that could happen. So you do feel you have to keep that availability constant even though you don't always know what days or what times you're going to be given for the week. It's not ideal really.

(NCU Employee 5 – Catering Assistant)

The third and final example of there being a conditional obligation to accept work is for IELTS Invigilators and Examiners in NCU. This is work which is undertaken on an intermittent basis each month of the year. Scheduling is partially structured a fortnight before examinations and the allocation is based on the availability that employees provide for a 6-month period. A Departmental Manager showed awareness of their employees' personal circumstances and suggested that it is acceptable to turn down some work:

We know people have different things going on in their lives and that it's a second job for many. So, yeah, it's ok if they decline some of the work that we allocate them, that's the nature of the contract.

(NCU Departmental Manager 13)

Being able to turn some work down suggests that there is no obligation to accept offers of work. However, as the following quote indicates, there are conditions where it does in fact apply. In particular, this involves a situation where people repeatedly refuse work that has been allocated to them on the basis of the availability that they have provided:

That spectrum that you've just described, we're very much towards that end of it [no obligation] but I would say we're a little bit inwards because if people repeatedly refuse work after saying they are available, they get dropped. I don't feel I have an obligation to them in that sense, they're here for a reason and that is to do some work. If not, then there's not much point in them being here.

(NCU Departmental Manager 13)

The participant was asked what was meant by repeated refusal and the following quote indicates that it essentially means turning down work on most of the occasions that it is offered. In this situation, there will be tangible consequences in the form of work being given to somebody else. If no resolution can be reached so that more work is accepted in line with stated availability, the situation will ultimately result in the non-renewal of the employee's fixed-term contract.

It would be tolerated up to a point, but if it was all the time – or more like 60 percent - it would be a case of “why are you remaining on the books?”. We'll start to offer the work to somebody else until their contract is up for review. The way it works, then, is they're on 2 year fixed term contracts and at the end of that time I get a message from HR saying, “are these people to be continued?”. I will have had a conversation with them [employees] and if nothing is resolved I'll say they're no longer available for one reason or another and that will be the end of their employment.

(NCU Departmental Manager 13)

The issue of obligation was discussed with participants employed as IELTS Invigilators. Their testimony generally confirmed what management claimed, particularly regarding a tolerance for turning down some work. One employee compared the situation quite favourably to employment in a more commercial sector and attributed the difference to the professionalism of the environment and a

dependency on staff associated with skills and experience (in a similar way to Study Skills Tutors earlier in the chapter).

In terms of obligation, I wouldn't necessarily feel the same as I did working for [name of employer in Hospitality] in terms of "oh I have to turn down a shift" and getting really worried about it...and that's because in the IELTS centre I found that it's a professional environment and there are rules to follow and confidentiality etc. etc. including training and liability and all this, whereas everyone can do housekeeping and there's competition to get the work.

(NCU Employee 3 – IELTS Invigilator)

However, this employee did go on to explain that they are not without some level of trepidation when it comes to turning down offers of work each month, and that this can at times force an involuntary acceptance of work. This is explained once more by the fact that the contracts do not guarantee a set number of hours and that management retain control over the process of allocating work:

But that doesn't mean that you feel totally free to accept or turn work down, it goes back to the contract really. You're not guaranteed the work and it's up to them who gets it so the ball is always in their court. There have been times when I've taken the work even though I've needed to do something else with my weekend.

(NCU Employee 3 – IELTS Invigilator)

Table 6.3 summarises the findings for examples of non-academic work in which there is a conditional obligation. These conditions and the reasons involved were believed by management to be legitimate and were linked to service needs. In each of the examples, obligation is not merely abstract but is actually enforced in the sense that there are consequences for employees if the conditions are breached. This does not necessarily involve reactive forms of punishment such as an immediate loss of

hours by arbitrary managerial decision but is instead the product of administrative ease or due and reasonable process.

**Table 6.3. Non-academic roles in SVU and NCU where there is a conditional obligation to accept work and reasons involved**

Periods	Role	Condition	Reason
Ongoing	Support Workers and ENTs (SVU)	Accept the weekly hours based on availability indicated for academic term	Duty to students and need to minimise disruption
	Catering and Hospitality (NCU)	Accept amount agreed at the point of recruitment	Pressure and workload placed upon management
Intermittent	IELTs Invigilators & Examiners (NCU)	Accept a proportion of the amount indicated on a 6-month basis	Considered necessary so that employment continues to have a purpose

In relative terms, this appears to be quite positive when compared to the most exploitative practices in existence. However, it does raise some questions. For instance, how fair and reasonable is it to insist that employees keep availability given at the start of the year or at the point of recruitment when those hours are not contractually guaranteed? While the management do allow for some work to be declined before taking any punitive action, there is still some shifting of economic risk onto non-academic employees which suggests that flexibility is not two-sided. The significance of this is most perceptible in its effect on employees, particularly in terms of a feeling that they must ensure availability despite practical problems this causes.

## 6.4 Summary

This chapter addresses the third objective of thesis which is to understand the variety of ways that Zero-Hours Contracts are used in HEIs. It does so by looking at the second of three major aspects of the employment relationship – namely, employee’s obligation to accept offers of work. Within the case study institutions, the issue of employee obligation was explored first for academic and then for non-academic roles and involved analysis of the formal contract and the ways in which the matter played out in practice. Overall, employee obligation is found to apply in a variety of ways, thereby confirming the main contention of the thesis. Just as in the previous chapter, the practices can be mapped along a continuum illustrated in the figure included below. In this sense, the situation in the case studies HEIs reflects the findings of existing research at the labour market level as well as some observations in HE.

**Figure 6.1. Summary of the continuum of employee obligation practices for academic and non-academic roles in South Valley University and North Coast University**

	South Valley University	North Coast University
<b>No obligation</b>	Lecturers Tutors Demonstrators	Lecturers Tutors Demonstrators
↑	Study Skills Tutors Student Ambassadors Sports Assistants Exam Invigilators Student Ambassadors	Student Ambassadors Peer Guides Technician
<b>Conditional obligation</b>	Support Workers and ENTs	Catering and Hospitality IELTs Examiners and Markers
↓		
<b>Total Obligation</b>	N/A	N/A

For academic roles in both of the institutions, all of the evidence suggested that there is no obligation for employees to accept offers of work, either as initial engagements or as additional hours. The reasons for this are intimately associated with the sectoral or product market context. They involve an appreciation of the skills and specialisms of employees and a need to build ongoing relationships for in the interests of the academic service, as well as agreements between HR and UCU with regards to maximum hours of work. There was, however, some evidence of other practices and issues that are of significance to the concept of employee obligation and the enduring debate. These revolve around the greater likelihood of offering work to employees who are most willing to accept it as well as a feeling among employees, or a compulsion in some instances, that they should accept work. This appears to emanate from the employer-led conditions of employment in which there is no guarantee of hours and an understanding among employees that decisions about their working futures lie outside of their of control. Although the situation regarding employee obligation may appear benevolent at its surface, this limits the extent to which two-sided flexibility exists for academic roles in the case study HEIs.

For non-academic roles in the HEIs, the evidence suggests that there is a greater variety of practices than for academic work and these occupy more points on the continuum. The default position is also that there is no obligation to accept offers of work. This involves a range of reasons including the value attributed to the professional input of SSTs and the need to appease them to ensure service quality, to other organisational factors such as an ethos regarding the use of student labour, the impersonal nature of the system of allocating work and the availability of alternative human resource. Unlike academic roles, there is no suggestion of any of these employees feeling that they should accept work.

However, there are also a few examples of a conditional obligation which have some basic precedent in the literature. The conditions differed between roles, although their common trait is that they set a pre-agreed level of availability that employees are required to meet. Management across the HEIs believe that their reasons for setting conditions are legitimate and note that any potential consequences are subject to due and reasonable process. However, it could be said that the conditions actually push the limits of what is fair to expect of employees. Moreover, because of these conditions some

employees expressed concern over declining work while others report that they accept offers of work against their personal preferences, often at inconvenient times. As such, this limits the extent to which the employment can be said to involve the kinds of freedoms associated with two-way flexibility.

In either academic or non-academic roles, there are no examples of total obligation where employers demand that work is accepted whenever it is offered. There is also no evidence of the most extreme practices that have been documented elsewhere in which failure to bend to the will of employers, often at short notice, can incur immediate punishment by reducing or “zeroing-down” employees’ hours of work. In this sense, and much like the previous chapter on working time, the situation in the HEIs is not like many of the worst excesses of one-way flexibility that dominate public and political discourse.

# 7 Rights and Entitlements

## 7.1 Introduction

The third objective of this thesis is to understand the variety of ways that arrangements identified as Zero-Hours Contracts are used for academic and non-academic roles in Higher Education Institutions. So far, this has been addressed in relation to working time and employee obligation to accept offers of work. This final findings and analysis chapter looks at the situation regarding rights and entitlements.

Before proceeding, it is useful to remind the reader of some relevant organising principles in the law of England and Wales, as well as some other details that were outlined in Chapter 2.

Until the end of the twentieth century there existed a binary division between:

- Contracts *of* service which designated the status of employee and full protection.
- Contracts *for* services which gave the status of self-employed and no protection

The growth of employment forms that deviated from the standard model led to concerns that increasing numbers of people failed to meet the strict test criteria for employee status but could neither be regarded as being genuinely self-employed. The government therefore decided to introduce a new intermediate category of worker in the Employment Rights Act (ERA) 1996 which provides a subset of the rights and entitlements available to employees. Employment status in the post-millennial period therefore involves a range of protections, as illustrated in Table 7.1 included below.



**Table 7.1. Employment status and statutory employment rights**

Employment Right	Employee	Worker	Self-Employed
Protection from discrimination	✓	✓	✓
Rest breaks	✓	✓	
National Minimum Wage	✓	✓	
Paid Annual Leave	✓	✓	
Statutory Sick Pay (Q)	✓	✓	
Part-time (no less favourable treatment)	✓	✓	
Fixed-term (no less favourable treatment)	✓		
Minimum notice periods (Q)	✓		
Maternity and paternity pay (Q)	✓		
Protection from unfair dismissal (Q)	✓		
Statutory redundancy pay (Q)	✓		
Transfer of Undertakings	✓		

\*'Q' denotes that the individual employment right is subject to the satisfaction of qualification criteria.

In Chapter 1, the reader was introduced to the arguments of legal scholars Adams et al (2014) (later repeated in Adams and Prassl 2018). These authors insist that contrary to many assumptions in public and political discourse, there is no such thing as “the” Zero-Hours Contract as a singular or unitary form of contract. Instead, through an analysis of case law, they demonstrate that the label has come to represent a wide spectrum of arrangements involving different classifications and levels of statutory protection (ibid: 5).

There is some evidence to support this observation among the existing primary research. In the CIPD’s (2013a) work presented in Figure 7.1, employers report that most staff on ZHCs are classified as employees which grants them potential access to the full range of employment rights. However, it has been noted by some such as Adams and Deakin (2014) and the TUC (2017b) that achieving the status of employee is only the first hurdle to claiming many employment rights due to the presence of different

qualification criteria. Given that employees differ in the extent to which they satisfy these requirements, there are variable levels of access even within the classification itself. Though they make up a smaller proportion, the figure also shows that many working people have the intermediary status of worker, which offers only limited coverage and excludes staff from access to key rights and entitlements. In many cases, the status will be correctly attributed, but the complexity of law can result in misclassification.

**Figure 7.1. Employment status of individuals on ZHCs**



Source: CIPD (2013a)

In current body of research, we can see that there are a variety of practices in relation to this aspect of the employment relationship. These can be mapped – albeit tentatively – onto a spectrum of coverage. However, the existing insights are very much limited to an overview of the situation in the general labour market with very little, if any, research exploring the situation in specific sectors. In Higher Education there has been some work, but this does not specifically consider employment that can be labelled as Zero-Hours Contracts. To address the gap, the following research question is posed:

➤ *How is employment rights and entitlements coverage provided for academic and non-academic roles in HEIs?*

Rather than continuing with the format of the last two chapters in which there were separate discussions for academic and non-academic work, the analysis in this chapter explores all of those instances where the status of employee is given before moving on to those who have the status of workers. In each of these, discussion involves an analysis of the classification given as well as levels of

access to employment rights in relation to the qualification criteria. This chapter confirms the main argument of the thesis which is that there are a variety of practices that can be mapped along the continuum shown below. These range from those with full coverage-plus associated with occupational policies, to those who have full coverage or partial coverage with regards to statutory rights and entitlements. Of note throughout the chapter are some issues that can arise for people on ZHCs.



## 7.2 Employees

At the furthest end of the continuum of coverage are contracts of employment which confer upon individuals the status of employee. These can be seen in the table below, along with the different employment roles for which they are used. In SVU, the status is given to all of those employed in academic positions while in NCU, it applies to the vast majority of these individuals. There is also an assortment of non-academic roles where the status of employee is provided in both of the case studies.

**Table 7.2. Zero-Hours Contracts that provide employee status and employment roles for which they are used in South Valley University and North Coast University**

South Valley University		North Coast University	
<i>Hourly Paid Contracts of Employment</i>	<i>Casual Contracts of Employment</i>	<i>Academic Contracts of Employment</i>	<i>Support Contracts of Employment</i>
Lecturer Tutor Demonstrator	Health and Fitness Instructors Study Skills Tutors Support Workers and ENTs	Lecturer Tutor Graduate Teaching Assistants	Language Tutors Dyslexia Tutors Catering Assistants IELT's Examiners and Invigilators Sports Assistants

The analysis can now begin by looking at the rationale for the HEP's provision of employee status. This is done by considering what is known about the different employment relationships in relation to existing legal frameworks. As discussed earlier in the thesis and at the start of the chapter, there are three main tests for determining whether an individual has a contract of employment and therefore the status of employee.

The first concerns whether an individual is obliged to undertake work personally for the employer and that they are not permitted to send somebody else in their place. This is a key characteristic of all the academic and non-academic roles in SVU and NCU where employee status is given. It is most discernible in the fact that these working people are employed to exercise their person-specific skills.

The second test relates to the issue of control, which in the case of *Ready Mixed Concrete* [1968]<sup>36</sup> is defined as: ...*the power of deciding the thing to be done, the way it shall be done, the means to be employed doing it, the time when and the place where it shall be done.* Within both institutions, management decide the general

<sup>36</sup> *Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance* [1968] 2 QB 497

outline of the thing to be done within the relevant departments as well as the time and place of work to be undertaken.

Some questions in relation to this test can be raised where the nature of the work is highly skilled and involves a significant degree of discretion, particularly in terms of the way tasks are performed (as discussed in Chapter 4). In particular, this applies to the majority of academic roles as well as to other non-academic positions associated with student learning such as Study Skills Tutors and Dyslexia Tutors. However, the discretion exercised does not supplant the broader level of managerial control and direction. If it was open to dispute, a further test of economic risk would distinguish the relationship from self-employment.

The third and most significant test concerns that of mutuality of obligation. As seen in previous chapters of the thesis, this refers to a set of promises: one on the part of the employer to provide the employee with work and another on the part of the employee to accept and undertake the work provided. In *Nethermere [1984]*<sup>37</sup> this was considered to be *sine qua non* of the presence of employee status since it is indicative of an economic dependence that one would not find with a relationship of self-employment.

In the previous chapters, it was seen that the use of contracts of employment for different roles in SVU and NCU involved no obligation to provide work and, in most instances, no obligation on the part of the employee to accept any offers of work. At face value, this would imply that no mutuality of obligation exists. However, when the facts of the employment relationship are inspected a little closer the situation is not as straightforward. It is instructive to draw on Freedland's (1976) seminal work here, in which he considers the employment relationship to consist of two important layers:

- Wage-work bargain.
- Global or umbrella contract.

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<sup>37</sup> *Nethermere (St Neots) Ltd v Gardiner And Another [1984] ICR 612*

The first and arguably the most important in terms of finding employee status in the case study HEIs, concerns the wage-work bargain which refers to a specific agreement to carry out work. Importantly, some form of mutual obligations will be seen to exist for this time regardless of what happens outside of the agreement. In Chapter 5, it was seen that for the most instances where individuals are classified as employees, working time is highly structured to the extent that arrangements are made for a whole semester or for the academic year. These essentially form extensive wage-work bargains where mutuality of obligation can be inferred from the long-term promise both to provide work and to undertake work (see Carmichael [1999]<sup>38</sup> and McMeechan [1996]<sup>39</sup>) and this is true even if the work is not contractually guaranteed during these times, as was shown in the case of Delphi Diesel [2003]<sup>40</sup>.

The finding of a significant wage-work bargain also applies for non-academic roles where there are shorter and less structured working time arrangements. The situation for Support Workers and Catering Assistants does involve some prior agreement with regards to the work that employees will undertake and as seen in previous chapter, there is also a conditional obligation to accept work on this basis.

So it is the case that each of these individuals are always employees for the time they have agreed to work. But what about the situation outside of these agreements? This is where the second layer of the employment relationship is relevant – namely, the global or umbrella contract. The concern here is whether there is a relationship of mutual obligations that persists during times when there is no work to be undertaken. Though it is not so critical when determining status, it is essential for meeting the temporal thresholds for continuity of service in order to gain access to key employee rights and entitlements.

The current rules state that a break of one week in which no work is undertaken is all that is required for a break in continuity of service, provided a global or umbrella contract is not found to be in place

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<sup>38</sup> Carmichael v National Power plc [1999] UKHL 47

<sup>39</sup> McMeechan v Secretary of State for Employment [1996] EWCA Civ 1166

<sup>40</sup> Stephenson v Delphi Diesel Systems Ltd [2003] ICR 471

(although this is due to change on the basis of recommendations made in the Taylor Review). The issue of continuity of employment involves some interesting but slightly different approaches across both of the case study HEIs. Box 7.1 below contains information on continuity of employment for academic roles in South Valley University. It states that the institution excludes any period of service intermission but requires that employees undertake work in each of the three terms in order to preserve continuity of service<sup>41</sup>.

**Box 7.1. Information on continuity of employment for Hourly Paid Contracts of Employment in South Valley University**

**3. DATE OF COMMENCEMENT AND DATE OF CONTINUOUS SERVICE**

3.3 Your continuous service shall be counted from the date you were first employed as an Hourly Paid demonstrator at the University, as stated at clause 3.2 above. For the purposes of continuity of service, breaks for the Christmas, Easter and summer vacation periods shall be ignored. However, in order to preserve continuity of service you must have undertaken work in each of the three periods in an academic year.

The equivalent information is not included in the academic contract for North Coast University, although HR suggested that it is indeed the case that periods of service intermission are excluded. However, it was claimed that, unlike SVU, continuity is not always broken when employees have not worked for a semester or a term provided that management in the HEI know that they will be working again at some point in future. As HR noted:

It would be based on the regularity of the contract and the ongoing basis of it. We may have somebody who always works every semester, in which case we'd keep their continuity of service [between intermission periods]. Our aim is not to keep issuing P45s and then re-engaging people, we class them as being under an umbrella contract for those sorts of examples. But if we had somebody who worked September to May and then we weren't sure

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<sup>41</sup> Term 1 is October to December / Term 2 is January to April / Term 3 is May to July.

when they were going to be engaged again, then we would see that continuity would have been broken at that time.

(NCU Human Resource Personnel 1)

Though there is some difference in the practices in both universities, the omission of some periods is made in order to account for a temporary cessation of work as established by the statutory continuity mechanism in S.212 (2b and 2c) of the Employment Rights Act 1996. This is conceived of in the following way:

*Subject to subsection (4), any week during the whole or part of which an employee is:-*

*b) absent from work on account of a temporary cessation of work, or*

*c) absent from work in circumstance such that, by arrangement or custom he is regarded as continuing in the employment of his [sic] employer for any purpose, counts in computing the employees period of employment.*

The practice in both institutions is commensurate with other evidence from case study research by JNCHES (2015) into hourly paid and casual work in HE and suggests a wider custom across the sector. Indeed, a member of HR spoke of a legal case that sets a benchmark in the area. Based on the details they provided it is likely that the case being referred to is *Cornwall CC v Prater* [2006]<sup>42</sup>.

There was a case, I can't remember the name of it now...it said that if the length of the time that you taught was greater than the break, so, for instance, if I was employed as an English Tutor and I came in in September, was there till June, and then I came back the following September, they would say you've been continuously employed for one year come the first of September. We do the same, it's just general employment law.

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<sup>42</sup> [2006] IRLR 362 (CA) covered in Davies (2006)



(SVU Human Resources 4)

The rules on temporary cessations of work also apply for non-academic roles, although the situation is less defined in both of the case study institutions. One thing that is unclear is whether there is an expectation that employees must undertake work in all semesters or terms in order to preserve continuity. This never appeared to be an issue since most of those who are given the status of employee do in fact work on an ongoing basis throughout the academic year. But what if shorter gaps in the work do occur? In the interviews, HR in SVU suggested that continuity would remain unbroken from the contract start date provided that there is an intention to continue to use the employee and they are in receipt of at least some occasional work.

The contract just needs to be in place, they don't actually have to work every single week, no not at all no. As long as there is an intention to keep using them. If there is no work after probably about 6 months, we'd get in touch to say they're [employees] off the books, so to speak. It [continuity of service] would then be broken at that point but not before.

(SVU Human Resource Personnel 4)

While there was no substantial commentary on the matter from HR in North Coast University, this sentiment was repeated by a manager who has oversight for work undertaken on an intermittent basis.

I'm no expert, but I don't think it [continuity] would be broken. They [IELT's Examiners and Invigilators] are still active employees who we'll be looking to use month to month. It just happens to be the case that we only work one weekend in four, most of the time anyway. So no, it stays in place and I should think it would only come to end if I saw it fit to terminate the employment.

(NCU Departmental Manager 13)

HR and management in the HEIs therefore demonstrate awareness that continuity of service should be maintained if there is some ongoing contractual relationship suggestive of a global or umbrella contract.

All individuals who hold the status of employee sit at one end of the continuum of rights and entitlements coverage described at the beginning of the chapter. However, the situation in practice is in fact more complicated. This is because a) employers have the option to make additional provisions in the form of occupational policies and b) employees experience a range of working time patterns meaning they will satisfy the qualification criteria for specific statutory rights to different extents. The discussion now moves on to explore access to a selection of employment rights and entitlements for employees in the HEIs.

### **Minimum Wage**

The National Minimum Wage Act 1998 enshrines into UK law the right of all employees to receive the National Minimum Wage (NMW). However, in certain sectors the literature has shown that underpayment can be a particular problem especially where there is a mismatch between tasks undertaken and the time remunerated. This includes the Higher Education sector where time taken to perform duties such as teaching preparation and marking is not always reflected in the rate.

There is no evidence to suggest underpayment of NMW is prevalent for academic roles in either institution, which could be due to the relatively high hourly rate that employees receive. However, as with earlier insights in HE from the Scottish Affairs Committee (2014) and Lopes and Dewan (2015) there were suggestions among academics that their hourly rate is not an accurate reflection of the time needed to perform tasks. In some cases, this can lead to underpayment of the minimum wage.

They gave me 2 hours on Wednesday nights 7 till 9, on the masters...but I was doing at least 10 hours a week for 10 weeks because of the preparation and marking I had to do...[and]...that

wasn't fully covered in the pay rate. So it was a hundred hours, and I got £400, so I worked it out to be only £4 an hour, and that's not including getting there and getting back and all the other problems.

(SVU Employee 2 - Lecturer)

In both institutions, full access to the NMW is granted to non-academic employees. This is because none of them require additional duties to be factored into the hourly pay rate for work.

### **Holiday pay**

Under the Working Time Directive 1998, individuals employed in the UK and paying NI contributions are entitled to 28 days or 5.6 weeks of holiday pay per year (HM Government 2018a). Employers are able to calculate this entitlement in a number of ways in order to account for different kinds of working patterns.

In SVU, an accrual system was in place in which allowance was calculated on the basis of hours worked. This involved payment of entitlement in place of physical annual leave, known as rolled-up holiday pay. The University still operates a policy of payment in lieu but no longer calculates entitlement using this system. Instead, it applies a standard 12.07% to the hourly rate to account for the statutory allowance. A Study Skills Tutor explained how this change served to rectify some previous issues of underpayment:

They've changed the holiday pay and they've actually increased it because I think it was lower than it was supposed to be. There's supposed to be parity between us and people who do the same job but are on a permanent contract. So they've raised that from 1.5 percent to like 12 percent or something which is a 2 quid an hour pay increase, that's quite nice<sup>43</sup>.

(SVU Employee 1 - Study Skills Tutor)

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<sup>43</sup> This figure is the interviewee's perception of the previous rate.

In North Coast University, no holiday absence is permitted during the semesters of the academic year, just as is the case of SVU and the sector more widely. There was no suggestion of the institution ever using a more elaborate system of calculation and payment. Instead, HR and management invariably spoke of a 12.07% holiday being rolled up and paid as part of the hourly rate, contrary to government guidance.

The rate we pay incorporates rolled-up leave because that saves the hassle trying to calculate it with hours changing and things like that and means that they get the required legal amount.

(NCU Human Resource Personnel 1)

In both case study institutions access is therefore provided across the board meaning that employees receive what can be labelled as full coverage in relation to this right. There is some issue regarding employee choice over the timing of leave. However, the situation therefore does not resemble the kind of non-payment documented in research by Cominetti and Judge (2019) of the Resolution Foundation who report more than 1 in 5 people in the UK are paid below the legal NMW rate.

### **Sick Pay**

In NCU there is a hybridised system of providing sick pay which encompasses both occupational and statutory dimensions. In this sense, many employees receive what can be labelled as full coverage-plus in relation to the right since this goes beyond the established legal minimum. Information on this system is included below and shows that employees receive Occupational Sick Pay (OSP) after 3-months service within the institution.

**Box 7.2. Information on statutory and occupational sickness pay in North Coast University**

The University is responsible for paying Statutory Sick Pay (SSP) in accordance with the legislation in existence at the time of the sickness absence.

Occupational Sick Pay, payable by the University, is related to your length of service with the University. This entitlement is as follows:

<u>Length of Service</u>	<u>Full Pay</u>	<u>Half Pay</u>
First year (after 3 months)	2 months	2 months
Second & third year	3 months	3 months
Fourth & fifth year	5 months	5 months
Five years plus	6 months	6 months

There are two ways in which the occupational entitlement is calculated. Just like the statutory provisions, the first involves calculating an average of hours and earnings over the 8 weeks prior to the absence. This route is taken if employees do not have work that is scheduled in advance and, as such, it is likely to apply to employment roles where the scheduling of working time is less structured. One manager explained.

It was paid on the basis of the work that she'd done previously. She extrapolated from that to what she should be paid, x number of sessions for the same as she would have been getting. I'd have thought there was no obligation but the university did feel an obligation and started paying out.

(NCU Departmental Manager 8)

Importantly, employees do not need to reach an earnings threshold as is the case for Statutory Sick Pay (SSP). So, if it is calculated that an employee earned only £40 a week they will still continue to be paid this amount when ill. In this sense, any employee with over 3-months tenure in the HEIs is covered.

In the second way of determining the amount of OSP entitlement in NCU, payment is not calculated based on an average of working hours already undertaken. Instead, it is provided based on work that has already been scheduled to occur at a future time. A member of HR explained how this works:

If somebody had a rota set up for the next 3-weeks then they were off on long term sick, you'd use that continuation of the rota for what you'd expect them to be working. So it would be linked to their normal shifts. If at the beginning year you had a Tutor who was down to teach 2 classes per week, you'd base it on what you'd given them....or if for the next 4 weeks you'd be scheduled into work 20 hours a week, you'd be paid for those 20 hours.

(NCU Human Resource Personnel 1)

There are examples of this being applied from the interviews with Departmental Managers overseeing both academic and non-academic roles, as the following comment clearly illustrates:

We pay them sick leave so we don't stop their pay if they're on the sick, we just pay whatever they would have got. I get told "oh so and so needs to be paid because they covered for sickness".

(NCU Departmental Manager 7)

As was seen in Chapter 5, many of those such as academic roles working in NCU have highly structured arrangements where their working hours are scheduled up to a year in advance. In these instances the length of time that sickness pay is paid for during the academic year corresponds with employees' length of tenure.

Employees who are able to claim OSP can also claim for any individual day that they are absent, provided that work has been scheduled and the sickness is reported in line with the institution's sickness policy. Management confirmed this is the case. An employee did also:

A good thing is that you get paid if you have the odd sick day too [in addition to longer-term sickness], as long as you report it by a certain time. There might be some re-arranging of the class and that to do, but least you don't get penalised or miss out when you can't work for being ill.

(NCU Employee 4 – Tutor)

The remaining employees in NCU and all employees in SVU must rely on Statutory Sick Pay (SSP). This is laid out in the Social Security Contributions and Benefits Act 1992 subject to qualifying conditions:

- The employee is absent from work for 4 or more days.
- Earned at least £113 per week over an eight-week relevant period.

(HM Government 2018b)

The clauses seen in Box 7.3 show that employees in South Valley University are entitled to receive SSP provided they qualify on the basis of these criteria. The interviews produced considerable amount of evidence on the topic, which attests to the plurality of its experience among managers and employees.

### **Box 7.3. Information on statutory sickness payment in South Valley University**

#### **Hourly Paid Contracts of Employment**

##### **11. ABSENCE AND SICKNESS**

If you are unable to teach a class for any reason, you should notify your Head of School, programme leader or other appropriate person immediately. Where absence is due to sickness, you will be paid any entitlement to Statutory Sick Pay for which you are eligible. Details and the procedures with which you must comply can be found on the Human Resources website on the University Intranet.

#### **Casual Contracts of Employment**

##### **8. Sickness**

- 8.1 If you are absent from work due to sickness or injury, you will be eligible to receive statutory sick pay.
- 8.2 The payment of sick pay is subject to your compliance with the University's rules for the notification and verification of sickness absence, which are set out in the University's Sickness Absence Policy.

Many of those on ZHCs of employment in SVU and NCU enjoy full coverage of SSP during the year because of their payment levels and the relative stability of their working patterns (as was seen in Chapter 4 and 5). While this puts them at the one end of the continuum, other employees in both HEIs fail to qualify on account of a having a low average weekly hours. So, for example, a Lecturer or Tutor who works 3 or 4 hours per week in either of the institutions would not be able to claim for the £100 that they would otherwise have earned had they not been unable to attend work due to sickness. The time of year at which an employee falls sick may also be significant factor. One non-academic employee expressed concern that the intermission might exclude them from meeting the earning criterion for the 8-week relevant period:

I've not had to use sick pay, but I think that's calculated on an average earnings for like 3 months [8-weeks], so if you were ill in the first week of September you would get almost nothing because you haven't worked over the summer, whereas if you were ill in January you would.



(SVU Employee 1 - Study Skills Tutor)

It is unclear whether the institution would make an allowance as per the statutory continuity mechanism in the ERA 1996, or whether the dilemma in the quote above would indeed be the case. It also illustrates a lack of clarity and confusion among some employees that has been widely discussed in the existing literature (Adams and Deakin 2015; CIPD 2013a; 2013b; Ewing et al 2015)

Under the rules for SSP all employees within SVU and a smaller number in NCU cannot claim for individual days if they do not attend work. One Tutor in SVU spoke of how the system is such that making a claim for one day is not worthwhile, a matter which would not arise if they were given occupational sick pay:

I broke my wrist at the end of January and lost 6 hours' worth of pay for a day's work and I wasn't able to claim that at all because I would have had to have gone the whole week to get statutory sick pay [rather than individuals days]...I would have lost 45 hours to then be able to start going on £30 a week or whatever it would be for statutory sick. It's not practical, there's no way you can do it. If you were on a proper contract you'd instantly get that cover.

(SVU Employee 4 - Study Skills Tutor)

No, I've not been here long enough [to claim OSP] so if I'm ill one day I'm not getting paid for it. Hasn't happened yet but I'm aware that that's the situation, let's just hope I don't get the flu.

(NCU Employee 4 – Tutor)

This is not so much of a problem for some employees who can re-arrange their work or find other less demanding tasks to undertake, but it is a significant issue for those who cannot. There is no evidence

from the interviews to suggest that those classified as employees are pressured as a result of this into working while physically ill, but the circumstances could be seen as being conducive to such behaviour.

### **Maternity Pay**

In North Coast University a hybridised system also exists for maternity pay. As the box below clearly describes, employees are covered by Occupational Maternity Pay (OMP) if they have been in continuous employment for a year. Until then, they are eligible for statutory maternity pay if they meet the criteria.

#### **Box 7.4. Information on occupational and statutory maternity pay in North Coast University**

##### UNIVERSITY MATERNITY, PATERNITY AND ADOPTION PAY AND LEAVE

To qualify for University leave and benefits, a member of staff should have been continuously employed by the University for a minimum period of 12 months before the expected week of confinement/adoption. The full details of the benefits, and other statutory benefits, are explained in the booklet "Employee Support Policies and Procedures". A copy can be obtained from Human Resources, or viewed on the Human Resources Website.

Staff who do not qualify for the University schemes may qualify for statutory leave and benefits.

The existence of OMP means that some employees receive full coverage-plus because the occupational policy exceeds the statutory minimum provisions. The box below details the system of OMP for the institution and shows that it involves a multi-layered system of payment. It is noted that average weekly earnings will be calculated in accordance with the statutory pay regulations at the time, but unlike the statute, maternity payment is given regardless of the employee's level of weekly earnings.

**Box 7.5. Information on occupational maternity pay in North Coast University**

<b>Scheme</b>	<b>Entitlement/Pay</b>
University Maternity Leave Scheme	• 8 weeks full pay (at your normal weekly rate).
	• + 18 weeks at half pay (half your normal weekly rate) + Statutory Maternity Pay, or 90% of our normal weekly rate if this is less.
	• + 13 weeks at the statutory rate, or 90% if this is less.
	• + 13 weeks unpaid leave.
Maternity Allowance	• If you are not eligible to receive SMP, i.e. if your average earnings are below the 'lower earnings limit' for national insurance purposes, Human Resources will provide you with a SMP1 form that will indicate why the University cannot pay you SMP. This form needs to be presented to your local JobCentre Plus office in order that they can process your Maternity Allowance payment

Note - Average weekly earnings will be calculated in accordance with the statutory maternity pay regulations that may apply at that time.

There was some inconsistency in the interviews with regard to the length of the period of pay calculation. An initial suggestion was that it is 4 months (16 weeks) but this was later clarified as being 6 months. Enquiries were made as to why the period is considerably longer. As the following exchange indicates, the decision is made so that the maternity pay is a better reflection of their work at the HEI.

No, we look at an average salary over a longer period because if somebody is on Zero-Hours we wouldn't want to just take the past x number of weeks, we'd want to look to try and get a fairly good pattern so that their maternity pay reflects the work that they've done.

(NCU Human Resource Personnel 1)

There are examples from the interviews with management of OMP being claimed by Zero-Hours Contract holders in the recent past. This included Lanaguage Tutors and Receptionists in the sports centre.

We've had a couple of receptionists who are on no-hours [ZHCs] who have had maternity pay in the last year...I'm not an expert on this [but], I believe, they work it out on an average of the 6 months [that] you've done work before that...so they benefited really well out of it because of the hours they did over the summer period were quite high, it was peak.

(NCU Departmental Manager 18)

Those who do not have the 12 months tenure required for OMP in North Coast University can claim Statutory Maternity Pay (SMP). In South Valley University, the statutory provisions are the only means open to any employee who wishes to make a claim for maternity payment. Information outlining this is contained in Box 7.6 included below.

**Box 7.6. Information on statutory maternity pay in South Valley University**

**12. FAMILY RELATED LEAVE**

**Maternity Leave**  
If you become pregnant, you have the right to Maternity Leave and the right to return to work after the birth of your baby. You may also have the right to Maternity Pay. Details are set out in the Maternity Entitlements for University Staff Document. (See Note 1)

**Paternity Leave**  
If your spouse/partner becomes pregnant, or if you or your spouse/partner is adopting a child, you may have a right to Paternity Leave. Details can be found on the Human Resources website on the University Intranet.

In order to qualify for SMP employees in both institutions must satisfy the following criteria:

- Earn an average of £116 a week over at least an 8 week period before leave begins.
- Worked for their employer continuously for at least 26 weeks up to the qualifying week.

(HM Government 2018c)

The interviews with management and employees did not provide any evidence of instances where SMP claims have been made. However, in both institutions, academic and non-academic employees who

rely on SMP will experience different levels of access depending on whether or not they meet the criteria. Some will have been working for 6 months and earn the amount needed each week. Indeed, the level of payment for skilled work within the institution may make it easier for them to reach the threshold with fewer hours when compared to individuals working in other low-paid sectors of the labour market. For instance, a Study Skills Tutor or a Dyslexia Tutor would only need to work around five or six hours a week to ensure that they qualify whereas minimum wage workers would need to work twice as long. These people sit at the end of the spectrum with full-coverage for maternity pay.

However, in some cases, employees have not been working in the institution for long enough or their weekly earnings and hours are insufficient to meet the threshold. For example, it was seen in Chapter 5 that those who undertake academic work in both institutions tend to have a low number of hours. It is also possible that those who have been working in the institutions for some years have a break in continuity which could disqualify them from gaining access to maternity (discussed further below).

### **Dismissal and Redundancy**

Rights and entitlements in the form of dismissal and redundancy are treated together here because they involve the same criteria with regards to continuity of service and both concern the termination of employment. The ERA 1996 puts into statute the legal principles governing dismissal, with section 95(1) stating that it can occur in one of three ways. The two most relevant of which are included below:

*a) the contract under which he is employed is terminated by the employer*

*b) he [or she] is employed under a limited term contract and that contract terminates by virtue of the limiting event without being renewed under the same contract.*

Section 86(1) provides a form of procedural protection by establishing minimum notice periods that must be given to the employees when they are dismissed. These differ according to length of continuous service:

- At least one week's notice if employed between one month and 2 years.
- One week's notice for each year if employed between 2 and 12 years.
- 12 weeks' notice if employed for 12 years or more.

There are no official occupational policies on this matter in the case study institutions, but the formal documentation states that both HEIs provide more notice than the one week required in statute. In Box 7.7 information is included for SVU shows that the institution actually provides a minimum of two weeks' notice. It also acknowledges the right of employees' to receive longer notice periods as tenure increases.

**Box 7.7. Information on minimum notice periods in South Valley University**

**21. TERMINATION**

- 21.1 The University reserves the right to terminate this appointment with two weeks' notice (or the statutory minimum, whichever is the greater), or to cancel individual classes with reasonable notice at any time should circumstances warrant this, subject to the provisions under Clause 13.
- 21.3 The University may terminate the Contract without notice if you are guilty of gross misconduct, gross negligence or gross incompetence.

The equivalent information for North Coast University can be seen in Box 7.8 below. The standard minimum notice for all new starters again exceeds that laid down in statute, standing at a greater period of one month. Again, there is an allowance for notice to increase with an employee's tenure.

**Box 7.8. Information on minimum notice in North Coast University**

**TERMINATION:**

The appointment may be terminated by one calendar month's notice in writing by either the employer or the employee should the contract end prematurely.

The employer will give one month's notice during the first four years of service, and one additional weeks notice for each year of service until a maximum of 12 weeks notice will be given after 12 years or more total service.

In interviews, enquiries were made as to whether this system was applied in practice. This was confirmed. It was also discovered that, for some roles, the nature of the contracts in both institutions can result in even greater notice. In SVU contracts are permanent but due to the nature of the contractual set up it could be the case that each engagement can be regarded as a fixed-term contract within the meaning of the ERA 1996 95(1)(b). Meanwhile, it was seen in Chapter 4 that most contracts in NCU are fixed-term.

In these situations within the case study institutions, notice of when the employment will end is essentially provided at the point of recruitment in September (so 8 months before). It should, however, be noted that this may not always mitigate the uncertainty for employees that can result from not knowing whether they will receive work in the next academic year. For the remainder of non-academic roles the different lengths of service result in a different levels of access with regards minimum notice.

The Employment Rights Act 1996 s.108 also lays down protections against unfair dismissal, which is again subject to qualification criteria that the Conservative Government saw fit to increase in 2012.

- Before 6 April 2012 - the qualifying period is normally 1 years.
- On or after 6 April 2012 - the qualifying period is normally 2 years.

Employees are entitled to claim unfair dismissal and redundancy if they meet the criteria on continuity of service. This has been the topic of some consternation - for example, the Institute of Employment Rights suggest that the rules on continuity devised in the 1960s lack sufficient flexibility to account for changing working conditions and result in many individuals being excluded from coverage.

As has been the case throughout the chapter thus far, there are different levels of access to unfair dismissal and redundancy in the case study HEIs due to differences in length of tenure and continuity of employment. In regard to redundancy, there is evidence in both institutions of employees qualifying for the right, thus placing them at the furthest end of the continuum with full statutory coverage. In

South Valley University it was explained that the correct procedures are adhered to whenever a redundancy situation arises:

We may need to make them redundant in which case we'll follow that procedure. So, if people have a certain length of service, those rules apply...when we do a data cleanse we don't just get rid of people because they haven't worked. We check "what's their length of service? Do we owe them anything [or] can we just get rid of them? I think we do things properly in that sense.

(SVU Human Resources 1)

In the time that followed fieldwork, some anecdotal evidence was provided of a spate of redundancies in Student Services that were said to be due to changes in funding for Disability Support Allowance. As alluded to above, the professionals employed in these roles are among the most likely to have been working at the institution on a regular ongoing basis meaning that many were covered by redundancy payment.

In North Coast University, HR also maintained that redundancy is paid where employees qualify. This is noted in Box 7.9 which indicates that payment is made at the statutory rate in the event of redundancy.

**Box 7.9. Information on redundancy procedure and payment in North Coast University**

**REDUNDANCY PAYMENT:**

In the event of this appointment being terminated for reasons of redundancy, the University will make a redundancy payment at the current statutory rate.

There is evidence of redundancy occurring in different parts of the institution. A manager recalled the situation occurring for some individuals who were working as Dyslexia Tutors in NCU's:



We have had [redundancy] for Dyslexia when we had the big separation and re-structuring and some people had worked for a long time so they were entitled to some redundancy. They were working at a school and the school took over a contract without discussing it with us and they said “oh we’re gonna make you redundant now”. They [employees] said “I’m not working for you anymore” so we had to pay redundancy, we were advised on what to do and HR sorted it.

(NCU Departmental Manager 10)

A manager of Language Tutors also told of a structural change to the service which meant that they lost the contract to provide courses to some towns in the east of the region where NCU is located. HR Personnel outlined the process for calculating redundancy payment for these staff most of whom were on permanent contracts and had the required two years’ continuity of employment. To calculate the entitlement, the institution looked back over the previous 12/13 weeks as per the legislation. Somewhat fortuitously for those employees involved, a choice was made when to issue notice so that they received payment that was more in line with their actual working pattern during the academic year.

[The language Tutors] I think the majority of them were on permanent contracts and if they had 2 years’ service or more they would receive the redundancy...what we did for those was look back at the was at the last 13 weeks [3 months] of payment and came up with an average which is what we based the payment on. I think we did it from the day we issued notice, which was about May time, whereas if we’d issued it in perhaps July they wouldn’t have had the same amount of work as part of their average. So we followed the legislation but we chose what date we gave notice and dismissal to ensure that the staff got the best out of it that they could.

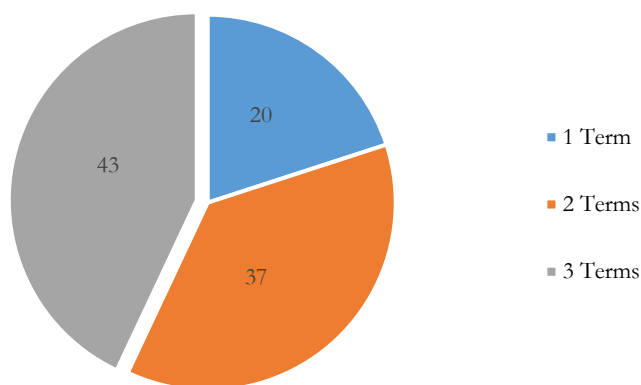
(NCU Human Resource Personnel 1)

In both the case studies many employees do therefore qualify for full-coverage with regards to dismissal and redundancy rights as established in the ERA 1996. This is despite the fact that an ability to do so is often overlooked within the literature and debate which constructs Zero-Hours Contracts as an

employment form that does not provide rights associated with standard employment. However, there are others who do not enjoy access to protection. This is the case for many of the academic staff on ZHCs in South Valley University. It was noted earlier in the chapter that as far as the institution is concerned, failure to be engaged for one academic term means that continuity of service is broken.

Figure 7.2 charts the proportion of individuals in the Faculty of Computing, Engineering and Science in who were working a certain number of terms within the academic year 2015/2016. Of the total number employed, only 43 percent worked for the 3 terms, while the remaining 57 percent were only engaged to work 1 or 2 terms. SVU will therefore regard the majority of employees as having a break in continuity of service for the year<sup>44</sup>. Moreover, while maintaining continuity of employment for one year is tricky, reaching the two-year threshold is will be even more difficult since there is no guarantee that an individual who works all terms in one year will be so fortunate to do so in the next.

**Figure 7.2. Proportion of employees in the Faculty of Computing, Engineering and Science in South Valley University working a certain number of terms in the academic year 2015/2016**



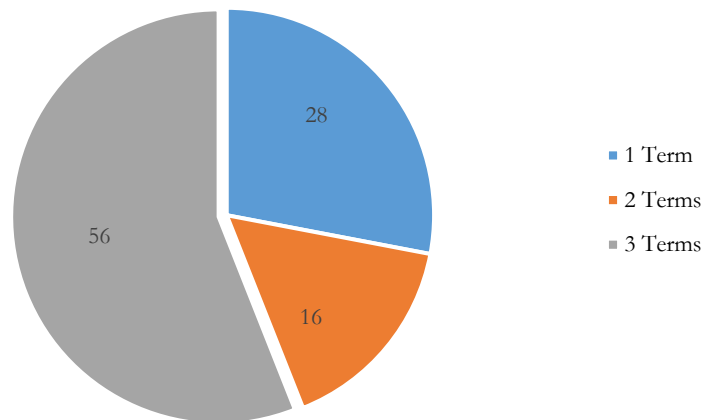
Source: Data provided by SVU Departmental Manager 2 compiled from faculty records

The equivalent graph on the proportion of academic employees who work a certain number of terms in NCU is included in the Figure 7.3 below. It shows that there are a greater proportion of employees

<sup>44</sup> Data collected as of the 24<sup>th</sup> of November of 2015 so the number may change as the year progresses.

working both semesters and all three terms than there are SVU, so fewer people will have an obvious break in continuity for that academic year. Moreover, it was noted earlier that efforts are made in NCU to ensure that continuity is not broken when it is known that employees will be working again in future.

**Figure 7.3. Proportion of employees in academic roles in North Coast University working a certain number of terms in the academic year 2015/2016.**



Source: Data provided by NCU Human Resource Personnel 2 compiled from institutional records

However, in many cases it is not always known that re-engagement will occur. Indeed, it must be remembered that one of the reasons for using the Zero-Hours Contracts in the first place is because they are an effective tool to manage uncertainty of demand. It is perfectly feasible that some employees will not work for one semester or term within a two-year period during which time there is no intent or promise to provide work again in future. A Manager explained this:

Usually we have a good idea of who we want to keep working for us but the need is never certain, Tutors could miss out on work for one term after we've said we no longer need you, but be brought in again on temporary contract for the year after.

(NCU Departmental Manager 14)

Even if they do work when the need arises in future, this would mean that continuity is broken and the right to claim unfair dismissal and redundancy is beyond the grasp of employees. It is difficult to know the exact number to which this applies but it is likely to cover a sizable minority of employees in NCU.

There is little evidence across the interviews in both of the HEIs of unfair dismissal and a denial of redundancy. Neither is there any account of management deliberately causing a break in continuity to avoid such obligations. Instead, any such break would be more to do with institutional demand or need. However, it was recognised among Trade Union Representatives and some employees that the system could be conducive to abuse in a way that is emphasised in the ZHC literature. This is seen in the following comment:

I think it's probably not been open to too much [abuse] certainly as far as the academic work is concerned. But look, there's always a scope for these contracts to be abused and for people to be unfairly dismissed or to have their redundancy claims frustrated. Just because you have a contract doesn't mean you've automatically got rights, there is still that imbalance in there.

(SVU Trade Union Representative 1)

This part of the chapter has analysed all instances in SVU and NCU where contracts of employment are in place and the status of employee provides a gateway to the full range of rights and entitlements. However, because of the presence (or absence) of occupational policies and the existence of statutory qualification criteria, the reality is that employees have different levels of access. Some can be placed at one end of the continuum with full coverage-plus or full coverage while other employees receive only partial coverage.

### 7.3 Workers

The chapter now moves on to look at those instances within the institutions where academic and non-academic staff are given the status of worker, and thus a subset of rights and entitlements. As discussed at the start of the chapter, the intermediary category was created in the ERA 1996. Its purpose was to ensure that people who did not meet the narrow criteria for employee status under a contract of employment, but who also were not genuinely self-employed, could access some rights and entitlements that they were not previously afforded. Section 230(3) of the statute defines the worker concept as:

*In this Act “worker”... means 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... 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.*

Part (a) establishes that all of those who are on a contract of employment are also workers (even though some may also qualify for employee status on account of meeting narrower criteria) while (b) is the part which ensures that some employment rights extend to all those who are not genuinely self-employed.

Table 7.3 shows the different Zero-Hours Contracts that provide worker status and the employment roles for which they are used. A common theme is the relative informality of the contracts but there is some difference in the nature of the roles for which they are used across the HEIs. In SVU, no academic staff are employed on this basis but they are in NCU. In NCU there are also instances where the arrangements are used for probation periods in roles that otherwise involve contracts of employment.

**Table 7.3. Zero-Hours Contracts that provide worker status and employment roles for which they are used in South Valley University and North Coast University**

South Valley University		North Coast University
<i>Casual Worker Arrangements</i>	<i>Students Union Agency</i>	<i>Pink Form Casual Worker Arrangements</i>
Exam Invigilators	Catering Assistants Student Ambassadors	Lecturer Tutor Demonstrator Catering Assistant (Probation) IELT's Examiners and Invigilators (Probation) Peer Guides Manual

It is possible to provide some analysis of instances where worker status is given in the case study HEIs. However, it should first be noted that the statute itself does not provide a clear distinction between the status of employee and worker. Since decisions on the matter have been left to judges, some degree of inconsistency has developed in the case law. This has resulted in a general of lack of clarity and a significant degree of confusion (as was noted in the Taylor Review). A key issue is what exactly makes this category distinct from that of employee and whether, or even how, the mutuality criterion should be considered.

Some have suggested that worker is not a “low-fat version of employee” and should in fact be seen as a different concept altogether (Davies 2015: 114). However, others such as Adams and Prassl (2018: 28) point to the leading interpretation of worker status found in *Byrnes Bros* [2002]<sup>45</sup>, which holds that the difference between employee and worker is in fact one of degree rather than kind. If this is the case, the finding of worker status will be decided on the basis of the same considerations as the

<sup>45</sup> *Byrnes Bros (Formwork) Ltd vs Baird and others* [2002] IRLR 96

traditional distinction between employee and self-employed but will rest on the extent to which the criteria for the former is met.

The interviews in both cases studies did not provide a great deal of information on why some arrangements conferred worker status. This is suggestive of a limited level of knowledge among HR personnel, and to some extent reflects a generalised lack of understanding among employers that is documented in the literature (CIPD 2013a). Nevertheless, some insights are worthy of discussion.

In regard to the first test set out in s230 (3) (b) of the ERA 1996, all of those working on the contractual arrangements do provide services personally to the employer institution. In no instance are the workers permitted to send others to undertake work in their place and each must undergo a process of appointment involving a NI and a payroll number. In many instances, recruitment is also undertaken on the basis that an individual has a particular skill set or experience to bring their respective occupational roles.

The second test related to control is critical in determining whether a client-customer relationship exists. There was some suggestion among HR Personnel in SVU that the attribution of worker status could be put down to the fact that the institution does not control the work to be undertaken:

Yeah, so the Exam Invigilators and Life Models are definitely the worker ones because we don't identify how they carry out the work, so it's [sic] we want to engage you for your profession.

(SVU Human Resource Personnel 2)

In line with the principle of degree, this would move the relationship closer to the realm of a self-employment. However, this is inaccurate since control of the work undertaken by Exam Invigilators rests is firmly within the hands of the management. This is clearly evidenced by the extensive training

that employees are required to undertake as well as the existence of a handbook that is replete with bureaucratic rules and procedural instruction.

For those employed via the SU Agency, the control test is a little more complicated since it can be argued that the work performed by students is not controlled by the employing agency but rather by the end user in the University's departments. The Agency Workers Regulations 2010 deal with this issue and are intended to mark out individuals working in this situation from the genuinely self-employed who are running a business to which the agency is client or customer.

*Part 1. 3 (1) In these regulations "agency worker" means an individual who-*

*(a) is supplied by a temporary work agency to work temporarily for and under the supervision and direction of a hirer.*

*(b) has a contract with the temporary work agency which is-*

*(i) a contract of employment with the agency*

*(ii) any other contract with the agency to perform work or services personally*

The SU Agency contract also contains information relating to the control test and can be seen in the box below. It echoes the regulations above and suggests that control is indeed present since students must accept the direction, supervision and instruction of individuals in SVU who have authority from the union.

**Box 7.10. Information relating to control from the Student Union Agency contract in South Valley University**

**7. YOUR OBLIGATIONS**

You shall agree that during every Assignment and afterwards as appropriate you will:-

- 7.1** co-operate with the Union and accept that direction, supervision and instruction of any person in the Union's organisation [or any individual with authority from the Union] to whom she/he is responsible and conform to the Union's rules and regulations and Union's standards of work and practice;



For those employed on Pink Form Casual Worker Arrangements in North Coast University, the HEP's departments retain control of the work to be undertaken in much the same way as instances of direct employment above. Some of those working in academic roles will have a lot of autonomy over their work and, as noted earlier, this can complicate the issue of control. However, it will not be sufficient to deny the existence of a broader level control since the timing of work and many of the tasks and outcomes are invariably set and monitored by management in the academic colleges and schools with the institution.

The greatest consideration must be given to the issue of mutuality of obligation, the role of which in determining employee status remains the subject of ongoing debate. Nevertheless, the case study institutions' rationale for attributing worker status appears to be heavily influenced by these considerations of this nature. Before looking at the matter in more depth, it is useful to revisit what, if anything, the contracts say about mutuality and its role in employment status.

As seen in Chapter 5, Casual Worker Arrangements in SVU address the issue of mutuality of obligation by stating that there is no guarantee of hours or obligation to accept work. This is included again for the reader in Box 7.11. However, there is no comment on how it relates to employment status.

**Box 7.11. Information on mutuality of obligation for Casual Worker Arrangements in South Valley University**

Further to your recent offer of appointment as an Exam Invigilator, I am writing to confirm that your name has been added to Exam Invigilators casual register.

In agreeing to join the exam invigilator pool no guarantee of hours is given nor is there a requirement for you to accept the hours offered by the University.

The equivalent information from the SU Agency in SVU can be seen in Box 7.12 below. In this instance, there is a clear attempt within the document to state that there is no contract of employment and therefore no employee status. This is done by persistently stressing that there are no mutual

obligations between the parties to the contract, regardless of whether individuals have undertaken work on more than one occasion.

**Box 7.12. Information on mutuality of obligation from Student Union Agency contract in South Valley University**

**2. THE CONTRACT**

- 2.1 Each offer of work by the Union which you accept shall be treated as an entirely separate and severable engagement.
- 2.2 These Terms and Conditions constitute a Contract for Services between the Union and yourself upon being signed by the Casual Worker and they shall govern Assignments undertaken by you for the Union. However, there shall be no relationship between the parties after the end of one Assignment and before the start of any subsequent Assignment.
- 2.3 For the avoidance of doubt these Terms and Conditions shall not give rise to a Contract of Employment between the Union and yourself. The fact that the Union has offered you work, or offers work more than once, shall not confer any legal rights on you and, in particular, should not be regarded as establishing an entitlement to regular work or conferring employment status or continuity of employment.

**3. ASSIGNMENTS**

- 3.1 The Union agrees to engage your services on these Terms and Conditions from time to time in the event that it offers Assignments to you, and you accept that offer.
- 3.2 The failure of the Union to offer Assignments to you shall not give rise to any liability on the part of the Union and you recognise that the Union is not under any obligation to offer an Assignment and is under no obligation to provide reasons for any failure to offer Assignments.
- 3.3 You shall not be obliged to accept an Assignment offered by the Union and you acknowledge that there will at no time be any mutuality of obligation between the parties.

There is no information included in the Pink Form Casual Worker Arrangements used in NCU with regards to mutuality of obligation or how it features in decisions to designate worker status. This is because the documentation is designed as a means of remunerating one-off isolated pieces of work.

The existence of no mutuality clauses within contractual documents is a well-known phenomenon in law. In Leighton's (2002) analysis of *Stevedoring and Haulage Services vs Fuller* [2001]<sup>46</sup> it was shown that they can sometimes be included with the intention of refuting the existence of a contract of employment. For years, the technique appeared to be effective in preventing a contract of employment

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<sup>46</sup> *Stevedoring and Haulage Services vs Fuller* [2001] IRLR 672 (CA).

if the document was detailed and drafted clearly. However, as Bogg (2012) notes, more recent legal decisions mean that the courts will now evaluate other available evidence that the real agreement differs from what was stated within the signed contracts – for example, the cases of Autoclenz [2011]<sup>47</sup> and then later Pulse Healthcare [2012]<sup>48</sup>.

It is therefore necessary to give some consideration to the reality of the relationship in practice when analysing the appropriateness of worker status in the case study institutions. In SVU, Exam Invigilation is the main worker role. During occasions of work, there is a wage-work bargain which means that some relationship of mutual obligations does exist. However, this is only for a short period when compared to the examples seen earlier in the chapter. Beyond this, individuals are contracted and registered within a pool but management insist there is no obligation to provide offers of work, implying that there is ongoing relationship worthy of establishing employee status or continuity of employment. Interestingly, there was some suggestion by management that workers may have an expectation of getting work in future:

I think so yes, if they're registered with us in the pool and they remain registered, so if they're on the register there will be an expectation that they will be offered work, though they may not get it.

(SVU Departmental Manager 10)

However, it was also said that clear efforts are made to “manage expectations” and to avoid promising work such that any mutuality of obligation could be inferred. Patterns of work are also highly intermittent, with the break between periods far exceeding any of the times when individuals are engaged to perform duties. HR considered this to be key factor and linked it to a lack of integration into the organisation:

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<sup>47</sup> Autoclenz Ltd v Belcher [2011] UKSC 41

<sup>48</sup> Pulse Healthcare vs Carewatch Care Services Ltd [2012] UKEAT 0123/12

Their break is longer than their service, so it is very much a different arrangement...there's also no integration, you know, you wouldn't see us putting these through the performance scheme, for instance, or the capability management scheme, they're not here for long enough.

(SVU Human Resources Personnel 4)

Alongside these factors, it was also shown in the previous chapter that Exam Invigilators do not have to accept any offers of work provided. This further underlines the absence of an ongoing relationship of mutual obligations. Overall, these factors suggest that those in the role probably do not warrant the status of employee but are instead workers according to the legal principle of degree.

Other roles where worker status is provided in the case study HEIs include the following:

- Student Ambassadors and Peer Guides (SVU and NCU).
- Sports Assistants and Receptionists (SVU).
- Lecturers and Tutors (NCU).
- Manual (NCU).

In these situations, there is no extensive wage-work bargain that binds the parties in some form of mutual obligation for a substantial period. In place of any underlying contract or recognised labour pool, there is only ever an informal relationship and management make clear that they are not obliged to provide any work. There is also a large break between the few working days that individuals may undertake each year and no obligation is placed upon them to accept offers of work. In these situations, it is extremely unlikely that the principle of degree would lead to anything other than worker status.

The situation seems appropriate thus far, but there are some important caveats to be raised regarding the finding of worker status in relation to the mutuality of obligation criterion. It has been noted earlier that legal cases such *Carmichael* [1999]<sup>49</sup> and *McMeechan* [1996]<sup>50</sup> have ruled that there is nothing in

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<sup>49</sup> *Carmichael v National Power plc* [1999] UKHL 47

<sup>50</sup> *McMeechan v Secretary of State for Employment* [1996] EWCA Civ 1166

principle to prevent agreements in the form of wage-work bargains from constituting contracts of employment. In the examples discussed above, these agreements are short enough to be overlooked. However, in other roles they are long enough for individuals to be regarded as having employee status.

This applies to the following in North Coast University on Pink Form Casual Worker Arrangements:

- Demonstrators.
- Catering Assistants (Probation).
- IELTS (Probation).

In Chapter 4 of the thesis, it was noted that NCU operates a rule in which departments are prohibited from using the arrangements where an individual's work lasts for longer than 3-months. HR explained:

The 3-month rule was intended to make sure that these people paid on pinks were really genuinely doing casual work. If it [working period] was over 3 months they should be on a proper contract.

(NCU Human Resource Personnel 1)

**Box 7.13. Information governing the use of Pink Form Casual Worker Arrangements in North Coast University**

**IMPORTANT - PLEASE READ THIS INFORMATION FIRST**

**Use this form for casual and occasional payments via the payroll only.** If you work for more than 3 months or the work is spread over a period of longer than 3 months then a formal contract of employment will need to be arranged via your employing department, prior to the work commencing. The employing department should seek advice from the Human Resources Office.

On the basis of a recent review in the institution, it was suggested that in “almost all cases” they were not being used in lieu of a formal contracts but only where there is a genuine casual need. However, HR Personnel explained there are exceptions to the 3-month rule for students within the institution:

Yes, [there are] exceptions for students because you [HR personnel] would have to keep opening and shutting their payroll which would mean they would have to have a different number each time. We felt that students who may be here for a 3-year period may do different pieces of casual work perhaps in different departments over that time period. So they may do a bit of demonstrating or they may do a bit of open day or some peer guide work for marketing, those kinds of things.

(NCU Human Resource Personnel 1)

For many PhD student Demonstrators, there is a big contrast between their work and other casual jobs. Moreover, it was seen in Chapter 5 that the reality of their employment relationships is very similar to many Lecturers and Tutors on contracts of employment in the institution (and in SVU). Indeed, their working time agreements are also highly structured and can last the duration of a whole semester. This means that there is unquestionably the same degree of mutual obligations but no employee status has been given. In comments from management, the presence of an obligation for this substantial period is underlined:

I don't know where that stands with mutuality of obligation because with teaching or demonstrating, if you ask somebody to come in and they're paid on a pink they have to come in to do that work don't they, they can't let the university down. If they don't turn up, that's bad.

(NCU Departmental Manager 9)

Some evidence has therefore been found of a widely debated phenomenon in which workers are being misclassified and therefore excluded from employment protections that they are due in law. It also supports data provided by UCU in response to the Taylor Review which points to the widespread experience of "atypical academics" whose working patterns do not justify worker status (UCU 2018).

The UCU suggest that this is because HEIs are deliberately attempting to save costs by avoiding payments that need to be made when employees accrue employment rights. Why, then, have Demonstrators not been given employee status when their colleagues in other academic roles are covered? There does appear to be a tacit view across the NCU that student employment is in some way intrinsically different than other employment and should therefore not be subject to the same formality or legal recognition. While this could play a role, there is little evidence to suggest that it is instrumental and instead the practice appears to be sustained due to administrative convenience. In the interviews, there was some understanding among HR that the current situation is incorrect and that a change is necessary:

We have recently brought in a code of practice for postgrads who are carrying out teaching, so I think we may see more of the ones that have been on pink forms being moved onto some kind of contract over the next 2 years in order just to be more consistent across the board.

(NCU Human Resource Personnel 1)

These issues of misclassification are not confined to academic roles in North Coast University. In the interviews, there was also a suggestion that managers are using the arrangements for a 3-month starting-out period before providing Catering Assistants and IELTS Examiners and Invigilators with a formal contract of employment. A Departmental Manager explained this situation:

We employ people on pink forms initially for a period of 3-months maximum, and then they go onto a contract. I'd say on average about 30 every year would start with us, so generally I think most years I probably have about 30, mostly students, who would start on pink forms [out of 120 staff] likewise then about 30 leavers, with the rest remaining solid.

(NCU Departmental Manager 1)

As is the case above, the employment relationship that these people have is identical to their colleagues who have contracts of employment, both in terms of their working periods and the schedule agreements in place. There is, as such, no reason in law why they too cannot be classified as having employee status. While the issue surrounding the value of student labour also applies here, a manager explained that the current situation is mostly due to administrative convenience and the need to ensure that staff are paid on time for initial work that they undertake. However, once these practical matters are considered, new staff are kept on the arrangements for longer than is necessary. This is to provide a probationary period:

It [the use of pink forms] gives us an opportunity to use the time to be closing monitoring the quality of work and the appropriateness of the person for the catering role, and then go from there.

(NCU Departmental Manager 1)

It is not certain that this motivation for the use of worker arrangements extends to an explicit intention to provide fewer rights. The decision does, however, appear to rest on an assumption that these individuals should not receive formal and legal recognition until they have proved themselves suitable for a regular position. During the course of non-recorded discussions with HR, it was suggested that they were unaware of the practice and expressed some concern at the prospect of management using the arrangements in this way.

With these matters explored, the chapter can shift its focus toward workers' access to the subset of rights to which they are entitled. Unlike in the situation for employees, this generally does not occur to different extents. Instead, they are all limited to partial coverage and can therefore be placed around the same position on the continuum. It could be suggested that access to some of these rights may be less important to workers due to a lack of economic dependence on the work (e.g. maternity), but there is still potential for different problems to exist on account of no access or coverage being available.



## Minimum Wage

There was no evidence in either of the case study HEIs of NMW being underpaid and this can be explained by the fact that workers receive a straight rate for a well-defined hour of working time.

## Holiday Pay

In terms of the right to holiday pay, Box 7.14 shows that those on those on Casual Worker Arrangements in SVU are paid annual leave on top of the hourly rate, or “rolled-up holiday pay”.

### **Box 7.14. Information on annual leave payment for Casual Worker Arrangements in South Valley University**

You will receive ~~£10.02~~ for each hour of invigilation and a payment for annual leave will be added on top of your hourly rate of pay.

In North Coast University, there was some uncertainty from both management and employees as to whether holiday pay is given to those working on Pink Form Casual Worker Arrangements. However, it was confirmed by HR and employees that annual leave is paid at the standard 12.07% in much the same way as SVU. While this ensures that no staff lose out on their entitlement, some workers expressed annoyance at not being able to take annual leave in the same way as their counterparts on standard contracts. This is particularly the case for those working in roles where their status should be that of employee:

I did feel that the permanent staff who are there and have proper contracts [Dyslexia Tutors] were able to say “oh I’m taking annual leave today” and I said “that’s nice to have one of those” you know, it’s nice to be able to say that...during Christmas time a lot of people were taking annual leave, I was pretty much alone I never saw nobody else. It was pretty depressing to be honest.

(NCU Employee 2 – Receptionist)

## **Sick Pay**

Within the debate, there is a tendency to believe that those who are classified as workers do not qualify for SSP on account of their worker status. However, provided the statutory criteria is met it is in fact open to anyone who is not self-employed and who pays Class 1 National Insurance contributions. In the case study HEIs, participants in HR seemed to be under the impression that there is no ability to claim SSP:

The Exam Invigilators and the [Life] Models have to report sickness but they're workers so they don't get the Statutory Sick Pay and things like that which the academic staff would get.

(SVU Human Resources Personnel 2)

In most instances in the HEIs, the fact that working periods are intermittent and last for a very short duration means that qualification for SSP is not possible and this might explain the attitudes displayed.

It was noted above, however, that in North Coast University some roles where worker status is given actually involves work for unbroken periods of up to 3-months and in some cases often longer. Many of these will not achieve the statutory threshold, but some who are employed in Demonstration and Catering should be able to claim on account of meeting SSP criteria. However, since there is a general view that worker status does not involve a right to SSP meaning there is a real risk that payment is not forthcoming.

For all workers in the case study institutions, there is no statutory right to claim payment for individual days of sickness and this can be seen in the information below from SVU (similar information is not available for NCU).

**Box 7.15. Information on non-payment for individual days of sickness absence for Casual Worker Arrangements in South Valley University**

<b>Sickness</b>	<p>Where an invigilator is unwell and is unable to attend the University to undertake their allocated duties, payment will not be made.</p> <p>When an invigilator attends duties and is taken ill, they are permitted to claim the time worked until the duty has been handed over.</p>
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While the case study HEIs are not permitted by law to make payment, one Exam Invigilator reported a sense of perceived unfairness, especially since they are still required to follow the reporting procedures:

If we're sick for a day or two that's it, you'll get no payment for that if you don't attend. To be honest it's a bit frustrating given that we're expected to make the effort to report it on a daily basis.

(SVU Employee 5 - Exam Invigilator)

In North Coast University two individuals spoke of their experience when asked if they receive payment for daily absences, both of whom denied being able to make a claim:

No, I don't think so [whether paid for an individual sick day]. They would try to make me work another day to make up for the hours where I've lost them but I didn't get paid. I mean it never happened I was never sick so guess it wasn't a problem. I wouldn't have expected them to pay because it's all just so basic and you feel like you don't have rights on a pink form.

(NCU Employee 3 – Catering Assistant)

I never called in sick, but I never had the luxury to say I'm calling in sick today like "I can't come into work because I'm not feeling well" and then still get paid for the shift. You don't get paid.

(NCU Employee 6 – Demonstrator)

The status of worker prevents any access to other rights issued to employees and, as a result, all of these roles are situated at the part of the continuum that guarantees only partial coverage. A lack of maternity pay is not matter of great concern due to insufficient patterns of work and the personal profile of workers. However, matters to do with minimum notice and a lack of protection against dismissal are more pertinent.

In the Box 7.16, information is included from Casual Worker Arrangements in South Valley University regarding notice in the event of dismissal or termination of the relationship. This would form part of a conversation about removal from the pool and while it can be seen as a courtesy notice, it is not a right.

**Box 7.16. Information on notice for dismissal for Casual Worker Arrangements in South Valley University**

If you no longer wish to be part of the exam invigilator pool you are required to inform the University, in writing, giving one weeks notice of your intention to leave the pool. Similarly should the University no longer require you to be a member of the pool you will receive one weeks notice of this.

In Box 7.17 information is given regarding notice for the SU Agency in South Valley University which clearly states assignments can be ended at any time without notice and since, there is no relationship between assignments (at least according to the documentation) it can also be seen as a termination.

**Box 7.17. Information on notice for dismissal from Student Union Agency contracts in South Valley University**

**9. CANCELLATION of ASSIGNMENTS**

- 9.1 The Union may at any time without notice and without liability end an Assignment. You will be paid for all work carried out during an Assignment up to the time it is terminated.
- 9.3 Failure to attend an Assignment (once accepted) without prior notice and without good cause will result in you not being offered an Assignment on the next occasion.
- 9.4 Repeated failure to attend an Assignment (once accepted) without prior notice and good cause will result in no further Assignments being offered.

There is no information in the documentation for Pink Form Casual Worker Arrangements in NCU.

In both of the case study HEIs, there was no evidence of people being unfairly or constructively dismissed. However, as was the case with regard to employees, some workers showed that they are conscious of their lack of protection and recognised that such a situation could indeed occur:

I think if they wanted to, they could just get rid of you without giving a reason and there's not much you could do about it. There's no safety net or protection so you just have to trust them.

(SVU Employee 5 - Exam Invigilator)

No I don't think I was forced out of anywhere in terms of, you know, I've heard about people saying well the Zero-Hours Contracts "we just won't give you any hours anymore and you will just eventually leave". I did feel like I could though [be unfairly dismissed] and that's not to do with the service specifically, it's the way the whole thing is structured being paid over a pink form.

(NCU Employee 3 – Catering Assistant)

These comments show that the current system of classification creates an imbalance of power that leaves many working people in vulnerable positions and exposes them to the potential for unscrupulous

management practices. This is particularly disconcerting when one considers that worker arrangements can be used for probationary periods because they enable workers to be dispensed with easily. There is also some concern in relation to those working people who have been given the incorrect status of worker and are therefore unable to make legitimate claims for protection against unfair dismissal.

## **7.4 Summary**

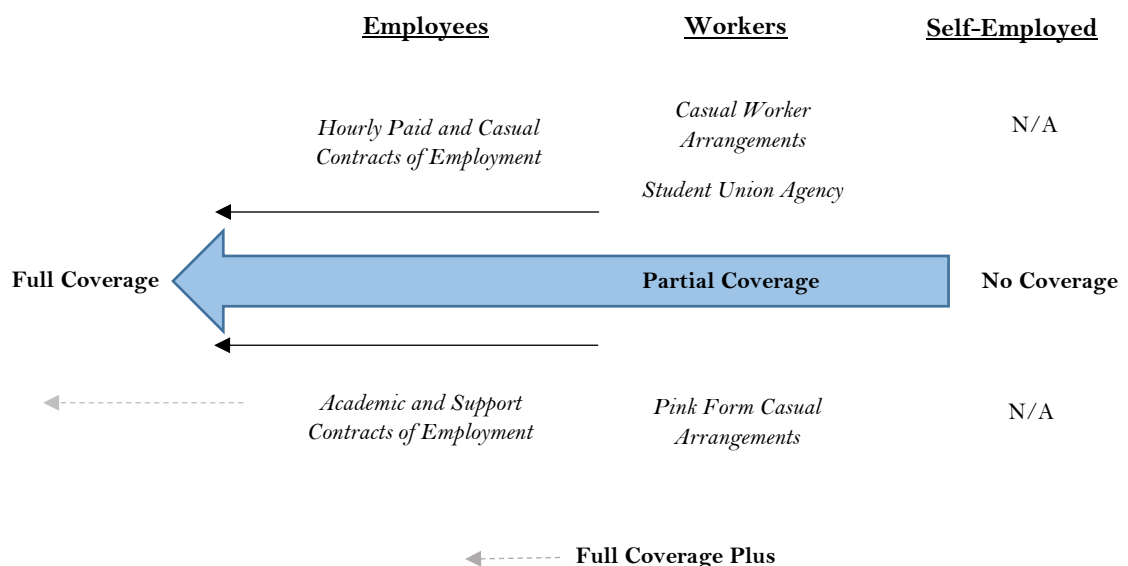
This final finding and analysis chapter completes the third objective of the thesis which is to understand the variety of ways that Zero-Hours Contracts are used in relation to different aspects of the employment relationship. Here, the focus was placed upon employment rights and entitlements.

The popular notion of “Zero-Hours Contract” has caused quite a stir in legal circles. In contrast to many prevailing assumptions, some scholars have been eager to show the label does in fact cover a wide spectrum of personal work arrangements that involve different classifications and levels of statutory protection. There is support for these observations among the existing research but the available empirical insights only relate to the use of Zero-Hours Contracts more generally, leaving a limited understanding of the situation in specific sectors of the labour market, including HE.

Inspired by earlier studies, this chapter has presented analysis of primary data from two HEIs giving consideration to employment status and levels of access to associated rights and entitlements. The overall findings are illustrated in Figure 7.4 included below. In line with the core argument of the thesis, it shows that there is indeed a variety of practices in both of the case study HEIs that can be mapped onto a continuum of rights and entitlements coverage. Occupying one half the continuum are contracts of employment that confer employee status. When considering the legal tests, the status of employee appears to be correct and is most attributable to the mutuality of obligation that persists through extensive wage-work bargains that last for up to a semester and even for the academic year.

However, the situation is by no means homogenous in terms of access to specific rights and entitlements. Some employees in North Coast University enjoy occupational protections that go beyond the statutory provisions meaning that they receive full coverage-plus. This is not the case in SVU and the contrast reflects what is known in the sector with regard to the willingness of HEIs to roll policies out to its non-standard workforce. Others in both institutions will qualify for full coverage owing to their ability to satisfy qualifying criteria. In both institutions, many employees will not have access to key rights and entitlement and will therefore sit further toward the centre of the continuum with only partial coverage. This is largely on account of not being able to satisfy statutory qualification thresholds and the outdated rules on continuity of employment. Ultimately, this can result in problems associated with non-payment for sickness and an absence of protection against unfair dismissal and redundancy. For these individuals, then, the status can act as a hurdle rather than a gateway to rights.

**Figure 7.4. Continuum illustrating the extent of statutory rights and entitlements coverage in South Valley University and North Coast University**



At the centre of the continuum of coverage sit all contractual arrangements that confer the status of worker as it is set out in the ERA 1996. While the analysis of the employment status reported here

cannot be seen as constituting a definitive judgement in lieu of legal authority, it does raise some important issues. After some deliberation, it was apparent that the institutions conferred the status of worker on account of the relative lack of mutual obligations associated with work that is of a short duration and is highly intermittent in nature. In most cases the chapter argued that there is nothing to suggest that this is inappropriate when one considers the principle of degree laid down in legal dictum.

However, when one focuses the analysis at level of the wage-work bargain, there is reason to believe that some individuals in NCU should be regarded as employees in much the same way as many of their ZHCs colleagues. This misclassification is in line with experience that is documented elsewhere in the labour market and HE sector. The literature reflects on the reasons why this can occur, with explanation ranging from the lack of clarity and confusion arising from case law to deliberate efforts by employers to avoid costs. In the case studies, it is difficult to conclude that intentional forms of avoidance have occurred with other factors such as administrative convenience appearing to be more relevant.

These workers are excluded from any of the available occupational policies and have a subset of statutory rights. This puts them firmly within a significant number of people on non-standard employment in HE who report not being able to access employment rights. It was noted that difficulties can arise for individuals on account of this low coverage which leaves many without recourse to key employment rights.



## 8 Conclusion

In the 1990s, the term “Zero-Hours Contract” emerged as a colloquial expression for some forms of casual employment. Though they were the subject of some controversy and debate during this time, they remained a relatively peripheral labour market issue. However, at the start of 2013 there was an explosion of interest that began with an increase in the official numbers in use for the previous year. After this, a series of further statistical estimates from Office for National Statistics were provided. As a result of methodological changes and increased awareness of the term “Zero-Hours Contracts” prevalence rates shot up to around one million. Ultimately, this has meant that they have become firmly fixed on the public and political agenda with strong arguments being made in support and opposition.

In addition to key issues of measurement and the ways in which their use relate to wider processes, this thesis placed an emphasis on the way in which Zero-Hours Contracts are often assumed to be a simple or homogenous category of employment. This is something that is implicit in attempts to regulate employment of this nature as well much of the existing public and political discourse including calls for an outright ban. However, the term is now more widely used and far more broadly defined than it was in the past. This means that it covers a great variety of employment arrangements. Even though it is not the intention of existing studies, the thesis showed that this is indeed demonstrated in the available data. However, the insights we do have are limited to the labour market as a whole and leave very little known about the variegated use of Zero-Hours Contracts in specific sectors of the labour market.

This thesis seeks to address the gap by looking at the situation in Higher Education. The HE sector was considered to be a suitable focus because it has a well a documented history of casualisation and is among the greatest users of ZHCs. Besides from contributing to a better understanding of the Zero-Hours Contract phenomenon the research was also motivated by the need for evidence to inform the policy debate. The research had three aims and objectives which were designed to have a logical order:

1. To clarify what employment arrangements can be labelled as *Zero-Hours Contracts* in HEIs.
2. To review the use of *Zero-Hours Contracts* in terms numbers, roles and pay levels in HEIs.
3. To understand the variety of ways that *Zero-Hours Contracts* are used in relation to the following aspects of the employment relationship for academic and non-academic roles in HEIs.
  - Working time.
  - Employee obligations.
  - Rights and Entitlements.

In Chapter 3, it was decided that the research would not follow a quantitative design like much of the existing empirical work. In order to avoid complications with definition and labelling and also to explore the ZHC phenomenon in depth, two case study HEIs were selected which represent either side of the pre-92 and post-92 divide. In these case studies, multiple forms of data were collected and analysed in order to provide a well-rounded basis from which to address the research objectives. These included documents and staff data but most notably interviews with HR, Departmental Managers and Employees.

## **8.1 Summary of Findings**

The first of the findings and analysis chapters began by providing a brief analysis of secondary data in order to give some context. Some limitations of the available HESA data were noted - for example, it does not enable us to measure particular types of employment such Hourly Paid Contracts and Zero-Hours Contracts which are known exist in great numbers in the HE sector. While HESA has gone some way to resolving the matter with a new measure for ZHC, the data are not available at present. In 2013, UCU (2013) recognised many of these limitations and conducted its own FoI exercise. In this thesis, some analysis of the data was undertaken alongside reflections from HR with regards to how

the HEIs responses were formulated. This confirmed the deep uncertainty around what a Zero-Hours Contract actually is and the kinds of employment to which the label should be applied.

The chapter then addressed the first objective of the research by clarifying what employment arrangements could be labelled as ZHCs in the HEIs according to the definition used in the thesis. In this sense, the study is the first to make systematic efforts to do so within in any sector of the labour market. There were some challenges to this. Despite its liberal reporting to the UCU (2013) FoI, HR in South Valley University disputed that its academic employment could be seen as ZHCs since it is not thought to be consistent with how they are commonly portrayed in the media. The situation was more straightforward in North Coast University. Here, HR were happier to accept the label, but there were still a whole host of atypical arrangements over which there is no agreement on their ZHC status.

The nature of the research design nevertheless enabled these issues to be overcome. Several broad types of Zero-Hours Contracts were identified in both case studies and these ranged from highly formalised contracts of employment through to informal worker arrangements. Importantly, all these arrangements have been used within the HEIs for many years but with different terminology. This suggests that re-labelling may be more likely to explain levels of use rather than “ZHCs” representing a new and distinctive form of casualisation within the sector. The chapter then sought to address the second objective by providing an overview of use in the HEIs. When all things are considered, it was found that the institutions use approximately 800-1000 arrangements that could be regarded as ZHCs during the year that the research was carried out. The chapter also explored how they are used in terms of occupational roles and payment levels. In both institutions, it was found that they are used for a great variety of roles spanning the entire SOC 2010 framework. Given this distribution, the chapter demonstrated that although payment levels are diverse they tend sit above the low-pay threshold.

The remaining findings and analysis chapters moved on to address the third objective in relation to three major aspects of the employment relationship. In much the same vein as existing research, these

findings underline the main contention of the thesis that Zero-Hours Contracts involve highly variegated practices for both academic and non-academic roles in the case study HEIs.

### ***Working Time***

In Chapter 5, the main objective was explored in relation to working time. Within this, a few specific dimensions of working time were of interest. It was found that in both HEIs, the working period of those in academic and non-academic roles only occurs during the academic year extending from October to June. However, within this timeframe, some academic and non-academic roles involve work that is ongoing for the duration, while for others work is intermittent. This is entirely determined by management and relates specifically to periods of demand and other forms of institutional need.

Some analysis was also undertaken on the quantity (or duration) of hours being worked. In academic roles these tended to be very low especially when compared to average hours for ZHCs in the labour market, while in non-academic roles there is a much greater range. This aside, the chapter maintained that the most intriguing dimension of working time is schedule notification and change to the number of hours worked. This is also the most relevant to the debate because of its potential to have a negative impact on employees. The varieties of practices can be mapped onto a continuum adapted from the early literature which is based on the extent to which working time arrangements are either:

**Structured:** Meaning that working time arrangements involve a fixed plan.

**Unstructured:** Meaning that working time arrangements involve flexibility.

In terms of academic roles, a key characteristic is that there is extensive schedule notification meaning that working time is structured in a fixed arrangement to last either the whole academic year or a 3-month semester. This can be explained by the fact that while the management of working time may be controlled in the interests of employers, it is constrained and shaped by factors relating to the sectoral context. Most important here is the nature of the product being provided which involves a set

programme of academic classes. This means that there is a need for human resource with the requisite skills to be put in place in order ensure sufficient quality of service delivery and that management in the HEIs are able to plan in relation to foreseeable demand and timetable needs. Given the high degree of structure to the arrangements, it could be said that the objective conditions most likely to cause problems for employees are not as pronounced as they have been reported in the debate more generally.

Non-academic roles involve a greater variety of practices which occupy more points on the continuum. In some the situation is very similar to academic roles in the sense that working time is highly structured and, indeed, there are many similar reasons involved. In others, arrangements are better described as being partially structured but this still involves a lot of schedule notice and relatively fixed or regular working hours. These practices are also shaped by factors associated with the sector and the need to ensure that service quality can be achieved and maintained. In some usual instances that we will explore in greater depth below, management consider that the best way to proceed is to give professional employees a significant level of autonomy and control over scheduling while encouraging them to engage in forward planning. In similar support roles, management allocate hours in a more conventional manner but provide an overarching regularity of work in order to foster developmental relationships between employees and students. Other managers across the HEIs, such as those in charge of exam invigilation, also need to plan ahead so that the service can be delivered successfully.

For the remaining non-academic roles in both HEIs, working time arrangements can be regarded as either partially unstructured or unstructured. This is because work is scheduled with much shorter notice and the number of hours provided to employees tends to be subject to significant change over time. The reason for this is because the service areas where these practices exist have greater commercial functions involving more cost than quality-based considerations, and the demand for services or the need to provide cover for things like workforce absence is always very unpredictable.

### *Employee Obligation*

In Chapter 6, the third objective of the research was explored in relation to employee obligation. It was noted that early conceptions of ZHCs held that a key defining feature was that employees were obliged to accept work when offered. Indeed, it is this which made the arrangement distinct from other forms of casual work and led to it being viewed as an extreme form of employment. Other countries across the international community continue to see Zero-Hours Contracts in this way. In the UK, however, the use of a broader definition means that the label covers far more arrangements and, indeed, this can be seen in the existing literature from across the labour market. Issues around employee obligation are also prominent in the enduring debate since they relate to questions over the balance of power in the employment relationship and whether flexibility can be said to be one-sided or working both ways.

As with working time, academic and non-academic roles within the HEIs can be positioned along different points of a continuum. In most instances, employment involves no-obligation to accept work. There are a number of different reasons for this depending on the particular role. For academic roles, it is mostly attributable to the value placed upon the skills and specialisms of employees which means that managers appreciate the work that is already being done and will avoid taking any action against those who decline additional offers because there is a need to build long-lasting relationships that will benefit the academic service. In non-academic roles there is also a need to appease those such as SSTs who are essential to providing a quality support service to students as well as other organisational factors including an ethos surrounding the use of student labour and the availability of human resource.

Further along the continuum are some examples in which a conditional obligation is in place. This has also been highlighted in existing research but has not been explored in any depth. In the HEIs, these conditions are based around agreements made at the point of recruitment or at the start of an academic semester. The reasons are various, but each are considered to be necessary and legitimate for the operation of the service. A breach of these conditions is not thought by management and employees to involve immediate implications in the form of penalisation, but some action can be taken if there is a persistent deviation from agreements. These practices should not be seen in the most negative light.

However, there are questions as to how reasonable they are and some discussions with employees revealed that they also feel pressure to ensure availability despite the fact that work is not guaranteed week to week. This puts significant limits on the existence of two-sided flexibility within the HEIs.

In either academic or non-academic roles, there are no examples of total obligation in which the employer or management demands that work is accepted whenever it is offered. There is also no evidence of some of the most extreme practices that have been documented where failure to bend to the will of employers can incur immediate punishment by reducing or “zeroing-down” hours. In this sense, the situation within the case study HEIs is not like many other examples of one-sided flexibility.

### ***Rights and Entitlements***

In Chapter 7, the third objective of the research was explored in relation to employment rights and entitlements. This began with a discussion around the three-tier system of employment status which determines the level of employment rights available to those in work. It was then noted how legal scholars maintain that the label “Zero-Hours Contracts” now represents a wide variety of personal work arrangements that exist on a continuum with different classifications and degrees of protection.

Occupying one half off the continuum of coverage are those academic and non-academic staff who have the status of employee and thus, the potential to claim all available employment rights. An analysis undertaken in relation to the legal literature and case law showed that employee status is justified. However, for employees in both HEIs there are differential levels of coverage. In relation to some rights, many of those in NCU are included in occupational policies meaning that they receive what was labelled as full coverage-plus. In SVU, the institution’s occupational policies for general staff do not apply. However, many receive full-coverage of statutory rights because of their working patterns and their ability to satisfy qualification criteria in the form of NI thresholds and the rules on continuity of service. That said, for some employees in both HEIs failure to qualify means that they do not have access to key rights such as sick pay, redundancy, maternity and protection against unfair dismissal.

The remaining examples in the HEIs are those with worker status as set out in the ERA 1996, all of whom receive only partial coverage due to a basic statutory floor of employment rights. It was apparent that the institutions confer the status of worker on account of the relative lack of mutual obligations associated with the short duration and highly intermittent nature of patterns of work. In most cases, there is nothing to suggest that this is inappropriate when considering the legal principle of degree. However, there is reason to believe that some individuals should be regarded as employees just like many of their colleagues in the same role. While there was no evidence of deliberate gaming of the system, questions are raised as to whether the HEI and managers have a sufficient understanding of the law or whether administrative convenience and the value given to some types of work acted as an obstacle to its proper application. The chapter closed by noting difficulties that can arise for workers.

## **8.2 Discussion**

So how, then, does all of this relate to the extant body of literature. As one might expect, numerous links can be made to what is known about the established use of non-standard and flexible employment. In being the first academic endeavour to treat this topic in any depth within one sector of the labour market, there are also important contributions to be made to the current state of knowledge and debate around Zero-Hours Contracts. These new insights are discussed below as they emanate from each of the research aims and objectives which formed the basis of the thesis' findings and analysis chapters.

The first objective of the research was to determine what, if any, employment arrangements being used within the case study institutions could fit the broad definition of "Zero-Hours Contracts". In line with the focus of the research, these were found to be numerous and variegated. Because of their common feature of no-guaranteed hours, it can be said that they all contrast with more traditional forms of employment such as permanent part-time positions that existed in the sector as far back as the 1980s. However, as suspected and outlined earlier in the thesis, the arrangements found in the case studies do have many similarities and overlaps with other employment forms that have grown extensively over the years in response to significant changes in funding systems and the marketisation of the HE sector.



We will talk more about the operation of the employment later on, but for now, let us concentrate more on the basic form of the contractual arrangements. When looking at those used for academic roles, we can see many similarities with the long tradition of using temporary engagements that have also been widely recognised as hourly-paid contracts (HPCs) which provide payment on an hourly basis. These have been well documented in the UK based academic literature over the years (for example Bryson and Barnes 2000b and Bryson 2004) and still have a central place in recent research from JNCHES (2015) which provides a typology of NSE in the sector. While some of these involve fractional guaranteed hours, many, such as those in the case study HEIs do not (and are thus ZHCs).

In other recent research, some scholars also highlight the close relationship between the two, observing that there is *“little qualitative difference between the experiences of lecturers on hourly paid or zero-hour contracts and...[we] therefore do not make a terminological or categorical distinction”* (see Lopes and Dewan 2015: 32).

In addition to this, there are parallels with other employment forms used for non-academic roles that have, to a much lesser extent, been documented over the years. These include open-ended part-time or variable-hour contracts that are used to manage services that tend to be provided on an ongoing basis but for which funding streams are uncertain and/or the demand or other need can fluctuate throughout the academic year. This includes disability support services and catering (JNCHES 2015)

There are also significant similarities with an extensive use of more informal employment arrangements that are well established in the sector. There are different terminology used for these – including “casual” or “as and when” contracts - but since as far back 2004 they been recorded by the official statistics agency HESA as “atypical” employment. In guidance that was developed through consultation with HEIs, HESA defines these, to paraphrase, as arrangements that last for less than 4 weeks, often for short-term or one-off tasks and involve a very high degree of flexibility. This record along with the important typology that has been provided by JNCHES (2015) shows that work of this nature applies to multiple academic and non-academic roles just has been shown to be the case in SVU and NCU.

There was also evidence that one of the case studies (SVU) were making use of a third party employment agency to perform functions that the other institution (NCU) covers through in-house atypical arrangements. Earlier in the thesis it was noted that there has not been any official decision as to whether agency employment, which dates back several decades within the labour market, is actually a form of Zero-Hours Contracts. We know, however, that agency employment often does not involve any guarantee of hours and has been included in broad ONS (2014) measurements for NGHCs. Moreover, its potential to fall under the label ZHCs has been recognised by notable scholars in the area (see for example Forde in Bessa et al 2016). Once again, the use of Student Union agencies and similar systems such as student banks has been well recorded within HE in recent years (see JNCHES 2015).

Since the term “Zero-Hours Contracts” entered popular discourse following reports of their initial statistical uptake, there has been very little consensus as to what employment can and should be described in this manner. The label has been adopted by unions such as UCU who see the emergence of ZHCs both as an urgent call to step up campaigns against casualisation and as a means of increasing public awareness over such matters. In contrast, the stigma that the label has attracted on account of negative media portrayals has resulted in a strong unwillingness among some within the sector to accept it and a preference instead for using other terminology in existence. This can be seen in many of the comments made by the employers association UCEA. The following captures their overall position:

*The pejorative label has been unhelpful in public discourse and has made it difficult for employers to justify their use in what has been a largely hostile media environment. In HE the “zero-hours” label is often eschewed in favour “variable hours” or “hours to be notified” contracts...while national campaigns by unions have generated significant attention and [have] used the label to encompass a much wider range of temporary [including hourly paid] and casual employment.*

(Hopkins and Fairfoul 2014 on behalf of UCEA)

Indeed, a similar sentiment was also found in one of the institutions SVU that featured in this research, particularly during the process of negotiating access with HR but also in the form of resistance to the label from several managers (in NCU, however, there was no such challenge). There is, as such, an ongoing conceptual disagreement in the sector that requires some resolution. This research is the first significant and empirically rigorous attempt to clarify exactly what employment can be labelled in this manner. Though optimistic, it could provide a useful benchmark to promote a common understanding between the different parties involved and to assist in any possible negotiations on the matter in future.

A better understanding of these issues can also help us to understand where arrangements labelled as “Zero-Hours Contracts” are located within ongoing processes of casualisation in HE. Of significance in this respect is the fact that HR Personnel and Departmental Managers in both SVU and NCU suggested that all of the contractual arrangements identified had been used for up to and, in some instances, over 15 years at the time of research (which is consistent with the overlaps discussed above). This suggests that the new statistical measures of prevalence from UCU and HESA have essentially quantified many forms of employment that were already well-established within the case study HEIs.

The findings here have some important bearing in relation to recent insights from the academic literature on measurement in the wider labour market. There has been much general discussion as to how far official figures on Zero-Hours Contracts really represent a genuine growth in employment of this nature or whether the high numbers can be attributed to other factors. These matters have been explored by Farina et al (2019) who examine LFS data in relation to proxy measures including number of newspaper articles and internet searches (as discussed in Chapter 1). Based on their analysis, the authors conclude they cannot reject the proposition that part of the apparent growth was down to:

- Re-classification of existing employment relationships.
- Increased public awareness of the label Zero-Hours Contracts.

The research presented in this thesis does not provide any definitive answers to this much bigger question, but some interesting reflection is possible. In the HEIs studied, employment identified as fitting the definition of Zero-Hours Contracts has been around for some considerable time and, assuming that is also the case across other universities, there would have been plenty of pre-existing employment arrangements in HE that could have been included within ONS' LFS estimates. Moreover, if one extrapolates from this to other sectors across the labour market and assumes that such a situation is occurring elsewhere, these findings could give some support the idea that the general statistical rise may misrepresent the extent to which there has actually been a genuine growth in employment that does not guarantee hours since around the time of the major explosion of interest in 2012 and 2013.

On the basis of these findings, we should therefore be careful not to fall into old modes of thinking that characterised the early debate on non-standard and flexible employment by assuming that the growth of arrangements called Zero-Hours Contracts is somehow indicative of a new or distinctive break from the past – either in the HE sector or the labour market more generally. Instead, the many continuities with employment that existed before the label came to prominence suggest that it is part of a more general shift in that direction. With this said, the label has nevertheless become entrenched and is now the major go-to term for a host of employment forms that have been steadily growing over previous decades. Given the level of public and political interest it undoubtedly commands, it should still be given serious empirical consideration and not rejected as some sort of fad or hollow concept.

Thus, one aspect of the second objective of the research presented in this thesis was to review the numbers in use within the case studies. It was noted that there were many individuals on employment contracts that can be defined as ZHCs, with a floating number at any given time sitting within the region of around 800-1000 in both cases. What implications does this have for existing measures of prevalence in the sector, then? It far exceeds the current measures for the case study HEIs that are seen in the UCU's (2013) Freedom of Information request (SVU=640 and NCU=223), although this is of little surprise given that the thesis applies a broad definition capable of overcoming problems associated with institutional self-reporting and also collects data for both academic and non-academic employees.

In newer research from HESA (2019) we do not at this stage have an institutional breakdown that would enable us to make comparisons between the figures for the case study HEIs. However, according to this measure, we know that in 2017/2018 a total of 11,000 Zero-Hours Contracts were found in UK HE which increases to over 20,000 when atypical arrangements are included. This is a better measure since it accounts for contracts that are used for both academic and non-academic roles. Interestingly, however, the overall figure is in fact equal to the previous measure from UCU (24,000), which one would consider quite counter-intuitive given the greater parameters of the HESA data collection.

This new figure is suspiciously low. If every institution in the country had as many arrangements that can be defined as a Zero-Hours Contract as those found in SVU and NCU, there could be over 100,000 in the HE sector and even if only half of all institutions were using them to this extent, it would still be well in excess of official HESA data. Assuming there is truth in this, there is still likely to be serious underreporting in the sector. The reasons for this are less known, though one might speculate that it is related to the absence of compulsory reporting on non-academic atypical and agency employees. There is significant scope for further research to examine the limitations of the available statistical measures.

The arrangements that have been identified in the HEIs were found to be used for many roles spanning the Standard Occupational Classification (SOC). In this sense, it reflects all of the available analysis of official ONS data for the general labour market, for instance Brinkley (2013) and UKCES (2014). Some interesting reflections can be made in relation to academic research from Koumenta and Williams (2015 and 2018) who have sought to assess the distribution of Zero-Hours Contracts across occupational roles by using sociological theory from Goldthorpe which considers the characteristics of work that are more or less amenable to numerical (or temporal) flexibility. This predicts that it will be less common in roles where labour inputs are harder to define and require specialised knowledge and more likely where labour inputs are easier to define and high levels of specialist knowledge are not necessary. In the case studies, this kind of theory is much less useful for predicting patterns of use. There are plenty of examples such as academic workers where labour inputs can in some way be broken down

into definable temporal units such as preparation and delivery but who are invariably highly skilled knowledge workers. This shows that where managers desire cost-efficiency they will, where possible, find a way of exerting control over working time without regard to the profile of individuals involved.

In the HEIs, this group of employees make up around a third of all those identified on ZHCs. As a proportion, this is higher than it is for equivalent level jobs on ZHCs in the wider economy and can be attributed to the sector and the nature of the product market. Looking beyond this, however, it is true that the remaining majority of arrangements identified in the institutions are indeed used for the kinds of lower-level roles that existing research shows involve the greatest use of Zero-Hours Contracts.

It should be noted that the kinds of occupations for which arrangements are used has an important bearing on other findings from the case studies that pertain to the final research aims and objectives. We shall move onto this in due course but, before doing so, some discussion can be provided with regards to organisational structure and workforce composition. One early model of note that has had a huge influence down the years is that of the flexible firm by Atkinson (1984). To give a recap, the author suggested that employers were adopting a strategy of dividing their organisations into two segments. These consisted of a protected core of employees on standard and secure employment with advanced conditions who undertake essential functions, and a growing periphery made up of less important employees who provide numerical flexibility on insecure and poorer quality employment.

It was noted earlier that the wider discourses of flexibility to which this model belongs were adopted enthusiastically in higher education, which has itself witnessed significant restructuring over the past few decades. Some previous literature such as Cloonan (2004) has assessed notions of flexibility in the sector and has asserted that the model has a lot of parallels - for example, the author suggests that “*thus far, UK HE can be characterised as having an inflexible core which limits flexibility to the more peripheral areas [of the workforce]*” (ibid: 176) (there are similar insights elsewhere by Kimber 2003). The findings of the research in this thesis also give some broad support to the structures of the model. There is, indeed, a

core of permanent employers that is made up of managers and academics and these are supplemented by a disproportionate number of individuals on different forms of non-standard employment.

In addition to this, we can also see that the Zero-Hours Contracts identified in this study are, indeed, used to provide the kind of flexibility highlighted in the original model. Some of them enable the institutions to achieve numerical flexibility by adjusting the overall number of employees – firstly, by controlling the number of academics employed year to year or term to term and, secondly, by bringing in people via a SU agency or on other casual arrangements to work a range of non-academic roles as and when they are required. The arrangements identified in the case study institutions are not only used to provide numerical flexibility but also, primarily, temporal flexibility by enabling adjustments to the working time of permanent employees. This is the main mode of usage in non-academic roles such as those in student support services (SVU) and catering (SVU and NCU). This latter kind of flexibility has similarities with the literature in recent decades but was not fully developed within the early model.

When we look a little further at the situation in the case studies, however, we can see at least some major issues that resemble those raised in many critiques of the model. One such critique was that there was little evidence of a centrally co-ordinated core-periphery strategy that was driving restructuring and an increase in the use of non-standard employment (Pollert 1988a; Hakim 1990; Hunter et al 1993). While this was not a key focus of the research, a general look at the findings seems to indicate that, much like in other HE institutions, the use of NSE (now Zero-Hours Contracts) has been a pragmatic response to wider changes facing the sector. Moreover, rather than proceeding from a centralised plan it is the result of more localised managerial decisions that tend to be reactive to pressures and conditions facing each particular area of service. This situation applies to SVU but is particularly the case in NCU which, as a pre-92 institution, has a legacy of college and school autonomy (we explore this more later).

It is more straightforward to comment on other issues that have been raised. In the early debate, it was suggested that the model proves too simplistic to account for the complexity involved in organisational structures. The flexible firm asserts that the core workforce should be seen as being completely separate

and distinct from the periphery. In the case studies, however, there are instances where academic and non-academic employees are employed on non-standard employment but are also performing essential core functions of delivering specialised aspects of the service that are essential for ensuring the HEIs can operate and maintain a competitive advantage within the HE market. These mainly include, but are not limited to, Lecturers and Tutors (SVU and NCU) and other roles such as Study Skills Tutors (SVU).

Indeed, this is consistent with the nature of casualisation in the HE sector which, after the abolition of tenure, has been characterised by an ongoing displacement of permanent staff by non-standard and temporary employees (in the UK see Bryson and Barnes 2000b). The findings support similar insights from other studies over the years, including those in the more recent literature on flexible scheduling, that has shown how different forms of non-standard employment can transcend the core-periphery divide. Some questions are therefore raised as to whether the structures of the flexible firm model should be revised, either to significantly reduce the core by redefining its scope, or by accepting that non-standard employment can be used for those who sit within it on account of the essential roles that they perform. This is necessary if it is to continue to have any relevance in the modern service economy.

Another related issue that was raised in the early debate was that the model, and other similar en masse categorisations, were guilty of implying (by way of a “muddy conflation” Pollert 1988b: 51) that all non-standard employment existing within the periphery of an organisation was homogeneous and made up of equivalent forms of employment. Though it has long been shown that such a view was inconsistent with the evidence, these kinds of early assumptions and analytic shortcomings now appear to have manifested in recent public and political discourse surrounding the use of Zero-Hours Contracts.

This pertains to the third objective of the research which was to explore the operation of the arrangements identified as Zero-Hours Contracts in relation to three major aspects of the employment relationship. It is here that the main contribution of the thesis is made since it is the first academic work to explore variegated use in any sector of the labour market, and to do so in such a way that draws on theory as well as other explanatory factors relating to the use of non-standard and flexible employment.



The main aspect of the employment relationship that featured in the research is working time and, indeed, it is this which has proved to be of the greatest interest to scholars and those involved within the debate. As established throughout the thesis, the use of non-standard employment arrangements in the case study HEIs belongs to part of a much wider shift toward an employer-centred or employer-led approach to flexibility. Institutions facing reduced funding and greater market-style competition have sought to control costs by closely matching labour inputs to times when the demand for services is highest (as well as other reasons such as to provide cover for shortages in the workforce). This, it has been argued, enables universities to sustain operations in an uncertain climate while providing them with greater financial resources to invest in services and improve the marketability of their institutions.

The issue of working time has numerous dimensions that have been documented in the literature. In this study, the choice of which to focus on has been informed by some general academic reviews which provide an indication of the main areas of interest (Messenger 2011 and Piasna 2018) as well as those which have featured in the grey literature research on Zero-Hours Contracts. With regards to the first aspect of working time, all of the employment identified as fitting the broad definition of ZHCs are used to ensure that work only occurs during the academic year when the institutions' provide their main service, thereby avoiding unnecessary costs for down-times or seasonal closures. This practice is common in public sector education (see term-time contracts) and has been well documented in HE.

It was also found that during this timeframe, the employment arrangements were being used to cover different kinds of periods and, again, there are parallels with what is already known about employment in the sector. Some employees are engaged to work the whole duration of the academic year on an ongoing basis since the demand for services for which they are recruited to deliver (sometimes as cover for absence) persists across the period. In addition to this, there are many others in both academic and non-academic roles who are brought in on an intermittent basis to respond to shorter-uptakes in demand. Thus, in having both of these simultaneously, the situation in the case study HEIs is consistent with what is found for the use of non-standard employment in other institutions (JNCHES 2015).

With this in mind, the most substantial insights with regard to dimensions of working time in the case study institutions came in relation to schedule notification and changes to hours. Indeed, it is this which has attracted by far the most attention in the debate since it is associated with the greatest negative impacts for employees. We saw that in the case study HEIs these practices can be placed on a *Structured* (fixed) to *Unstructured* (flexible) continuum which has been adapted from early literature that attempted to map out types of non-standard employment in existence at the end of the century (Purcell et al 1999 and Reilly 1999). This was chosen because it usefully encapsulates the peculiar nature of many of the arrangements that cannot be accurately represented by considering issues such as notice and changes to hours as separate variables. Where occupational roles are placed on this spectrum is determined by numerous factors which have parallels with the literature that emerged after early debates in the 1980s.

In keeping with previous chapters, we shall work our way across the spectrum in this discussion. However, rather than concentrating on all of the nuance we can focus in more depth on two groups of examples – both of which are heavily influenced by product market considerations. In HE it has previously been established that competition tends not to be based on cost/price but, rather, on the quality of services that are provided at universal tuition fee rates. This has not translated to the kind of secure employment one might expect of higher-end services where employers seek the commitment of their workforce. However, it does have an important bearing on the management of working time.

In the first examples, the nature of the product market and the tuition fee system is such that academic products are sold as set packages. Students then seek out a place within a university and upon a course that they consider to be appealing relative to their proven ability and the level of their qualifications. They then make payments for a service to be delivered across the academic year and choose modules which run for either one or two terms. Once students are registered, the overwhelming consensus among managers in both HEIs is that they cannot make schedule arrangements in haphazard manner even if, as some union figures suggested, they may like the idea of having individuals at their beck and call. Instead, since they are competing on quality, they must ensure that sufficiently skilled human

resource is scheduled for the whole year or term so as to avoid implications for the institution or the school if the services cannot be delivered as promised and to a required standard. This situation reflects early insights which find evidence of employers across the labour market paying close attention to scheduling and other forms of “qualitative flexibility” where they face non-price (or quality) pressures (Wilkinson and White in Rubery and Wilkinson 1994). It is also enabled by the fact that the nature of the product sold means that demand is known in advance once student registration is complete.

On the rare occasion that student numbers drop to exceptionally low-levels, these schedule arrangements do not change, although this option is certainly a motivating factor for the use of contracts. The reason for this fixity is because, as some noted, it is not in managers’ interests to make undue alterations in terms of reducing the number or the timing of classes. This was, on several occasions, linked to the potential for students to provide a poor review of the institution’s performance to the National Student Survey (NSS). Indeed, this has been shown by scholars to be a key means of determining quality in the sector and, if negative reports were to be made, it could have implications for both HEIs by putting them at a serious competitive disadvantage (Jones Devitt and Samiei 2010).

It can be argued, then, that these product market pressures impose significant rigidities and constraints that limit the extent to which the employment can be used in an extremely flexible way. These working time practices have also been found in existing research in HE on the use of hourly paid contracts (which overlap with ZHCs) (JNCHES 2015). It is also apparent in the information gathering exercise on Zero-Hours Contracts undertaken by Hopkins and Fairfoul (2014: 12) of UCEA, who find that:

*“...hours are generally notified to the staff member once the enrolment is confirmed and the academic plans for the coming period are known and the offer to work the hours required is likely to run for at least a semester sometimes more”:*

These comparisons with what is known elsewhere in HE suggest that the practices found might apply across many organisations operating under the same product market and competitive conditions. Indeed, it indicates that the findings from the case study HEIs might have a degree of generalisability.

Other non-academic roles could also be said to belong to this broad group since they too involve highly structured working time arrangements. In some examples, this can be attributed to the nature of the product market involving a package of leisure classes and the need to ensure that sufficiently skilled employees are in place to deliver the service over the term. In others there is a need to plan in advance for things like examinations that are an essential part of the overall academic service and which could seriously damage the reputation of the universities if they do not manage them in an effective manner.

The second group that requires a mention in this part of the discussion are those individuals who are employed in non-academic roles as Study Skills Tutors (SSTs) in SVU. In this example, SSTs are allocated students who carry with them a set number of funded support hours depending on the extent of the support that they require. Tutors (and indeed students) receive no more and no less than this number of hours and, in this sense, management closely match the quantity of working hours to the DSA funding provided in order to avoid additional costs being absorbed by the institution. However, unlike any other roles in the case study institutions, these individuals are afforded a degree of autonomy over the scheduling of their working hours that is tempered by the choices of the students they support. The reason for this is because management in the relevant department want to ensure that the best support is provided i) out of a genuine concern for student welfare and ii) as part of a recognition that the service is linked to wider competitive concerns over the need to maintain standards of quality. It is believed that SSTs as highly skilled professionals are better placed to make decisions to this affect than managers in the department, although there is some guidance which encourages forward planning and ultimately results in tutors self-structuring their working time arrangements for the academic year.

In this we see obvious similarities with the studies on flexible working practices in which employees in high-level professional positions are given some control over the scheduling of their work (Golden 2005; Messenger 2004 and Plagenta and Remery 2005; Chung et al 2007 and OECD 2011). However, the autonomy that SSTs exercise goes further than many of the employee-friendly working practices in this literature and is, in fact, more reminiscent of freelance subcontracting which would ordinarily be

sourced on a self-employed basis. The control granted to employees is also not intended to facilitate work-life balance from which a series of indirect benefits can be obtained by the employer. Rather, it appears to be an entirely pragmatic strategy which is only meant to work to the advantage of the service and, by extension, the student in receipt of support. It may be that similar arrangements are used in the other case study NCU, but this could not be confirmed due to limits on access and data collection.

How then, do these examples compare to the wider literature? They are all very distinctive when looking at the empirical trend in the area. To begin with, there are clear contrasts with the literature on employer or manager-led flexible scheduling with which Zero-Hours Contracts have been heavily associated in the academic debate. In the HEIs, the examples discussed involve highly structured working time arrangements that do not include anywhere near the same levels of temporal flexibility. In this body of literature based on low-end sectors, products or services are not sold as high quality set packages. Instead, the demand is subject to significant fluctuation and employers or managers who are driven by pressures to reduce costs tend to schedule work at short notice with significant changes to the number and timing of hours week to week (Lambert 2008 and in UK Wood 2016 and Lloyd and Payne 2018).

There are also sharp contrasts with the majority of Zero-Hours Contracts in the UK which the available literature shows contain practices that are more in tune with the academic work noted above. In many ways, they can, in fact, involve more extreme flexibility since they are not only used for permanent employees but also for more casual workers. The major survey research from CIPD (2013a) finds that an overwhelming 80 percent of employees say they are told less than a week in advance and that over half of these reported receiving under a days' notice when work is available. There is also considerable changeability to the weekly hours (CIPD 2013a also see research from Unite 2013 and TUC 2017b).

As far as the two groups of examples discussed go, then, the comparisons made here appear to give some support to what members of HR were keen to stress, namely, that the institutions are not like other large scale low-end employers in the way they use the contracts. However, beyond this, there are indeed some similarities with the trend in the literature. This applies to non-academic roles involving

ongoing work (e.g. Support Workers SVU and Catering NCU ) and work on an intermittent casual basis throughout the year (e.g. Casual Sports Assistants SVU and Manual NCU) and can be attributed to patterns of demand and other organisational needs that are more unstable or unpredictable in nature.

The research was limited in terms of exploring employee experiences and the impacts that this work can have on their lives, although some mention can be made here. Overall, it can be said that the practices are, at least on an objective level, much less conducive to the kinds of problems that have been documented in the literature regarding work-life balance and financial insecurity. However, in interviews that did broach these issues, there appeared to be some evidence of similar concerns among both academics and non-academics and, as such, the Zero-Hours Contracts identified should not necessarily be seen as constituting a more positive form of casualisation from an employee perspective.

There is one more issue raised in the literature that requires some mention before moving on. As noted earlier in the thesis, some employers who make use of these kinds of employment may make short notice adjustments or cancellations of work if, for example, the level of demand or the need for services turns out to be lower than was initially expected. This has been found to be a very common occurrence in literature on flexible scheduling (as seen in Lambert 2008 and Wood 2016) and is experienced by over half of those individuals who are employed on Zero-Hours Contracts (CIPD 2013a and 2015).

The situation has not been explored within the HE sector until now. However, these findings show that, unlike other areas of the labour market, short notice cancellation of work is, on the whole, very uncommon. As previously alluded to, this is mainly linked to the fact that the academic programme and other related services are set for long periods during which time the demand for services does not really change. It can occur for several other reasons, however, and where it does, there is a very mixed picture in terms what HEIs offer by way of compensation. In SVU there are central and departmental policies on this matter while in NCU there is a reliance instead on general and departmental customs.

Sometimes there is a payment made to employees when work is cancelled at short notice, but this only applies to a small number of roles. Insofar as there is compensation, it mostly involves re-arrangement of work. This is the main mode of operation for all academics in SVU and also in NCU (which ran contrary to assumptions of HR there who were under the impression that managers would indeed provide payment). This way, at least, employees do not lose the cancelled work entirely since lectures and seminars still need to be delivered at a future date. In addition, while it is the least likely situation in the case studies, there were a couple of examples where management do not commit to either of these meaning that employees or workers lose hours completely (NCU IELTS and Demonstrators).

The HEIs cover all of the possible varieties of practice seen in the literature, but there are a greater number of good examples than elsewhere in the economy where the treatment of labour as a commodity is more pronounced. That said, however, re-arrangement and non-payment can still be conducive to the kinds of issues identified in the Taylor Review including interruptions to work-life balance and a loss of income for employees despite, in some instances, having already attended work.

The use of non-standard employment in HE and the case study HEIs is part of a shift toward a more employer-centred or employer-led approach to the management of working time across the academic year, the month and the working week (with some exceptions as seen for SSTs above). This, in general terms, involves a shift in the balance of power in the employment relationship which can be said to be most pronounced where obligations are placed on employees to accept work whilst at the same time providing no guarantee of when, or indeed whether, any work will be provided. This issue of employee obligation was the second major aspect of the employment relationship to be explored in the research.

As noted throughout the thesis, in the mid-1990s the presence of obligation to accept work was a key defining feature of employment regarded as “Zero-Hours Contracts” which marked it out from other forms of casual work. This remains the case in other countries such as Ireland and New-Zealand. However, on account of a peculiar set of social process in the UK that are linked to intense media coverage and union campaigns, the scope of the label is far broader here. As such, it should involve

many varieties of practices with regard to obligation and, indeed, this has been confirmed in the available body of survey and anecdotal research. The evidence collected from the case study HEIs supports this and shows that they can be mapped over a continuum from obligation to no-obligation.

Many, if not the majority, of the contracts in both HEIs involved no obligation and, as such, this reflects the evidence in the leading research literature from CIPD (2013a and 2015) which shows that just over half of employees in the labour market have no obligation in either contract or in practice. This thesis, however, makes a notable contribution by providing some rationale as to why it is the case while such a level of analytic depth is conspicuously lacking within all of the extant literature to date.

Drawing attention first to all academic roles in SVU and NCU, as well as SSTs in SVU, the highly structured nature of the arrangements means there are fewer occasions where the issue of obligation can arise. However, there is always an initial instance in which offers of work are made as well as some additional provisions made available during the academic year. In the extant literature, obligation can manifest itself in multiple ways but it usually involves punishment in the form of a reduction or complete removal of future work (labelled “zeroing-down” ACAS 2014) or direct termination of the employment. There were several key reasons as to why there was no such obligation in the HEIs. In the main, this stemmed from the perceived value of the employees to the institutions and to the delivery of the service, particularly within a product market where competition is based upon quality of service. This involved two themes. First, they cannot be treated as a disposable resource by not offering hours or further engagements if they decline work as this will mean that the colleges or schools will lose their contribution. Secondly, if this were to occur, there is a recognition that employees could be coaxed away and recruited by another rival institution within the locality where skills are often in high demand.

Instead, there is a need to appease employees by letting them exercise choice over the work they accept. Within this, then, there are observable similarities with a body of literature on employer strategies which involve more of a progressive “soft HRM” approach to management aimed at maintaining commitment from the existing workforce (Storey 2014 also Boxall and Purcell 2015). Interestingly,



while it has been adopted in relation to this aspect of the employment relationship, overriding pressures for cost-efficiency have ensured that such an approach does not extend to providing full employment security or other advanced benefits (reflecting findings from elsewhere which dispute the existence of pure models of HRM, see Truss et al 2004). Nevertheless, the situation does run contrary to suggestions that casualised employees in the sector are by nature a disposable commodity or resource for whom HE institutions have very little regard. One should note, however, that this could indeed occur where for some reason there is no comparable reliance on employees and greater supply of available labour.

In the other roles where there is no obligation to accept work, it is not so much to do with human capital considerations but is instead linked to other reasons that are more organisational in nature. The existing literature on non-standard and flexible employment across the labour market shows us that such matters can play an important role in shaping employers use strategies. In one instance, this took the form of a culture (a notable factor in university management as seen in Tierney 1988) or ethos surrounding the use of student labour and a understanding that students should be able to decline work. It is difficult on the basis of the data to say what exactly drives this sentiment, but one might suggest that it is interlinked with the desire to provide a high quality student-friendly service that produces positive academic results since this can have knock-on implications for university status. In the other examples, there is no such overarching convention. Instead, the reason for there being no employee obligation is because there is no necessity to ensure that employees accept work on account of a greater availability of human resource to cover staffing requirements, and, also, the infeasibility of enforcing discipline due to the fact the manager-employee relationship is of a highly impersonal nature.

In both of the case study HEIs, there were also examples of what is termed conditional obligation. This dimension of obligation often does not attract much attention in commentary and debate. However, the findings do nevertheless supports the available literature from the wider labour market and HE sector which notes that for some employment arrangements there can be obligation to accept work under some circumstances (CIPD 2013a and EIS 2013). This situation applied to non-academic work that is ongoing week to week and occurred in two notable ways, that is, either by providing availability

at the point of recruitment or at the beginning of the academic year or term. In this, there are clear parallels with work on employer or manager-led flexible scheduling from the US (Lambert et al 2012) and to a lesser extent the UK (see Wood 2016). The common reason for this is because it assures managers seeking to closely match labour to demand that they have a sufficient number of employees to run the service whenever they are needed. There are also very similar repercussions for altering this availability mainly in terms of a potential loss of hours allocated in future weeks (ibid). Unlike the situation seen in this literature, however, the managers interviewed were keen to suggest that the situation is entirely reasonable because of the mutual promises and agreements that are made and the fact that any discipline that may occur will always be subject to a process of formal warnings. However, there are some questions as to how far it is acceptable to expect employees to maintain availability over such a long time period without any full guarantee of hours, especially given the effects that some of them reported regarding the impact it can have on their work-life balance. These findings again contribute insights into the specific mechanisms and underlying rationale that is involved in this kind of obligation and which had not yet been explored in the existing literature on Zero-Hours Contracts.

There was no evidence of there being a total obligation where employees must remain available at all times to accept work whenever it is offered to them. These practices, where they do exist in the labour market, seem to be explained by the low market value of employees which, in the absence of other organisational constraints, makes them highly susceptible to being treated as a commodity. It can therefore be said that the situation in the HEIs contrasts with the most extreme practices that have come to dominate much of the public and political discourse and also supports the overall pattern seen in the literature that this is, in fact, something that applies to only a minority of employees in the UK.

The overall situation appears to be relatively positive in the institutions, but this does not tell the whole story. Thus far, we have looked at obligation at an objective level, but an interesting phenomenon to emerge from the data is what happens in terms of subjective perception – that is, a feeling among employees that they should accept work when it is offered to them. Though it is not present in every role (as far as the limited number of interviews could ascertain) it was found to be common among

many academic and non-academic employees for whom there is either no obligation or a conditional obligation. It seems to emanate out of a realisation among employees that, without guaranteed hours, they must avoid upsetting or disappointing management who have full control over whether or not they will receive work in future. This has parallels with earlier literature on employment with similar conditions such temporary agency work (Forde 2001: 641) and lines up with several studies which find that it applies to as many as two thirds of those on Zero-Hours Contracts (Unite 2013; UKCES 2014).

The issue of perception with regards to the employee obligations to accept work has not really been explored in HE until this time. However, the findings of this study can be located within a wider phenomenon found by Lopes and Dewan (2015) who look at the general experiences of academics on HPCs and ZHCs. The authors find that many individuals who consider themselves to be in vulnerable employment positions reported acting in numerous ways to appease management in order to ensure that they will be given work in future semesters and academic years (also see articles by Swain 2013 and Grove 2014). The research in this thesis shows that this situation is also something that extends non-academic roles that are so often overlooked in the discussion around NSE within the HE sector.

In relation to these issues there are also some notable parallels in the new research on employer- or manager-led flexible scheduling, in particular, the novel insights from Wood (2018) who documents how managerial control of working time is creating new informal regimes of workplace control. While there is no mention of accepting offers of work in the study, doing so can be seen as a means of acting in ways to gain favour from management in order to receive more hours in the form of what the author calls “schedule gifts”. It was not clear in the HEIs if the arrangements were being used to assert control in the ways the author suggests, although there is certainly scope for it to occur as well as for further research to consider the issue as part of an ongoing transformation of employment relations in HE.

Though the thesis does not explore the impacts of this kind of obligation in much depth, it does nevertheless indicate that it can be just as problematic for employees. This is because it is the level of perception which ultimately governs employee behaviour and can lead them to act in ways that run

contrary to their self-interests i.e. accepting work when it is inconvenient for them to do so. The findings support the view that this should be considered as an equally important dimension of employee obligation. In fact, given the extent to which it is found to exist across the other categories, one might also go further to say that it is even more of a pressing issue facing employees. Overall, this suggests that there are inherent limitations on the extent to which flexibility is really a balanced two-way process.

The third and final aspect of the relationship for discussion relates to legal matters with regards to rights and entitlements. In many ways, it is the literature in this area which inspired the focus of the thesis. As was established at the outset, some such as Adams et al (2014) (also Adams and Prassl 2018) have argued that there has been an unspoken but widespread assumption in public and political discourse that Zero-Hours Contracts are a new form of employment and constitute a unitary or specific phenomenon in employment law and the labour market more broadly. Instead, these scholars maintain that the label covers a wide variety of employment arrangements and, through an analysis of case law, they demonstrate that they span the whole spectrum of existing legal categories in the UK. In the case studies HEI this is also true and, as such, the findings lend empirical support to the observations.

Thus far, we have seen that the two institutions are very similar in the way in which they use arrangements for academic and some non-academic roles. There are also many parallels with regards to the third aspect of the relationship, particularly in terms of contractual formality and the designation of employee status. This classification is mainly due to the mutuality of obligations associated with the structured nature of arrangements, either through a set schedule or other agreements made with regards to work to be undertaken throughout the year. There are, however, some other significant contrasts.

We know from previous literature that organisations within certain sectors can adopt some models of HRM that provide a range of intrinsic benefits and occupational protections to employees beyond what is necessary in law. However, the existence of such an approach was only found in NCU and not SVU. Those HR personnel who participated in the research could not fully account for why the institutions

chose the path that they have. This seemed to suggest that, despite their high positions, the original decisions involved either pre-date their tenure or their roles tend to involve more general oversight.

There was no evidence of there being a deliberate “integration” or “differentiation” strategy that has previously been documented in the UK HE sector (Bryson and Blackwell 2006) and is capable of explaining contrasts found, though clearly one could argue that some elements of this have occurred in a roundabout way. The presence of trade unions has been shown to secure additional conditions within organisations but there is very little difference in the extent to which they are present and active within the HEIs. Indeed, if anything, UCU and other unions have less of a consultative role in NCU where such policies exist than they do in SVU where they do not. One explanation for which basic inferences were made by participants, however, was linked to the issue of geographical locality and nature of the local labour market. NCU, unlike SVU, is situated in an area that is relatively isolated in terms of population. This means that there is substantially less human resource in the immediate area and, as such, there may be a need to attract employees from outside and to retain them by offering additional benefits. Conversely, for SVU, this is not necessary since it is located close to two big cities.

Those with the status of employee do not share in the same levels of access. Clearly, all of those with occupational protections in NCU receive an additional level of coverage. Though this is not the case in SVU, some do enjoy complete coverage of the available statutory employment rights. However, just as is found in the existing survey research, for many other employees this is not the case (CIPD 2013a). There are two issues of note here. Some are not able to meet the criteria for Statutory Sick Pay (SSP) meaning that they do not receive any payment either for individual days or prolonged periods of sickness. This resonates with concerns raised in the literature in recent years which point to the UK’s woeful rates of provision (TUC 2017b) and which have been amplified during the COVID-19 pandemic (Crozier 2021 and TUC 2021). In addition to this, many do not have sufficient continuity of service to qualify for protection against unfair dismissal and redundancy. In many cases this is due to service being broken by a system of engagements that require individuals to work all academic terms. The difficulties experienced here reflect concerns raised by scholars in the legal literature that the rules

on continuity of service devised decades ago lack sufficient flexibility to account for the changing nature of employment. Overall, these findings support the view that the status of employee currently acts as a hurdle rather than as a gateway to employment rights (see Adams and Deakin 2014; Ewing et al 2016).

Beyond this, another point of interest vis-à-vis the wider literature is why there are differences between the HEIs terms of the use of employer and worker arrangements for certain roles. In particular, this applies to PhD students who deliver teaching and demonstration. Again, there was not a huge amount of data that can explain the contrasts, but some informed reflections can be made. To do so, it is useful to think back to developments in the sector following the expansion or massification of the service, in particular the reductions in funding and marketisation of HE. This change was accompanied by the promotion of a “new managerialist” approach seen in wider public sector that stressed the need for a centrally coordinated and highly rationalised system of management and accountability (Deem 1998). While this is increasingly becoming the model for the HE sector, some such as Deem et al (2008) have noted that the transition has not been universal since its implementation has required considerable compromise and the retention of some aspects of regimes that were already in place. Thus, alongside the new systems, many of the older pre-92 institutions have continued to maintain more traditional forms of administration with an ongoing level of autonomy for academic colleges and departments.

There was a very palpable sense that this was the case in NCU. Within colleges and schools, managers have a lot of freedom to make use of the available employment arrangements and, as such, some have been permitted to develop a reliance on using informal worker contracts. This should also be understood in the context of wider sectoral trend in which older institutions that have greater research functions make extensive use of such arrangements for postgraduate and PhD students, with the Russell Group universities estimated to account for 50% of such employment. Though NCU is not part of this elite group, managers have sought to emulate the practice by utilising their supply of labour.

In SVU the situation is different. It is a post-92 institution whose history is rooted in more of a hierarchical rule bound local authority tradition. The literature shows that these universities are more

likely to operate according to centrally coordinated managerial approach which, in this case, has led to a standardised use of employment practices (ibid). Moreover, in the institution there are comparatively few postgraduates delivering teaching and, where there is, it is more of a recent development. Human Resources indicated that rather than drawing up new contracts and payroll processes for these individuals, they would rather issue existing contractual arrangements. It is possible this will change in future given the HEI's research ambitions and the potential for its PhD student population to expand

Beyond this matter, another notable area that is worthy of discussion the “worker” classification itself. This has been the subject of a significant debate since its introduction a few decades ago. More recently, however, it has received increasing attention due to the growth of new forms of employment. The conversation rests on two sets of concerns. First, there is a worry that the emergence of more diverse forms of NSE has led to many individuals who should be regarded as employees being given the status of worker. Second, that the emergence of the gig economy linked to new technological platforms is leading to individuals being denied worker status and falsely regarded as self-employed (see for example Forde et al 2017 and Prassl 2018). These matters have been the subject of recent governmental reviews including the Taylor Review into Modern Working Practices in the UK (to which we shall later return).

We are concerned here with the former of these issues. In the case study HEIs the analysis concluded that, on the whole, the classification of worker was appropriate and commensurate with the facts of the employment relationship. However, as in the wider labour market, the findings showed that there are some instances where it could be argued that workers have been misclassified and are therefore not given the opportunity to access the rights that they could be due in law. This was judged to be so on account of a series of legal rulings including Carmichael [1999]<sup>51</sup> and McMeechan [1996]<sup>52</sup> which state there is nothing in principle to prevent wage-work bargains in the form of schedule agreements from constituting contracts of employment, even where the work is not guaranteed during these times.

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<sup>51</sup> Carmichael v National Power plc [1999] UKHL 47

<sup>52</sup> McMeechan v Secretary of State for Employment [1996] EWCA Civ 1166

Though not an issue in SVU, this applies to academic roles such as PhD student Demonstrators in NCU. These individuals have highly structured schedule agreements that are identical to many of their other academic colleagues who have given employee status and also cover long enough periods for them to be able to meet the criteria for some substantive employment rights. These findings contribute rare legal analyses and empirical evidence in support of an issue that has long been recognised by UCU in relation to what they call “atypical academics”. Indeed, in response to the Taylor Review which took a keen interest into such matters, they write:

*There is nothing in the patterns of working of these teachers that justifies the use of worker arrangements [and the inclusion of contractual clauses denying mutuality] is commonly done without regard for the reality of the working relationship.*

UCU (2018)

While the union has mostly reported on this problem in elite universities, the findings in this thesis show that such a situation is not confined to these upper echelons. In addition to this, the data show that these problems of misclassification also apply to some of NCU’s non-academic roles in instances where they are used for probation periods for employees in catering and IELTS. These also involve long-term agreements to work that can be inferred from the systems of giving availability, previously discussed. They also undertake very similar patterns of hours to their colleagues with employer status. This again shows that it is possible for the issues to apply to roles that often do not get sufficient attention in a literature which disproportionately concentrates on academic and academic-related roles.

A general view found in the literature and expressed by unions such as UCU on the basis of their experience of negotiations with institutions, is that misclassification involves an intentional “gaming of the system” in order to save costs associated with providing certain employment rights (ibid). It should be noted that there was no direct evidence of this occurring from interviews in the case study HEIs, though this is not to say that it does not happen or that it may have been a motivation when the informal arrangements were originally introduced. The data suggest that this view is a little



oversimplistic and that, in fact, the situation is instead perpetuated by the complex processes involved in a large organisational structure based on hierarchy and a division of responsibilities. A recurring theme from HR and managers is that they use the arrangements in the way they do because "...it is just the way things are done" and that it is administratively convenient to do so given the time taken to process full contracts. Those who make use of the arrangements do not stray from or question this view because they do not have a necessary understanding of what is very much a complicated collection of case law and because of what appears to be a tacit, though uniformed, assumption that certain groups like students and those yet to prove themselves only really require a lower level of legal conditions.

To wrap this discussion up, when taking the findings in relation to the final objective in their entirety, it does not suffice to assume as much of the public and political discourse does that Zero-Hours Contracts are a unitary or homogenous category of employment. Like many of the major forms of non-standard employment before them, they must be understood as a highly variegated phenomenon that is shaped by the specific sectoral, organisational and labour market context in which they are used.

### **8.3 Policy Implications**

The evidence provided in this thesis carries implications in terms of how to respond to the use of Zero-Hours Contracts. For many years, the UK approach to flexible and non-standard employment has been to preserve freedom of contract by keeping legislation and regulation to a minimum. The early consultation on ZHCs and the subsequent legislation is no different in this regard. These developments are believed by some scholars such as Adams et al (2014) (and Adams and Prassl 2018) to have the effect of normalising and giving legitimacy to new and often problematic employment practices. Parallel to this, another way that assumptions about the singular and homogenous nature of ZHCs manifest themselves is in calls for a total ban. The approach is favoured by Labour Party and the TUC (2018) and has been articulated regularly in the HE sector by UCU and other unions such as Unite. It was noted at the beginning of the thesis that there are also problems with this position. Not least, an apparent misunderstanding of what ZHCs are in the UK when compared to much more narrowly

defined arrangements that have been prohibited in New Zealand and the Republic of Ireland. In this context, a ban would be more far reaching than the legislation is intended to be in either of these countries and would disadvantage employees who enjoy the freedom of being able to turn down work.

Nevertheless, a way forward must be forged. This should involve a more cautious approach that occupies an intermediate ground between the positions discussed above but which is fully committed to finding regulatory solutions to the problems associated with more employer-led models of flexible working. In the years since the research proposal for this thesis was formulated and the fieldwork began, there have been some policy developments and recommendations that do implicitly recognise that ZHCs involve many practices many which are in need of redress. There are also lessons to be learnt from measures (that do not constitute a total ban in UK terms) that have been implemented in places like NZ and Ireland amongst others. How then, might these be taken forward within HE sector?

### **Proposals Relating to Working Time**

Among the suggestions that have been put forward in relation to working time, the most notable is that those on Zero-Hours Contracts should have access to a contract with guaranteed hours that more closely reflects their usual working pattern. This is something which is implemented in different ways in other countries on the continent such as the Netherlands and Italy. As part of its package of proposals to tackle one-sided flexibility, the Taylor Review recommended this should take the form of a right to request fixed hours after 26 weeks (Taylor 2017). This has since been accepted by the Government in its Good Work Plan (HM Government 2018d). However, some have pointed out that the right to request is not the same as a right to receive. Although employers will have to justify their decisions, there is no guarantee that their request will be granted. In the case of the HEIs, we have seen that the use ZHCs is almost invariably employer-led, meaning that the needs of the institutions invariably override the preferences of employees and workers. Since there is a strong likelihood that requests will be refused because of this, the right of request may not go far enough. Besides the official developments, there are other proposals which advocate for an actual right. These are presented below:

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<b>Ian Mearns (2014)</b>	A right to a fixed and regular working hours
<b>Institute of Employment Rights (2016)</b>	contact after 12 week in employment
<b>Living Wage Foundation (2019)</b>	A right to a contract that reflects minimum hours worked after 12 weeks of employment

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Is there scope for this in the HEIs and how might it work? To begin with, we should note the often highly structured nature of working time arrangements. The HEIs do not guarantee hours for this time because it enables risk to be transferred away from institution and absorbed by academic employees in the event of poor course numbers. However, given that this work is seldom subject to discontinuation or change, it seems perfectly reasonable for the institutions to provide a contractual minimum number of hours for the time that employees have agreed to work. If this is not thought to be something that the HEIs can implement, the highly structured nature of the working arrangements often do involve a pattern of regular employment to which the proposals above might apply. Indeed, there could be a case for employees to opt for their work to be guaranteed beyond 12 weeks where people work more than one semester and this would inevitably afford them more long-term certainty than they have at present. It is worth noting, however, that a statutory rule of this kind would probably come up against stiff opposition from HEIs. It is likely that they would counter the regulation by guaranteeing very short hours and relying on the legitimate rules of fixed term employment to avoid longer-term obligations. There is some movement on this within the High Education sector (including NCU) with local agreements encouraging the transfer of long-standing ZHC employees onto fractional contracts.

For those in non-academic roles, there is certainly scope for the right to guarantee hours after 12 weeks to exist, particularly where work is ongoing for the academic year and beyond. While there is some difference in the extent to which working time is structured, those employed as Study Skills Tutors and Support Workers do have regular hours in the sense that they do not drop below a certain agreed level.

Indeed, this was recognised by some employees who spoke favourably at the prospect of having contracts with at least some or all of their usual hours guaranteed:

I was thinking about how they could make it a permanent job like some of [policy] suggestions because the nature of it is quite flexible. I guess it would be a case of “we’ll guarantee you a certain number of hours that we always pay you as a basic rate and then if you want to do work more then that’s up to you” – that would be something, I always do those [core] hours anyway.

(SVU Employee 1 - Study Skills Tutor)

A similar feeling was expressed by a Catering Assistant in North Coast University, who experiences less regularity in working time week to week. It was felt that some form of guaranteed hours based around an average over time could provide more security and a sense of fairness to the employment:

I think it would be a good if we had some guaranteed hours. It would give me a bit more security knowing that I have those to fall back on. A fair thing to do would be to calculate an average or something and give you a portion of that [average] which you work every week.

(NCU Employee 5 – Catering Assistant)

After the Taylor Review, the Low Pay Commission’s (2018) information gathering exercise found further examples of what it calls one-sided flexibility in which employers are said to be unduly transferring economic risk onto employees. This led to the development of two more proposals that have been put out to consultation and are currently awaiting governmental response. These are:

1. That there should be a right to reasonable notice when work is provided.
2. That there should be a right to compensation when work is cancelled without reasonable notice.

It is likely that both of these will eventually involve minimum levels decided on the basis of consultation. From here, employers could then apply the rule as they see fit in order to take account of other (sectoral) factors. This is yet to be confirmed, however, and in the meanwhile there are a number of other proposals that warrant some consideration. Two of the most notable among those available are included below:

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**Ian Mearns (2014)**

Must provide reasonable notice of 72 hours  
If not, a payment rate of 150% for work undertaken

**Living Wage Foundation (2019)**

Minimum of 4 weeks' notice

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The intention of both of these proposals is to encourage employers to engage in good workforce planning. The latter has been specifically designed with a view to helping employees manage their finances in relation to the monthly payment of bills and rent. On the face of it, 4 weeks minimum notice seems ambitious especially since the reason that many employers use Zero-Hours Contract is to enable the matching of labour to largely unforeseeable fluctuations in demand. When looking at the situation in the case study HEIs, the structuring of working time arrangements for academic roles involves notice that is far in excess of either of the proposals. As such, it can be said that they do not have much direct relevance to the HE sector as they might elsewhere in the labour market. For the majority of non-academic roles, schedule notice also tends to be quite advanced though in many cases it can drop below the higher threshold of 4 weeks. In these instances, an argument could be made to provide hours with greater notice. However, given the complications that the more ambitious target could involve, it is better to suggest that a 72 hour minimum threshold is more appropriate.

There are also a number of progressive proposals with regards to compensation for work that has been cancelled. These also come from the same sources as the proposals above and are summarised below:

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**Ian Mearns 2014**  
**(also TUC)**

Right to full payment when work is cancelled within 72  
hours

**Living Wage Foundation 2019**

Payment if shift cancelled within 4 week schedule period

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In the HEIs the situation is mixed. Although payment is sometimes made when work is cancelled, there is usually a reliance on the re-arrangement of work instead of financial reimbursement. Ultimately this means that many employees are exposed to the same potential problems seen in the wider labour market. A right to payment for cancellation could therefore be welcomed and would not involve much resistance given some of the commitments already made by HR in the institutions. A minimum timeframe for this could be anything under 72 hours but since there is still potential for adverse impacts to occur even when work is cancelled well in advance, it is not unreasonable to expect the employer to pay at least some compensation whenever any hours scheduled are cancelled (as suggested by the Living Wage Foundation's Living Hours Campaign 2019).

### **Proposals Relating to Employee Obligation**

There is no direct mention of issues to do with employee obligation within the official proposals. However, they too are of central importance when considering relational imbalance and one-sided flexibility. In the HEIs, there is no evidence of people on ZHCs having total obligation to accept work when it is offered to them. However, there is sometimes a conditional obligation whereby employees are expected to accept hours as agreed at point of recruitment or at the start of academic year. In these situations, there is scope to consider the application of IER proposals which argue that employees should be paid for times when they are on call (or in this case, expected to accept hours if they are offered) at a rate of 10-20 percent of that time. This follows in the vein of pre-existing legislation in the

Republic of Ireland which allows for a payment of compensation amounting to 25% of the time required to be available. It is also similar to a system that exists in countries like Italy and Switzerland.

### **Proposals Relating to Rights and Entitlements**

There has been much discussion in relation to employment status, which currently consists of three tiers. Of particular interest to this study is the distinction between employee and worker. There are widely documented problems with this, the most notable of which are the difficulties in agreeing which status is appropriate. The legal definition of worker is excessively vague and has resulted in the courts developing a series of tests in order to help them apply the classification. However, the way that these tests are interpreted varies significantly and the resultant uncertainty can lead to employers misclassifying individuals either through a deliberate gaming of the system or a genuine lack of understanding.

These issues were recognised in the Taylor Review and subsequent Good Work Plan where it was agreed that some action in the area is necessary (Taylor 2017; HM Government 2018d). However, the feeling is that the three-tier framework generally works well and is helpful in applying basic protections to less formal employment. Insofar as something can be done, it is thought that government should replace its minimalistic approach to legislation with a clear outline of the tests for employment status. This, they presume, will make the worker category distinct and not open to as much interpretation (Taylor 2016). In the HEIs studied, legislation of this nature may not be sufficient and could still leave scope for misclassification. For example, who is to say that employers will understand the tests as they are intended to be read in statute? This is especially true around the principle of degree which, if put into legislation, would still require some level of interpretation as to which side of the threshold people belong. If no certainty can be achieved, instances of misclassification in the HEIs and in the HE sector more generally are likely to continue.

Alternative suggestions are therefore preferred. The IER who are supported by the TUC and all major unions in the HE sector, argue that the employee-worker categories should be collapsed into one universal status. In this scenario, all individuals who are not self-employed will have a right to the same protections. A starting point for a new definition of worker is found in Ian Mearns (2014) *Zero-Hours Contracts Bill*: *...a person is employed [for the purposes of the act] if he or she is engaged by another to provide labour and is not genuinely operating a business on his or own account.* This removes the mutuality of obligation criterion from the decision making process. Within the HEIs this would ensure that all employees and workers, including those currently misclassified, would be given the same basic platform of employment rights.

There are also issues to do with access to rights and entitlements that stem from the existence of qualification criteria and rules on continuity of service. In the HEIs, problem exist with regard to SSP, redundancy and unfair dismissal. More could be done to improve access for both employees and workers under the new universal status discussed above. Suggestions have been made from all sides of the debate that SSP be reformed so that it becomes a basic employment right to which everybody is entitled regardless of income. In terms of the other rights, the archaic rules on continuity of employment that were drawn up in the 1960s need to be reformed so that they reflect the realities of a world of work that is increasingly flexible and casualised. It is encouraging that the Government's has committed to extend the period required to break continuity to four weeks in its Good Work Plan. However, this does not have as much relevance in the HEIs since it often the case that continuity either remains intact or that breaks in work are too long or frequent for it to matter. Instead, the most pressing issues could only be fully rectified by abandoning the length of service criteria entirely and providing access to unfair dismissal and redundancy rights from the first day of employment in all academic and non-academic roles.

### **The Role of Trade Unions and Collective Bargaining**

It would be a mistake to assume that the issues surrounding ZHCs and insecure employment more generally can be resolved by legislation alone. While it is necessary to have a statutory framework as a



starting point, many of the proposed changes to the law risk creating new complexities and challenges. Legal experts from the UK including Simon Deakin and Keith Ewing note that collective bargaining at the sectoral level can be a more effective mechanism for regulating Zero-Hours Contracts (discussed in O’Sullivan et al 2015). They point to several examples of how this is done on the European continent such as in France and Sweden. In the UK, collective bargaining coverage is comparatively weak due to decades of anti-trade union legislation culminating most recently in the Trade Union Act 2016.

As with much of the UK public sector, however, HE is something of a special case in that it has retained high union density and has an established tradition of collective bargaining. For example, following recommendations from the Dearing (1997) and Bett (1999) reports, the existing bargaining structures were brought together to form the Joint Negotiating Committee for Higher Education which now encompasses UCEA and unions representing academic and non-academic roles. This subsequently led to the Framework Agreement for Pay Structures in HE. Collective bargaining does not extend beyond pay, pensions and equalities. However, with the ambition of Jo Grady, General Secretary of UCU, and a renewed spirit of industrial action (UCU 2019c), it may be possible to use these structures to reach agreements on casualisation. While it stands to reason that such agreements would have a broad focus, the findings of this research can be used to inform any course of action in regard to ZHCs.

## **8.4 Limitations**

There are some inevitable limitations to the research that need to be recognised here. A noteworthy issue which has been discussed briefly in the methodology chapter is how far the findings from the case study HEIs can be generalised across a HE sector that is comprised of over 130 universities. The use of purposive sampling attempted to go some way towards addressing this matter by selecting two institutions for study that represented both sides of the main pre-92 and post-92 sectoral divide.

There is cause to believe that some generalisability of findings is indeed possible. In the case studies, there are phenomena that are consistent with what has previously been found with regards to these

groups of institutions, namely the extent of managerialism or ongoing departmental autonomy and the impact that this can have on employment. Moreover, wider applicability is also suggested by the fact that some varieties of employment practices such as structured working time arrangements have been found to exist elsewhere in the sector. It is likely that this is due to a universal set of product market pressures with regards to the nature of competition and demand that confront all HE institutions.

This said, one cannot avoid the reality that the sector is composed of a great many institutions, none of which is completely similar in profile nor operates under the exact same conditions as the two case studies. Neither SVU or NCU is a member of the Russell Group of universities which have been shown to have levels of casualisation that are among the highest in the HE sector and are places where one might expect there to be an even wider array of NSE forms. In addition to this, there are numerous other issues that universities could face to a greater or lesser extent than the case study HEIs and which can lead to employment outcomes that are not found in this thesis. For example, in an increasingly competitive market with ongoing funding cuts, institutions experience varying degrees of financial success or crises and are also embedded within contrasting external labour market structures. On account of these factors, it must be conceded that this research cannot claim to provide a definitive model of the complete variety of arrangements that can be regarded as ZHCs within the UK HE sector.

Indeed, there are several forms that exist but have not featured. One major employment group are those who are employed as researchers. It is known that there are currently 49,000 researchers employed on fixed-term contracts across the HE sector. Although some were located in the case study HEIs, their contractual arrangements were either found to involve guaranteed hours or insufficient data were collected to enable an informed decision to be made. There is currently no way of knowing how many of the total number of researchers in sector are on what can be called Zero-Hours Contracts.

There are also other forms of employment in the HE sector that may be of relevance. Some of these were actually found within the case study HEIs themselves but they did not feature in the research due to issues with access or data limitations. These include contracts issued via the following organisations:

- Subsidiaries.
- Agencies (other than the Students Union).

It is known that there is extensive and growing use of both within the sector. They are often used for the lowest paid positions which tend to fall outside of sectoral safe guards in the form of union coverage and collective bargaining, both of which can provide an essential point of resistance against the degradation of working conditions. If this employment was factored into the research, the overall use of Zero-Hours Contracts in HE may not look so dissimilar to the more extreme and problematic forms of employment common in lower-ends of the labour market and which have dominated the debate.

In terms of those that were included, a third major limitation exists in the form of employee voice. As was noted in the methodology chapter, there was a relatively low number of employee participants. This means that accounts given by management were not always assessed against the views of those employed on ZHCs and, as such, it could leave some scope for a biased or distorted picture to emerge. Moreover, while it was decided that I had a responsibility to represent the concerns of employees when they arose, the actual impact of working on Zero-Hours Contracts in the HEIs was not a primary area of empirical interest. Thus, it could be said that another limitation of the research is that it does not sufficiently explore the implications that different employment practices can have for employees' lives.

## **8.5 Further Research**

Even though Zero-Hours Contracts remains one of the highest profile labour market issues of our time, there continues to be a surprising lack of academic research with only a handful of studies available. As such, there is plenty of scope for more empirical work to be undertaken. This thesis makes a contribution to knowledge by analysing the use of “Zero-Hours Contracts” in relation to processes of casualisation already underway within HE and by showing how varieties of practice can be mapped onto a series of different continuums. Further qualitative or quantitative work could be undertaken to see whether or not the findings presented here resonate across the wider sector. Such work could also

attend to the limitations of the current study, particularly in terms of covering the kinds of employment forms that have not been included and by assessing the implications for those who work on ZHCs.

This thesis has only focused its empirical enquiries on one area of the labour market but as discussed extensively in the first chapters, there is plenty of opportunity for further research on the variegated nature of ZHCs in other sectors. The most pressing need for such work is in other areas where prevalence is greatest such as Hospitality, Retail and Social Care and where the drivers of labour employer-led flexibility and its inherent problems are most apparent. Work here could build on that which has already undertaken, but when mapping varieties it could focus on what constitutes good and bad practice. This would enable assessment of policy proposals in relation to specific sectoral contexts.

Given the political juncture at which the UK finds itself, it is worthwhile saying a few words on Britain's imminent withdrawal from the EU. It has been noted earlier in the thesis that recent decades have seen a shift from the more traditional UK industrial relations model to a situation in which the use of different employment forms is significantly more employer-led often at the expense of employees. To some extent, this movement is tempered by a host of EU directives and regulations. However, its positive influence is now under threat as the prospect of a sharp break from the European Union appears increasingly likely. In the event that this occurs, scholars such as Countouris and Ewing (2019) warn that a Boris Johnson administration could seek to drive an already wanting UK labour law below EU standards in a deliberate attempt to undercut the trading block and to boost domestic competitiveness. In this situation, it is of critical importance that more evidence is provided in order to monitor the growth and increasing variegation of new forms of employment so that we have the tools at our disposal to advocate for an acceptable and progressive way forward.

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# Appendices

- A) Timeline of developments for Zero-Hours Contracts 1989 to 2020
- B) Higher Education Single Pay Spine
- C) Example of request for participation of sent to SVU and NCU
- D) Letter of Approval from North Coast University
- E) Example interview guide and questions
- F) Ethical approval from Cardiff University Ethics Committee
- G) Information sheet issued to participants
- H) Written consent form issued to participants
- I) Notes on data and calculations for the quantity and range of weekly hours

## Appendix A. Timeline of developments for Zero-Hours Contracts 1989 to present.

Sourced from Nexis UK search of all newspaper articles containing variations of the term ZHC (“zero-hour contract” OR “zero hour contract” – excluding group duplicates and websites). Due to the volume of reports after 2012, coverage is limited only to major events and developments.

**1989**

First reference to Zero-Hours Contracts in discussion of Labour’s Charter for Employees.

**1993**

John Monks TUC General Secretary refers to Zero-Hours Contracts and their appearance in the retail trade in an address on the changing nature of employment and the growth of uncertainty.

**1994**

Commentary in the media about the increasing use of flexible contracts including ZHCS in retail, especially by the Burton Group and Kingfisher.

Zero-Hours Contracts considered to be the most extreme form of flexible employment in which no work is guaranteed but employees are required to be available on-call and to accept work when it is offered to them.

**1995**

Flashpoint in the history of Zero-Hours Contracts where staff at Burger King are asked to clock-off during quiet periods but to remain on or near premises without payment for this time.

TUC calls for minimum wages policy and a total ban on Zero-Hours Contracts.

Earliest mention of Zero-Hours Contracts in a leading specialist journal article. Watson (1995). Employees and the Unfair Contract Terms Act. *ILJ* 323: 323-336.

**1996**

Commentators continue to express grievances with Zero-Hours Contracts.

It is suggested that ZHCs are odds with Tony Blair’s Third Way and that further redressing of imbalance in the employment relationship is required. Draft policy document *Building Prosperity: Flexibility, Efficiency and Fairness at Work* covers a list of employment proposals (including NMW) and pledged to outlaw ZHC. However, publication of the document moves from an outright ban to a proposal to examine how people on ZHCs can be protected from abuses.

Zero-Hours Contract referred to as “fashionable notion” and enters the Glossary for the 90s.

**1997**

Katherine Cave’s (1997) survey of 173 employers across a range of industries reveals 6 organisations employing more than 1,000 people on ZHCs and only 9 employing fewer than 50.

**1998**

National Minimum Wage Act 1998 enters statute (not yet enforced).



Publication of the White Paper *Fairness at Work* broadly reflects New Labour's manifesto on employment and labour market issues. It is described as the biggest job shake up in 20 years and seeks a "new culture of partnership" in line with its third way principles.

The Working Time Directive and NMW legislation is considered sufficient to defend against ZHC abuses including clocking-off and non-payment during quiet periods despite employees remaining on or near the premises. Proposes to seek "views on whether further action should be taken to address the potential abuse of zero hours contracts and, if so, how to take this forward without undermining labour market flexibility".

Lobbying by Confederation of British Industry (CBI) secures a number of concessions to the policy document including commitments not to legislate further against the use of Zero-Hours Contracts.

Working Time Regulations come into effect.

**1999**

The National Minimum Wage Act comes into effect in National Minimum Wage Regulations 1999. Individuals on a Zero-Hours Contracts are entitled to a min rate of pay of £3.60 an hour (over 21 years) while r15(1) obligates employers to pay minimum wages when employees are required to be available at or near a place of work.

**2000**

Employment Relations Act 1999 comes into effect and extends employment rights to all but the genuinely self-employed by creating the category of worker. Some regard the high court judgement from Lord Irvine to be give a "green light to the use of Zero-hours Contracts".

Seminal ruling from European Court of Justice - *Sindicato de Médicos de Asistencia Pública v Conselleria de Sanidad y Consumo de la Generalidad Valenciana* - creates binding legal precedent on Working Time.

**2001**

Commentary notes that Labour's earlier pledge to abolish ZHCs is its only promise not to be enacted.

**2002**

Department of Transport and Industry announce review of Employment Relations Act 1999. Opposed by CBI and embraced by TUC who say Zero-Hours Contracts should be unlawful.

**2003**

TUC suggest there is a growth of a two tier workforce and argue employment law has developed in haphazard and confusing way with as many as 9 million with worker status in jobs like ZHCs.

**2004**

Workplace and Employment Relations Survey (WERS) finds ZHCs are used in 4% of workplaces.

**2005**

Citizens Advice (CAB) suggests hundreds are going without holiday pay for up to 4 weeks a year due to deliberate avoidance and unawareness of obligations, ZHCs given as an example.

**2006**

Reports of gang masters exploiting Polish migrants on Zero-Hours Contracts in South Wales.

Conservative Party calls for a “working revolution”, ditching 9 to 5 to prevent the country plunging into economic decline and to meet the challenges of globalisation. They envision people on the books of several companies employed on arrangements like ZHCs, selling units of work by the hour or project.

## 2007

Public and Commercial Service Union (PCS) votes for a campaign to ban ZHCs.

Unite the Union bring attention to the plight of Polish migrants in a South Wales meat plant who are employed through an agency on Zero-Hours Contracts after being used to replace local staff.

First mention in the media of domiciliary care workers being transferred to Zero-Hours Contracts after a Liverpool City Council implements a package of cost savings.

## 2008

Global Financial Crash and the onset of Recession.

## 2009

University and College Union estimates there are 75,000 hourly paid staff working in HE and suggest that some could be working on Zero-Hours Contracts.

More coverage of the meat processing plant in South Wales where Polish migrants are employed on agency Zero-Hours Contracts which undercut local workers. British National Party (BNP) said to be taking advantage of tensions to build on its 25% polling in council elections.

## 2010

Increased media reports of domiciliary care workers being transferred to ZHC.

Unison’s Dave Prentis highlights problems for employees effectively being paid below the NMW due to non-payment of travel time and swings in hourly rate because of unpredictable work.

## 2011

Further media reporting on domiciliary care workers being transferred to ZHCs.

Multiple reports of how agency workers are being transferred to Zero-Hours Contracts as a means of avoiding new EU Agency Worker Regulations which allow for equal pay after 12 weeks.

## 2012

Reports of clinicians and medical staff being put on Zero-Hours Contracts by Hospital Trusts around the UK and concerns that this will have a direct negative effect on the quality of service.

A series of media discussions on how improved unemployment rates post-recession mask the growth of flexible and non-standard employment such as ZHCs that do not provide enough hours.

Seminal employment case *Pulse Health Care vs Carewatch Care Services* rules that care givers who work regular hours on ZHCs were employees with an umbrella or global contract of employment.

## 2013

ONS release LFS estimates for Oct-Dec 2012 placing Zero-Hours Contracts at 200,000. This represented a 25% increase from the second quarter of the year.

Department of Business, Innovation and Skills (BIS) announce review of ZHCs. Vince Cable suggests that this is to ensure that balance between flexibility and fairness is struck.

Skills for Care estimates 307,000 adult care workers employed on ZHCs in England.

Research by Bessa et al (2013) on NMW in the domiciliary care sector finds 56% of workers employed on Zero-Hours Contract and extensive underpayment of the NMW.

Sports Direct reported to employ 90% of its workforce (20,000 people) on Zero-Hours Contracts giving them no guarantee of work but a need to be available when called upon.

Pub chain JD Weatherspoon reported to employ 80% of its workforce on ZHCs.

ONS changes to analysis of LFS raise estimates to 250,000. Further methodological changes announced.

Explosion of interest in Zero-Hours Contract begins. *LexisNexis* search reveals 634 publications containing the term Zero-Hours Contracts in August. This exceeds Jan-Mar 2013 by 429 and highest previous annual figure of 89 by 545.

CIPD estimate that there are 1 million Zero-Hours Contracts.

McDonalds reported to employ 90% (82,000) of its workforce on Zero-Hours Contracts making it the largest employer of people on ZHCs in the in the private sector.

ONS announces additional estimate for No Guaranteed Hours Contracts in its Business Survey.

UCU publishes results of its Freedom of Information request which finds that 53% of UK universities say that they use Zero-Hours contract with a total 24,427 employed on this basis.

Guardian reports that universities are twice as likely as other employers to use ZHCs.

Unite publishes research suggests up to 5 million people are employed on Zero-Hours Contracts.

Ed Miliband promises to end exploitative Zero-Hours Contracts. Proposals include:

- Ending arrangements where require workers to work exclusively for one business.
- Banning employers from insisting workers are available when no guarantee of work.
- Giving employees a right to a contract that reflects regular hours after 12 weeks.

Department of Business, Innovation and Skills (BIS) publish review of Zero-Hours Contracts. Assurances given that there will be no ban but will consult on issues of exclusivity and transparency. Receives broad support from business organisations but opposed by unions.

CIPD publishes results from the first in-depth study into the nature of Zero-Hours Contracts. Both those in support and opposition to ZHCs make extensive use of its findings.

Government announces that it plans to legislate against the use of exclusivity clauses.

## 2014

ONS releases LFS estimates for Oct-Dec 2013 placing Zero-Hours Contracts at 583,000. Media commentary suggests it shows a huge rise in the use of the employment arrangements.

Plaid Cymru amendment to Social Service Bill bids to outlaw ZHCs in social care setting in Wales. Rejected by Welsh Labour and Conservative Parties to much criticism.

Ed Miliband reiterates promises to tackle Zero-Hours Contracts but waters down proposals.

- Ending arrangements where require workers to work exclusively for one business.
- Protection against insisting workers are available when no guarantee of work.
- After 6 months employee will get a right to ask for a fixed-hours contract.
- After a year employees will automatically be entitled to a fixed-hours contract.

ONS Business Survey estimates 1.4 million No Guaranteed-Hours Contracts (Jan 2014).

Small Business and Enterprise Bill 2015 is introduced to Parliament.

A definition of Zero-Hours Contracts is provide and a ban on exclusivity clauses put forward.

TUC welcomes the move but claims it is not enough to tackle problem of ZHCs.

Ian Mearns Private Member's Bill introduced to Parliament but was defeated on second reading. Proposed wide ranging measures to regulate the use and abuse of ZHCs including:

- A right to reasonable notice of 72 hours when providing and cancelling work.
- A right to payment for any work that is cancelled within this period of time.
- A duty on employee to offer a fixed and regular contract after 12 weeks.
- A prohibition of exclusivity clauses (much like the SBEE Bill).

## 2015

Sports Direct founder an owner Mike Ashley called before MPs (Scottish Affairs Committee) over treatment of employees at the company's USC retail park and the use of Zero-Hours Contracts.

ONS release LFS estimates for Oct-Dec 2014 placing ZHC at 697,000.

ONS Business Survey estimates 1.8 million No Guaranteed Hours Contracts (Aug 2014).

Small Business and Enterprise Act 2015 banning exclusivity clauses gains Royal assent.

Jeremy Paxman asks David Cameron if he would like to work on a Zero-Hours Contract. After failing to answer three times he eventually replies with "no".

Reports that Sports Direct account for 1 in 5 of all ZHCs in the UK retail sector.

Calculated on the basis of ONS figures compared with the 15,000 employed by the company.

Ed Miliband promises to end "epidemic" of Zero-Hours Contracts.

This involved a return to original proposals after they were revised and moderated in 2014:

- Ending arrangements which require workers to work exclusively for one business.
- Banning employers from insisting workers are available when no guarantee of work.
- Giving employees a right to a contract that reflects regular hours after 12 weeks.

More than 100 business leaders sign letter backing Conservative Party.  
They warn that a change in course would threaten jobs and risk the UK's economic recovery.

Channel 4 airs Despatches exposé of work practices at Sports Direct's Shirebrook warehouse.

David Cameron's Conservative Party win the general election and form a majority government.

Small Businesses, Enterprise and Employment Act 2015 comes into effect.  
A ban on exclusivity clauses is called toothless and unenforceable by employment lawyers.

McDonalds UK boss Paul Pomeroy defends the company's use of Zero-Hours Contracts.  
Suggested that 92% of employees in a survey of restaurants said they were happy with them.

Guardian releases an undercover report on work practices in Sports Direct Shirebrook warehouse

In response to intense criticism and a 13% fall in shares (£300m of stock market value), Mike Ashley announces a review of all agency employment at its warehouse sites.

## 2016

ONS release LFS estimates for Oct-Dec 2015 placing Zero-Hours Contracts at 801,000

New Zealand moves to ban Zero-Hours Contracts in Employee Relations Amendment Bill.  
This prevents employers from forcing employees to remain available when not guaranteed work. It also ensures that contracts must specify minimum hours – but this can still be Zero.

The New Zealand development is held up by The Guardian and Unite the Union as proof that Zero-Hours Contracts can be completely banned in UK.

McDonalds pilot scheme of offering UK staff the option of moving to fixed-hours.  
Roughly 80% of workers in the trial elected to stay on Zero-Hours Contracts.

Mike Ashley of Sports Direct gives into pressure and answers MPs questions in Parliament.  
Among the admissions, he agrees more ZHCs staff should be transferred to permanent contracts.

Institute of Employment Rights publishes *A Manifesto for Labour Law: Towards and a Comprehensive Revision of Workers' Rights* which advocates wide reforms including a commitment to collective bargaining to progressives regulation of Zero-Hours Contracts.

Sports Direct report announces that it will abandon compulsory Zero-Hours Contracts.  
Staff offered guaranteed 12 hour per week but does not apply to agency workers at warehouses.  
(Reynolds Porter Chamberlin 2016)

Theresa May announces Taylor Review into Modern Employment Practices.

## 2017

ONS release LFS estimates for Oct-Dec 2016 placing Zero-Hours Contracts at 905,000  
ONS Business Survey estimates 1.7 million No Guaranteed Hours Contracts (Nov 2016)

Theresa May calls a snap election with a plea to strengthen her hand in Brexit negotiations.

McDonald announces it is to offer fixed-hours to 115,000 UK staff on Zero-Hour Contracts.

Labour Party led by Jeremy Corbyn releases its manifesto *For the Many, Not the Few*.  
Adopts many of the Institute of Employment Rights (IER) policies and pledges to:

“Ban zero-hours contracts so that every worker gets a guaranteed number of hours each week”.

Theresa May’s Conservative Party win the general election and form a minority government.

Government publishes *Good Work: The Taylor Review of Modern Working Practices* which considers flexibility to be positive but highlights examples of one-sided flexibility. Recommendations relating to the use of Zero-Hours Contracts include:

- Payment of higher NWM for hours not guaranteed.
- A right to request a contract which reflects actual hours after 12 months.
  
- A right to a written statement of particulars from first day of employment.
- SSP reformed as a basic employment right for all workers regardless of income.
- Extend period for continuity of service to be broken from 1 week to 1 month.

Taylor Review met with disappointment from employment lawyers (IER) and trade unions.

Sports Direct accused of breaking promise of abandoning Zero-Hour Contracts and responds by insisting that some staff like to work on a ZHC basis.

A survey of 400 people finds four fifths of McDonalds workers are still involuntarily employed on Zero-Hours Contracts despite the company promising to offer fixed-term contracts to all employees by the year’s end.

## 2018

Theresa May announces intention to act on the Taylor Review.  
Low pay Commission to consult on higher NMW and one-sided flexibility.

ONS release LFS estimates for Oct-Dec 2017 placing Zero-Hours Contracts at 902,000  
ONS Business Survey estimates 1.8 million No Guaranteed Hours Contracts (Nov 2017)

Archbishop of Canterbury describes the gig economy and Zero-Hours Contracts as the “reincarnation of an ancient evil”.

Government publishes its Good Work Plan setting out a broad programme of legislation in response to recommendations made in the Taylor Review on one-sided flexibility.

Those that are relevant to Zero-Hours Contracts include the following:

- A right to request a contract that guarantees hours after 26 weeks employment.
- A right to a written statement of particulars from the first day of employment.
- Extend period for continuity of service to be broken from 1 week to 1 month.

Low Pay Commission (LPC) report responding to government on one-sided flexibility.  
It agrees with the Taylor Review that it is an issue in some parts of the labour market.  
Advises against payment of higher NWM for hours that are not guaranteed.

However, the LPC make the following two recommendations:

- A right to reasonable notice of work.
- Compensation for shift cancellation without reasonable notice.

It is also suggested that the right to request a contract with guaranteed hours would require an employer to justify any refusal according to conditions set out in legislation.

## 2019

ONS release LFS estimates for Oct-Dec 2018 placing Zero-Hours Contracts at 844,000.

The Republic of Ireland passes the Employment (Miscellaneous Provision) Act 2019. Though it is not an outright ban it offers many restrictions and support to ZHC workers.

TUC report the developments as an outright ban and suggests that it gives "...added impetus to the UK unions' campaign to ban Zero-Hours Contracts".

The Living Wage Foundation launches Living Hours campaign to tackle in-work insecurity. It involves ambitious measures which it developed through piloting with employers:

- At least 4 weeks' notice of work and payment if shift are cancelled during this time.
- A right to a contract that reflects actual hours worked after 12 weeks employment.

Department of Business, Energy and Industrial Strategy respond to LPCs recommendations. Announces it will not make payment of higher NWM for hours that are not guaranteed. Opens a consultation on the right to reasonable notice and compensation for cancellation.

UK Parliament votes to hold a general election on 12<sup>th</sup> December.

Boris Johnson's Conservative Party win a landslide election victory.

## Appendix B. Higher Education Single Pay Spine.

Calculations performed to give hourly rates (as discussed in JNCHES 2015: 34)

	2014-15	2015-16	2016-17	2017-18
Spine Point	Salary from Aug14	Salary from Aug 15	Salary from Aug 16	Salary from Aug 2017
1	13,953	14,323	14,767	-
2	14,257	14,599	15,052	15,417
3	14,631	14,953	15,356	15,721
4	14,959	15,258	15,670	16,035
5	15,356	15,632	15,976	16,341
6	15,765	16,017	16,289	16,654
7	16,131	16,357	16,618	16,983
8	16,577	16,776	16,961	17,326
9	17,039	17,209	17,399	17,764
10	17,528	17,703	17,898	18,263
11	18,031	18,211	18,412	18,777
12	18,549	18,734	18,940	19,305
13	19,083	19,274	19,485	19,850
14	19,632	19,828	20,046	20,411
15	20,198	20,400	20,624	20,989
16	20,781	20,989	21,220	21,581
17	21,391	21,605	21,843	22,214
18	22,029	22,249	22,494	22,876
19	22,685	22,912	23,164	23,557
20	23,386	23,620	23,879	24,285
21	24,057	24,298	24,565	24,983
22	24,775	25,023	25,298	25,728
23	25,513	25,768	26,052	26,495
24	26,274	26,537	26,829	27,285
25	27,057	27,328	27,629	28,098
26	27,864	28,143	28,452	28,936
27	28,695	28,982	29,301	29,799
28	29,552	29,848	30,175	30,688
29	30,434	30,738	31,076	31,604
30	31,342	31,655	32,004	32,548
31	32,277	32,600	32,958	33,518
32	33,242	33,574	33,943	34,520
33	34,233	34,575	34,956	35,550
34	35,256	35,609	36,001	36,613
35	36,309	36,672	37,075	37,706
36	37,394	37,768	38,183	38,833
37	38,511	38,896	39,324	39,992
38	39,685	40,082	40,523	41,212
39	40,847	41,255	41,709	42,418



40	42,067	42,488	42,955	43,685
41	43,325	43,758	44,240	44,992
42	44,620	45,066	45,562	46,336
43	45,954	46,414	46,924	47,722
44	47,328	47,801	48,327	49,149
45	48,743	49,230	49,772	50,618
46	50,200	50,702	51,260	52,132
47	51,702	52,219	52,793	53,691
48	53,248	53,780	54,372	55,297
49	54,841	55,389	55,998	56,950
50	56,482	57,047	57,674	58,655
51	58,172	58,754	59,400	60,410

## Appendix C. Example of request for participation sent to SVU and NCU.

### PhD Research Proposal

#### Provisional Title: Variations and Developments in the Use of Zero-Hours Contracts: The Case of Higher Education

My name is Kyle Henry. I am a second year ESRC funded PhD student in Cardiff University's School of Social Sciences. I have been interested in the world of work for many years and have decided to focus my PhD research on Zero-Hours Contracts (ZHCs).

Zero-Hour Contracts have attracted considerable attention and have been the subject of much debate in recent years. However, little is known about the various types of ZHCs and the different ways in which they are used in specific sectors.

In order to provide some of these insights, I am in the process of undertaking several anonymised institutional case studies in the Higher Education sector. I am exploring definitions and understandings of ZHCs, the different types of ZHCs in use, how they are used for different occupational roles and the reasons that they are used in particular ways. I am also interested in examining how and why the use of ZHCs has changed over time and which aspects, if any, can really be regarded as new.

It is hoped that my research will help to improve our understanding of ZHCs as a labour market phenomenon and provide a better understanding of casual/flexible employment. It could also contribute to more informed and balanced debate around ZHCs.

My initial investigations suggest that [REDACTED] would be an ideal case study given its location and the existence of the ZHCs working group. It would be great to meet with both HR and union members of the group to discuss my ideas in more detail and to answer any questions you may have.

Kyle Richard Henry  
PhD Student  
School of Social Sciences  
Cardiff University  
1-3 Museum Place  
CF10 3BD

Email: HenryKR@cardiff.ac.uk  
Mobile Contact: 07757 230 926

Research Profile:  
<http://www.walesdte.ac.uk/profiles/pathway/sociology/>



**Appendix D. Letter of Approval from North Coast University.**

[REDACTED]

16<sup>th</sup> February 2016

Dear Kyle

**Re: Variations and Developments in the Use of 'Zero-Hours Contracts': The Case of Higher Education**

I am writing on behalf of the College of [REDACTED] Academic Ethics Committee to confirm that I have reviewed your PhD research proposal, supporting documents and the correspondence confirming ethical approval from Cardiff University.

Section 4.5 of the University's Research Ethics Policy stipulates that ethical approval by other universities, institutions or organisations will normally be acceptable as proof that a particular project has been properly reviewed and approval granted. I am content for [REDACTED] University to act as a contributor to this project and for you to collect research data from staff at the University.

I wish you well with your research.

Yours sincerely



[REDACTED]

Chair, [REDACTED] Research Ethics Committee

[REDACTED]

## **Appendix E. Example interview guide and questions**

Note. That the interview guide was developed as the case study progressed and depending on the position of the participant. When employees were interviewed additional questions were asked about how they felt the different aspects impacted on their lives.

### **Overview of area and role in the University**

What is the participant's position duties and length of tenure within the university?

### **Definitions and UCU Freedom of Information**

Discuss definitions and the SBEE Definition

What is the agreed definition in the institution?

I will be using the definition of "No-Guaranteed Hours Contracts".

UCU Freedom of Information:

How was this definition interpreted and what was the rationale for reporting as they did?

### **Contracts**

\*See formal contracts\*

Are they permanent?

What proportion of total staff are on permanent contracts?

Are they fixed-term?

What proportion are on fixed term contracts?

- Why some are on permanent and some on fixed-term?

- Why the proportions on permanent and fixed-term?

### **Occupational Roles**

What roles are ZHCs being used for? How many of these are there?

What do these occupational involve?

### **Remuneration**

Is payment for work claimed via a central system or timesheets?

What is the level and how is payment structured?

Is payment just based on contact time or are other payments factored in?

Do payment rates increase overtime?

## Hours and Patterns of work

What are the typical patterns of work associated with the ZHCs in question?

- Quantity of hours per week.
- Length of employment.

Are figures available for this?

What factors determine hours of work?

What factors determine length of employment?

What factors account for differences in hours of work and length of employment?

\*For contracts discussed above\*

What is the process involved in the arrangement of hours?

Does the arrangement work on an on-call as and when basis?

- When and why is arranged like this?
- What notice is given?

Is there pre-agreement and scheduling of the work to undertaken?

- When and why is it arranged like this?
- What notice is given?

Is there an element of both?

- When and why?

Are there any accompanying documents that contain more information on this?

What additional documentation would be included with the contract document?

Are staff informed of the no guarantee when starting the job?

If not via written documents then verbally?

Do hours offered vary?

- How frequent is there a variation in hours offered?
- In what circumstances and through what mechanisms would hours offered vary?
- What are the reasons for the amount of variation in hours offered?
- Are some likely to experience more variation in hours offered than others? Why?
- What notice would be provided in situation where there is a variation to hours offered?

Do hours that vary after they have been agreed?

- How frequent is there a variation in hours agreed?
- In what circumstances and through what mechanisms would hours agreed vary?
- What are the reasons for the amount of variation in hours agreed?
- Are some employees likely to experience more variation in hours agreed? Why?
- What notice would be provided in situation where there is a variation to hours agreed?
- Is some form of compensation awarded when there is a variation to hours agreed? Why?

Are there times when hours may be reduced to zero after they have been agreed?

- How frequent are hours reduced to zero after being agreed?
- In what circumstances would no hours be reduced to zero after they have been agreed?
- Are some employees more likely to have hours reduced to zero after agreed? Why?
- What notice would be provided when hours agreed are reduced to zero?
- Is some form of compensation awarded when hours agreed are reduced to zero? Why?

Are there times when no hours will be offered?

- In what circumstances and through what mechanisms would no hours be offered?
- How frequent will no hours be offered? Why?
- Are some employees likely to experience being offered no hours than others? Why?
- What notice would be provided in situations where there no hours are offered?

Are employees made aware that patterns of work can pan out in these ways?

### **Employee obligation**

Is there a contractual obligation for the employee to work hours initially offered?

- Do employees ever turn down work?
- How would the institution respond and why?

Is there a contractual obligation for the employee to work additional hours offered?

- Do employees ever turn down additional work?
- How would the institution respond and why?

Is there a contractual obligation for the employee to work hours agreed (reduce or vary)?

- Do employees ever fail to work these hours and why?
- How would the institution respond and why?

Is there an expectation rather than a contractual obligation?

Examples of response: non-payment, preferential selection, removal of hours, termination

- Are individuals preventing for working elsewhere?
- Do employees have to ask permission or seek approval if working elsewhere?
- Are there instances where permission be denied? Is it ever a topic of discussion?
- What are the reasons for answers given?

Are employees made aware of these issues of obligation?

### **Rights and Entitlements**

What is the employment status of individuals employed on the ZHC in question?

What factors in each relationship will determine classification as either an 'employee or a worker'?

\*See document\*

If it is not clear cut, why was the decision made?

Consider global contracts and wage work-bargains.

Note. Continuity of employment (clause 1.1) and pro rata access to employment rights.

Holiday pay:

How does the university approach this issue?

- Rolled up or pro-rata?

Sick Pay:

- Off work 4 or more days in a row and earn £112 a week.
- Given the patterns of work how will this affect access to sickness?

Maternity and Paternity:

- Earn an average of £112 a week and 28 days' notice.
- Given the and patterns of work how will this affect access to sickness?

Redundancy:

- Continuity of services for 2 years or more.
- Given the patterns of work how will this affect access to redundancy?

## Appendix F. Ethical approval from Cardiff University Ethics Committee.

Cardiff School of Social Sciences  
Head of School Professor Amanda Coffey FAcSS  
Ysgol Gwyddorau Cymdeithasol Caerdydd  
Pennaeth yr Ysgol Yr Athro Amanda Coffey FAcSS



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Cymru Y Deyrnas Unedig

8<sup>th</sup> July 2015

Our ref: SREC/1551

Kyle Henry  
PhD Programme  
SOCSI

Dear Kyle

Your project entitled "*Contemporary use and experience of 'zero-hours contracts': The case of higher education*" has been approved by the School of Social Sciences Research Ethics Committee of Cardiff University, subject to the following:

- *Response to Question 30c (Data Protection and Retention)*: Following recent guidance to the Committee on the University data retention policy, please note that you must retain both your interview audio files and survey results (this is non-anonymised data) and your transcripts for no less than five years or two years post publication.

The reason for this clarification is that, as far as the University is concerned, the primary objective of retaining the source data is to ensure that the data or records contain sufficient information to establish their authenticity and to make them a reliable source of evidence to support any final research outcomes. The University Records Manager has previously issued related guidance as part of the *FAQs on Data Protection and Writing a Research Protocol or Applying for Research Ethics Approval* which can be accessed via:

<http://www.cardiff.ac.uk/govrn/cocom/accinf/dataprotection/datap/dpguidquestions/index.html>

"10. Do I need to keep my original digital/audio tape as well as my transcripts?"

Yes, the University's Research Governance Framework does not explicitly state that original digital/audio tapes should be kept but it does include the expectation that researchers will keep clear and accurate records of all results obtained including primary data. It is therefore advisable to retain any original digital/audio recordings as well as any transcripts made for the full retention period. This will ensure that the original material is available should any queries arise after publication and guard against any allegations of fabrication or falsification of data. Some research councils (such as MRC) also require raw data to be kept in its original form alongside transcripts, so it is advisable to check any



guidance from your funder. If your tapes and transcripts relate to a clinical trial there are specific requirements as set out in the University's Standard Operating Procedure for Archiving records from Clinical Trials of Investigational Medicinal Products.

If you are considering destroying original digital/audio tapes it is advisable to assess the risk of only retaining transcripts. If you do not have any documented transcription procedures and do not carry out verification checks it may be difficult to prove that the transcripts are a true reflection of the original recording."

If you need clarification concerning this, please contact me.

If you make any substantial changes with ethical implications to the project as it progresses you need to inform the SREC about the nature of these changes. Such changes could be: 1) changes in the type of participants recruited (e.g. inclusion of a group of potentially vulnerable participants), 2) changes to questionnaires, interview guides etc. (e.g. including new questions on sensitive issues), 3) changes to the way data are handled (e.g. sharing of non-anonymised data with other researchers).

In addition, if anything occurs in your project from which you think the SREC might usefully learn, then please do share this information with us.

All ongoing projects will be monitored every 12 months and it is a condition of continued approval that you complete the monitoring form.

Please inform the SREC when the project has ended.

Please use the SREC's project reference number above in any future correspondence.

Yours sincerely



Professor Adam Hedgecoe  
Chair of School of Social Sciences Research Ethics Committee

cc: C Perkins  
Supervisors: A Felstead  
S Cam

## Appendix G. Information sheet issued to participants.

# Towards an Understanding of Zero-Hours Contracts as a Variegated Phenomenon: Evidence from the UK Higher Education Sector

### Background:

My name is Kyle Henry. I am a second year ESRC funded PhD student in Cardiff University's School of Social Sciences. I am interested in many aspects of the world of work and have decided to focus my PhD research on Zero-Hours Contracts (ZHCs). Since you have encountered forms of employment that might be categorised as ZHCs, I am interested to hear about your thoughts and experiences. Here is some further information about my research and the interview itself.

### Research Summary:

Zero-Hour Contracts (ZHCs) have attracted considerable attention and have been the subject of much debate. However, little is known about how they vary and the different ways they are used within specific sectors.

To provide these insights, I'm undertaking several case studies in the university sector. In each case study I will be exploring definitions and understandings of ZHCs, the different types of ZHCs in use, how they are used in different occupational roles and the reasons that they are used in particular ways. I am also interested in examining how and why the use of arrangements that can now be referred to as ZHCs has developed over time.

I'll be conducting semi-structured interviews with members of HR departments, departmental managers, trade union representatives, and members of staff. To situate the case studies in context, I am also holding interviews with relevant representatives at a regional and national level.

It is hoped that my research will improve our understanding of ZHCs as a labour market phenomenon while helping provide a necessary level of detail for balanced and effective policy making.

### The Interview:

The interview will be approx. 45 minutes in length. In order to help with recall, it will be tape recorded with your agreement and the data kept for at least five years or two years post-publication. The questions I'll ask will relate to the areas of interest outlined above. Please note that your involvement in the research is completely voluntary. Should you not wish to respond to questioning, or would like to end the interview, you can do so at any time. Everything that you say in the interview will be kept in strictest confidence and your identity will be protected.

Should you have any questions after the interview, please do not hesitate to contact me.

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Appendix H. Written consent form issued to participants.

**Towards and Understanding of Zero-Hours Contracts as a  
Variegated Phenomenon: Evidence from the UK Higher  
Education Sector**

Kyle Richard Henry

I confirm that I have been informed about the purpose of the research in which I am to participate. I understand that my involvement is entirely voluntary and that I am free at all times to refrain from responding should I consider it necessary. I am aware that the interview process will be recorded, that any information I give will be treated with confidence, and that my anonymity will be guaranteed.

Participant Signature \_\_\_\_\_

Researcher Signature \_\_\_\_\_

Date:



## **Appendix I. Notes on data and calculations for the quantity and range of weekly hours.**

i) The only available data capable of meeting these purposes were provided by management in the Faculty of Computing, Engineering and Science in SVU. This data detailed every individual engagement for the academic year 2015-2016 (as of November 2015). Employees can have more than one engagement, but average weekly hours were calculated on the basis of the average per engagement. This is due to the practical difficulties associated with an alternative calculation of the number of hours per week per individual employees whose engagements can overlap. Given that employees can have more than one engagement concomitantly, however, the actual average is likely to be higher than reported. The calculation of average hours and range of average hours per engagement was then done for each occupational role.

ii) Average weekly hours were calculated using the main data provided by Human Resources (discussed in Chapter 3.4.6) which provided total hours for each employee per month. An average was taken for the monthly hours of each employee and was then divided by 4 to give a weekly average. This then enabled an average and a range to be worked out for employees within a particular academic role (rounded to 1.dp).

iii) Students Services provided data for occupational roles in the faculty for the period October 2016 to December 2016. This included the number of hours undertaken by individual employees for each month. Averages were calculated for each individual member of staff by totalling the hours worked in each month and dividing it by 10 to account for the number of working weeks within the term. In the very few occasions where no work had been undertaken in a given month, it was omitted so as not to artificially lower the average. An average and range of averages was then taken for all employees in each role (rounded to 1 d.p).

Management in Campus Services gave some indication of the average weekly hours worked by Health and Fitness and Instructors and later provided data on the number of hours for a selection of employees in each week of the academic year. Overall averages and range could then be calculated from this information.

iv) See ii above.

v) Average weekly hours for Exam Invigilators were calculated by management in Student Administration for the main examination period, for two lesser examination periods, and for minor “ad-hoc” periods throughout the year. The figure 5.11 includes two averages: one for the main examination period in May since it is the period when the vast bulk of work is undertaken and is a significantly higher average than all other periods, and second, a combined average for all other periods. The range around the average was not provided as part of this data but has been determined on the basis of data from interviews.