

# **Consultation on measures to increase transparency in the UK labour market:**

## **Citizens Advice response**



# About us

Citizens Advice service provides free, independent, confidential and impartial advice to everyone about their rights and responsibilities. We are the membership body for local Citizens Advice services in England and Wales. There are around 300 local Citizens Advice services in England and Wales giving advice from 2,700 locations including high street offices, libraries, courts, prisons, GP's surgeries and hospitals.

We helped 2.7 million people face to face, over the phone, by email and webchat in 2016-17. There were also 43 million visits to our online advice pages. The real-time data we receive from our clients helps us identify emerging issues, understand what is causing them and make recommendations on how to fix the problems.

Employment problems are the 4th biggest issue affecting Citizens Advice clients. Over the past year we have helped more than 160,000 people with issues relating to employment. Millions more have accessed our employment advice online. This, together with our extensive labour market research conducted over the last 3 years, provides us with a unique insight into problems at work and allows us to spot new areas of detriment.

# Summary

The rapid pace of change in the jobs market means it is often difficult for people to understand their rights and entitlements. Existing employment law was largely designed for a very different labour market. As working patterns and work practices change, gaps and grey areas can emerge which make it difficult for workers to enforce their rights.

Citizens Advice therefore welcomes the proposals set out in this consultation which we believe will help improve transparency around pay and entitlements for workers in the modern workforce, as well as bringing some rights of non-permanent employees in line with those of permanent employees.

We agree that both individuals and businesses would benefit from greater transparency around contractual arrangements between employers and workers. Better awareness of pay and entitlements amongst workers makes it easier for them to enforce their employment rights. Proposals such as a right to request a direct contract will create more pressure on employers to improve employment practices.

However, we also believe the Government needs to go further than these proposals in order to improve the overall quality of work in the UK. Large employers should be required to publish information such as the proportion of their workforce on different types of contract, or the number of requests for guaranteed hours they receive. This would encourage businesses to engage in discussion about job quality and the overall shape of their workforce, as well as helping them to adapt their practices to attract and support workers in a variety of employment types.

Employment rights are only as strong as our ability to enforce them. It is not clear which enforcement body will facilitate and enforce the new rules proposed in this consultation document. We know that workers are already put off from enforcing their rights because they find the process confusing.<sup>1</sup> We believe creating a Fair Work Authority - bringing together the specialisms and responsibilities of existing bodies - would help Government realise the benefits of greater transparency. For example, the proposal to extend the right to a written statement opens up new opportunities for large-scale enforcement for an organisation which could be both proactive and reactive.

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<sup>1</sup> Please see our response to the Government's consultation on the Enforcement of Employment Rights Recommendations.

# Section A

**Recommendation:** 'The government should build on and improve clarity, certainty and understanding of all working people by extending the right to a written statement to 'dependent contractors as well as employees.'

## **Q9 - To what extent do you agree that the right to a written statement should be extended to cover permanent employees with less than one month's service and non-permanent staff?**

- Agree strongly

We believe that all workers should have the right to a statement outlining the terms and conditions of their employment. This should be provided prior to the individual's start date, and ideally upon offer of employment.

Issues relating to pay and entitlements are the most common problem that Citizens Advice sees amongst clients who come to us for help with employment. Last year, we helped just under 50,000 people with this type of problem.

Extending the right to a written statement to cover new and non-permanent staff would address three key issues we see amongst clients:

- **Lack of awareness.** We have found that a lack of awareness of rights is a particular problem amongst non-permanent workers. For example, half of people on zero-hours contracts and two-fifths of people on temporary contracts wrongly believe they are not entitled to paid holiday.<sup>2</sup>
- **Lack of transparency.** Where workers do not have the terms of their employment clearly set out, this opens up opportunities for malpractice by employers. For example, amongst people on zero-hour contracts or working variable shift patterns we see employers unlawfully avoiding paying statutory sick pay by taking staff 'off the rota'.<sup>3</sup> Similarly, Citizens Advice has seen clients whose have been informed by their employers that they are not entitled to holiday pay, or that it is conditional on their performance.<sup>4</sup>
- **Fear of reprisals.** We find that clients - particularly those in agency work or on zero-hours contracts - can be reluctant to enforce their rights because they fear it will lead to them not being offered work in future or

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<sup>2</sup> [Citizens Advice \(2017\) Sharp Practice at Work: Paid Holiday](#)

<sup>3</sup> [Citizens Advice \(2017\) Sharp Practice at Work: Statutory Sick Pay](#)

<sup>4</sup> [Citizens Advice \(2017\) Sharp Practice at Work: Paid Holiday](#)

that the process will be too arduous.<sup>5</sup> This problem is exacerbated when employers do not make it clear to employees what terms they are entitled to.

Extending the right to a written statement to new and non-permanent employees would require employers to be transparent about the terms of employment from the beginning. This will help raise awareness of employment rights amongst workers, discourage malpractice amongst employers, and make it easier for workers to raise incidents of non-compliance.

### **Case study: Jake**

Jake visited Citizens Advice earlier this year after his employer failed to pay him for 5 days annual leave. Although he has worked for the same company for more than a year, they have not provided him with an employment contract despite repeated requests to do so. He usually works 20 hours per week and receives a pay slip.

Jake booked his leave and had this confirmed by his manager. However, when he checked his payslip he saw that he had not been paid for this time. He complained by email but did not get a response. When he raised the issue again he was informed that it was too late to claim his holiday pay.

Jake was very reluctant to raise a grievance because he was afraid it would result in him losing his job. However, after checking his entitlement online he believed he was owed £200.

After being supported by Citizens Advice to write a letter to his manager, he was invited to attend a face to face meeting in which he was given an explanation as to how holiday pay was calculated. Following this, Jake was still unsure whether he had received his full entitlement, in part because his employer was still unable to provide anything in writing. His local Citizens Advice referred him to a specialist employment adviser to pursue the matter further.

**Question 10 - The following items are currently prescribed contents of a principal written statement. Do you think they are helpful in setting out employment particulars?**

- Yes to questions **a)** through **h)**

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<sup>5</sup> [Citizens Advice \(2015\) Out of hours: Balancing flexibility and security in non-traditional employment contracts](#)

**Question 11 – Do you agree that the following additional items should be included on a principal written statement:**

- Agree strongly with all additional items outlined in questions **a)** through **g)**

**Question 12 - To what extent do you agree that the principal written statement should be provided on (or before) the individual's start date?**

- Agree strongly

We believe workers should be provided with the principle written statement - including the additional items proposed in Q11 - prior to their start date. Workers should have the opportunity to see the terms of their employment before accepting an offer from an employer, to allow them to make an informed decision about the quality of the job offer and whether it meets their requirements.

**Case study: Asma**

Asma applied for a position as a healthcare worker late last year. The job was advertised as being full time and Asma was also informed of this when she interviewed for the role.

However, when Asma arrived for her first day at work she was given a zero-hour contract to sign. She was unhappy with this as she felt she had been employed under false pretences, as she had been looking specifically for a full time role. Asma came to Citizens Advice to find out whether she could seek legal recourse in these circumstances.

**Question 13: To what extent do you agree that other parts of the written statement should be provided within two months of their start date?**

- Agree strongly

## Section B

**Recommendation:** 'The government should extend, from one week to one month, the consideration of the relevant break in service for the calculation of the qualifying period for continuous service and clarify the situations where cessations of work could be justified.'

**Question 22: Do you have examples of instances where breaks in service have prevented employees from obtaining their rights that require a qualifying period?**

- Yes

Evidence from our adviser casenotes indicates that breaks in service cause particular problems for clients on temporary or zero-hours contracts who come to us for help when they experience problems at work. Clients who are seeking to understand their rights in these circumstances can then come up against the barrier of having to prove continuous service.

### Case study - Ian

Ian worked as a day centre worker on a zero-hour contract for four years. He worked there on a full time basis, usually doing 37 hours per week. He also worked overtime when this was required by his employer.

However, Ian and his colleagues are required by their employer to work for 8 weeks and then take the 9th week off unpaid. As a result, Ian does not have a record of continuous service which would entitle him to some employment rights and protections - for example, the ability to make a claim of unfair dismissal against his employer.

**Question 24: We have committed to extending the period counted as a break in continuous service beyond one week. What length do you think the break in continuous service should be?**

- Six weeks

Having to establish continuous service - even in cases where breaks in work are exempt - adds another layer of complexity and can deter clients from holding employers accountable for poor practice. We therefore strongly support the Government's commitment to extend the period counted as a break in continuous service beyond one week.

In our view, the break needs to be set at a level which would deter avoidance from employers. We see many cases where clients are left without work for a period of around two weeks which means they are prevented from additional entitlements at work. We feel that a break of six weeks would help to deter avoidance from employers.

**Question 26: We intend to update the guidance on continuous service, and would like to know what types of information you would find helpful in that guidance. (Select all that apply)**

- Signposts to further information
- Information on what to do if you feel your employer has not complied with the legislation



## Section C

**Recommendation:** 'The government should do more to promote awareness of holiday pay entitlements, increasing the pay reference period to 52 weeks to take account of seasonal variations and give dependent contractors the opportunity to receive rolled-up holiday pay.'

### **Q27 Do you agree that government should take action to change the length of the holiday pay reference period?**

- Yes

We support the recommendation set out in the *Review of Modern Working Practices* that the holiday pay reference period be increased from 12 to 52 weeks.

As reported in our response to Q9, lack of awareness of entitlement to paid holiday is a key barrier to the enforcement of employment rights, particularly for those in non-traditional employment. Setting the pay reference period at 52 weeks would provide clarity for workers, making it simpler for them to predict the amount of holiday pay they are entitled to and identify incidents where they have been paid an incorrect amount. We believe having a set reference period - rather than introducing variation between employees - would also provide clarity to employers.

It is our view that allowing employees and workers to agree a shorter reference period, or setting it at less than 52 weeks, would be unlikely to address the issues which the Taylor review identified and the Government has acknowledged in its response. The existing 12 week reference period does not take account of the seasonal nature of work in sectors where atypical work is common. This means that workers are entitled to higher holiday pay following busy periods where they have been given additional hours or worked overtime, and lower holiday pay following quieter periods. The 52 week period is required in order to fully take account of seasonal variations in activity.

Imbalances in information and negotiating power between employers and workers mean that allowing variation in reference periods would also risk leading workers to accept arrangements which disadvantage them. Under the current arrangements, employers have an incentive to limit when employees can take holiday in order to reduce costs. At Citizens Advice, we see clients who have been discouraged by their employer from taking holiday during periods where they would have been entitled to higher pay. Allowing employers and

workers to agree a different reference period would not remove this incentive, making it likely that workers will continue to face similar problems taking paid holiday.

**Q28 If you answered yes to Q27, should government:**

a) increase the reference period from the current 12 weeks to the 52 weeks recommended in the review?

- Yes

b) Set a 52 week default position but allow employees and workers to agree a shorter reference period?

Yes/No/Don't know.

- No.

As demonstrated in other areas of labour market regulation, where protections are negotiable this tends to lead to bad outcomes for those in insecure employment. A lack of awareness and bargaining power means workers are likely to accept conditions which are worse than those they're entitled to.

c) Set a different reference period

Yes/No/Don't know.

- No

**Q29 What is your understanding of atypical workers' arrangements in relation to annual leave and holiday pay?**

As reported in our response to Q9, our evidence suggests that workers in atypical employment are not always getting the annual leave or holiday pay to which they are entitled.

We see cases where employers using non-traditional contracts are unaware of their workers' entitlement to annual leave or believe they are entitled to less than the legal requirement. Sometimes employers repeatedly refuse holiday requests citing business needs, which results in workers losing their entitlement as they move into the next holiday year.<sup>6</sup> A widespread lack of awareness around entitlements, alongside a fear of reprisals, makes it difficult for workers on atypical contracts to enforce their right to annual leave.

We see many cases where employers are avoiding their responsibility to provide paid holidays to atypical workers. In particular, we have found some employers

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<sup>6</sup> [Citizens Advice \(2017\) Sharp Practice at Work: Paid Holiday](#)

misinform their workers about their right to holiday pay - either by denying they are entitled to this or making it conditional on their performance.

However, our research also shows that employers sometimes struggle with the technical difficulties of calculating holiday and holiday pay. For example, in converting the 5.6 weeks entitlement into days or hours, employers can end up shaving off amounts of pay from workers' full entitlement. Another example is employers wrongly calculating paid holiday based on employees' guaranteed contractual hours instead of typical hours, which include regular overtime. Many employees take the word of their employer and don't investigate or contest this further.

Ultimately, workers whose hours fluctuate should not be in a position where their overall yearly holiday pay has been less than a comparable worker on fixed hours. At present, workers often have to factor in the hours they expect to work and how their pay will be calculated when deciding whether or when to take holiday. This significantly limits the amount of choice they have over when to take annual leave, compared to that enjoyed by workers on fixed hours.

### **Case study - Martyn**

Martyn came to Citizens Advice because he thought he might be owed holiday from a previous employer. Martyn worked for a garage on a zero-hours contract.

He had previously seen on the Citizens Advice website that he would start accruing holiday pay from his first day of employment. He asked his employer about his entitlement and looked on his wage slip to try and find out more information. However his employer informed him that he would not be entitled to any holiday until he had 6 months continuous service.

As Martyn subsequently left his employer, he was then faced with the challenge of trying to claim back the money he was owed.

### **Q30 How might atypical workers be offered more choice in how they receive their holiday pay?**

We understand and support the Government's position that schemes which provide payment in lieu of holiday whilst employment is ongoing - or 'rolled-up holiday' pay schemes - are contrary to the Working Time Directive.

However, we suggest that the Government could explore the possibility of removing the prohibition on payment in lieu in circumstances where workers reach the end of a leave year having been unable to take their holiday

entitlement - either because they were on long-term sick leave or maternity leave, or because their employer repeatedly turned down applications for annual leave or denied they were entitled to any. This would allow workers in these circumstances to have the option of receiving payment in lieu of holiday, rather than carrying it over to the next leave year.

## Section D

**Recommendation:** 'The government should introduce a right to request a direct contract of employment for agency workers who have been placed with the same hirer for 12 months, and an obligation on the hirer to consider the request in a reasonable manner.'

**Recommendation:** 'The government should act to create a right to request a contract that guarantees hours for those on zero hours contracts who have been in post for 12 months which better reflects the hours worked.'

### **Q31 Do you agree that we should introduce a Right to Request a more stable contract?**

- Yes

We support the Government's assertion that all workers should have more choice, where possible, in how and when they work - including having the right to request a more predictable and stable contract.

Both workers and employers can, and do, benefit from some flexibility. It allows businesses to respond to peaks and troughs in demand whilst many workers find it allows them to fit work around their lives; around children, caring responsibilities, or ill health. Flexible arrangements can also be helpful for those who need to supplement their household income, work in a particular sector, or in seeking opportunities for progression.

However, variable working patterns also mean that people have to manage a more volatile income. Our research has also shown that more than 1 in 10 (13%) UK adults say their income varies significantly from month to month.<sup>7</sup> Whilst this trend is not confined to people in non-traditional employment, nearly half (48%) of people who are self-employed or in insecure work reported that their income changed significantly from month to month.

Managing money in this context is hard. Many households find it difficult to budget when their income is unpredictable. Our research found 1 in 5 (21%) people with unpredictable incomes have gone without food or essentials in the past year (compared with 8% with stable incomes). Having a volatile income also makes it more likely that households have to borrow to get by. A quarter (25%) of people with volatile incomes used an overdraft to pay for essential costs like

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<sup>7</sup> [Citizens Advice \(2018\) Walking on thin ice: The cost of financial insecurity](#)

food, utilities or rent in the past 12 months, compared with only 10% of people with stable incomes. Other research from Citizens Advice has found that fluctuating earnings made it more difficult for workers to save for the future, claim benefits, and stay in good physical and mental health.<sup>8</sup> In our recent report, *Universal Credit and Modern Employment*, we showed that Universal Credit has particular challenges for people with volatile earnings, with UC payments making fluctuations in monthly income more extreme depending on the timing of their assessment.<sup>9</sup>

Security of income is as important to people as its overall level.<sup>10</sup> It is therefore not surprising that 1 in 4 (27%) UK adults with volatile earnings have tried to find a job which would provide a more stable income.<sup>11</sup> Giving workers the right to request a more stable contract would be a valuable lever with which they could negotiate the terms of their employment - requiring employers to engage in a discussion about job quality and the needs of their workforce, as well as encouraging them to gauge demand for more consistent hours amongst their employees.

It is likely however that workers using their right to request a more stable contract will face similar obstacles to those which occur within the existing right to request flexible working arrangements (see Q33 for more detail). We therefore believe that the Government should build on recent steps to introduce transparency in areas such as the gender pay gap by nudging employers to change their behaviour in other areas. The Government should:

- **Require large employers to publish information on the proportion of their workforce on different types of contract.**
- **Require large employers to publish the number of requests for a more stable contract they receive, and the proportion of requests approved.**

Such measures will require businesses to engage in discussion about job quality and the overall shape of their workforce. It will also encourage public debate as the labour market continues to evolve, helping businesses adapt their practices to attract and support workers in a variety of employment types.

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<sup>8</sup> [Citizens Advice \(2015\) Out of hours: Balancing flexibility and security in non-traditional employment contracts](#)

<sup>9</sup> [Citizens Advice \(2018\) Universal Credit and Modern Employment: Non-traditional work](#)

<sup>10</sup> [Citizens Advice \(2016\) The importance of income security](#)

<sup>11</sup> [Citizens Advice \(2018\) Walking on thin ice: The cost of financial insecurity](#)

### **Q33 Do you think this will help resolve the issues the review recommendations sought to address?**

- Unsure

Providing workers with the right to request a more stable contract is a welcome measure. However, we believe that workers using this right will face similar obstacles to those which occur within the existing right to request flexible working arrangements.

Currently, employees who have worked for their employer continuously for 26 weeks have a statutory right to ask for flexible working arrangements. Evidence from our adviser casenotes indicates that it can be difficult for an employee who has had their request turned down to know whether the decision was unreasonable - or to provide business reasons to support their application when appealing a decision. The information imbalance between employers and workers means it is difficult for employees to ascertain how much effort has been made to accommodate their request.

To ensure that the right to request a more stable contract is an effective tool for workers, the Government should use greater transparency to encourage employers to take all possible steps to approve worker requests. As outlined in Q31, we recommend that the Government should require large employers to publish the number of requests for a more stable contract they receive, and the proportion of requests approved. This would ensure greater transparency for workers looking for more a more stable contract by providing information about which employers are most likely to offer this.

In addition, measures need to be put in place to protect workers who request a more stable contract from any potential retaliatory action. Workers are unable to bring an automatic unfair dismissal claim, as employees are entitled to do if their employment was terminated because of a request for flexible working. We therefore recommend that the right to request a more stable contract be included as a protected employment right. This would allow workers who have been treated in a demeaning or detrimental way because they requested a more stable contract to bring a claim for detriment to tribunal.

### **Case study: Adele**

Adele came to Citizens Advice to discuss her employment rights. She was due to return to work from maternity leave the following month and had submitted a request for flexible working arrangements so that she could fit her shifts around her caring responsibilities. In particular, she wanted to avoid working on a Sunday because she was unable to get childcare for that day.

Adele's employer declined her request on the basis of a 'justifiable business need', giving her 5 days to appeal the decision. Citizens Advice supported Adele to write an appeal letter. In the meantime, she had to return to work on her original shift pattern.

The employer's decision was upheld on appeal, meaning that Adele was unable to reach a work arrangement that was flexible enough to meet her childcare needs. Moreover, her employer had recently introduced a computerised shift planning tool which did not take personal circumstances such as childcare into consideration. Adele found that she was being offered shifts which were less convenient than her original allocation.

Although Adele is continuing to try and negotiate shift patterns, she is also considering looking for a new job as she has lost confidence in her employer.

### **Q34 Should employers take account of the individual's working pattern in considering a request?**

- Yes

We strongly believe that employers should take account of an individual's working pattern when considering a request for a more stable contract. At Citizens Advice, we see many cases where clients on zero-hours contracts have built their lives around a regular pattern of working over months or years. When these clients suddenly have their hours reduced, or are no longer being offered work at all, the impact on their finances and home life can be substantial. Employers should recognise the circumstances of workers who have worked regular hours for a significant time period and factor this into their decision-making.

### **Q35 Should there be a qualifying period of continuous service before individuals are eligible for this right?**

- Yes



We think it is fair that workers be required to work for a qualifying period before they are entitled to request a more stable contract. We suggest that 52 weeks of continuous service would be appropriate.

**Q36 What is an appropriate length of time the employer should be given to respond to the request?**

- 1 month

We appreciate that employers will need time to properly evaluate each request and judge whether they are able to accommodate it. Nonetheless, workers should be able to expect a reasonably prompt response so that they can take appropriate action if they are unable to continue with their current working patterns.

The 3 month response time which is set for requests for flexible working can cause significant problems where people are responding to a change in their circumstances, e.g. taking on additional caring responsibilities. We anticipate that setting a similar length of time for responses to requests for a more stable contract would cause similar problems - for example, for people who need to work a minimum of 16 hours in order to qualify for additional free childcare. Requiring employers to respond within a month would allow workers time to seek alternative employment or make other adaptations as required.

**Q37 Should there be a limit on the number of requests an individual can submit to their employer in a certain period of time?**

- Yes

We understand the need to avoid placing too much of a burden on employers by limiting the number of requests for a more stable contract that a worker can submit. It is also reasonable to assume that conditions which prevent employers from accommodating a request are unlikely to change in the short term. At the same time, workers should be provided with sufficient opportunity to understand what they can expect from their employer in the future, in order that they can seek alternative employment if necessary. We suggest that workers should be required to leave 6 months between requests.

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confidential and independent advice  
to help people overcome their problems.

We advocate for our clients and consumers  
on the issues that matter to them.

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