



# Citizens Advice response to Business, Energy and Industrial Strategy Committee inquiry into the Future World of Work and Rights of Workers

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## Summary

**In 2015-16 Citizens Advice helped 208,000 people with 377,000 employment-related issues across every community in England and Wales.** The work advice pages on our website also received over 10 million visits.

**This data, alongside our own research, provides us with a unique insight into the changing nature of work in Britain.** Of the clients who come to us about employment-related problems, 38% needed advice about another issue. Of these additional issues, 51% related to benefits and 21% to debt. Many of the challenges relate to those in non-standard forms of work; this year we've seen a 20% increase in visits to our agency worker website pages, for example.

Technological, economic and social developments have facilitated **a rapid degree of change in the labour market and how we understand the concept of work.** This change has created complexity: the workforce is now increasingly diverse and mobile, with more people working for themselves, via agencies and on variable hours. The main benefit of this change is increased flexibility - for both employer and employee.

Yet this **growing labour market complexity also creates risks.** At Citizens Advice, we see less scrupulous employers able to exploit confusion or misinformation around what they need to offer in terms of security and rights. This is not only damaging for those who work for them, but also risks undercutting the majority of employers seeking to act lawfully.

**The systems in place to defend employees' rights have struggled to keep up with these changes.** Options for individuals to enforce their rights have also become less accessible in recent years. In 2013 fees of up to £1,200 were introduced for those attempting to secure their rights at employment tribunal. We have also seen responsibilities for policing the system dispersed between various different bodies - including the employment tribunal service, HMRC, Acas, the Gangmasters and Labour Abuse Authority (GLAA) and the Employment Agency Standards Inspectorate (EASI). This creates the potential for an inefficient and confusing system.

### **Next steps:**

Traditional forms of labour market organisation and representation may have changed, but the rights that underpin them are still widely thought to be appropriate. Employment rights need to adapt to continue to serve their purpose, striking a balance between the benefits of flexibility and the need for basic security. They also need to be enforceable. **We believe a robust set of employment rights for the future should be clear, enforceable and be capable of adaption to changing conditions.**

#### Options to improve clarity on rights:

##### **1) Define self-employment:**

- a) Introduce a statutory definition of self-employment. This measure would improve transparency and clarity for both employers and individuals.
- b) Provide an intuitive online test to determine whether a role was self employed using this new definition. The results of this test would need to be binding unless challenged by the employer through the Employment Tribunal system.

##### **2) Increase awareness of rights:**

- a) Improved access to information on rights and entitlements. This would be assisted through the streamlining of current employment rights agencies into a single Fair Work Authority (see 6).
- b) Increased awareness-raising on employment rights, amongst both employers and the wider public. While the National Minimum Wage is now a widely-understood concept, there is far more confusion about entitlements to other basic rights, including sick pay, parental leave and paid holiday - particularly with regard to non-standard employment contracts.

#### Options to improve enforcement:

**3) Create a Fair Work Authority:** A new dedicated organisation - which could be called the Fair Work Authority - should serve as a single body for enforcing workplace rights. This would bring together specialisms in existing bodies. It would have clear overall objectives and a comprehensive set of combined powers. It would serve a pro-active as well as reactive function, monitoring the trends in labour market organisation and their likely impact on rights in future, as well as working to uphold existing rights.

**4) Reduce ET fees:** There has been a 70% reduction in single claims to the employment tribunal since the introduction of fees in July 2013. This is a clear and continuing barrier to access to justice for our clients and the level of fees should be significantly reduced. There is a willingness from claimants to make some contribution: 90% of our clients said they would not be put off by a £50 charge.

#### Options to ensure self-employed people do not lose out:

**5) Policymakers should consider measures to level the playing field and align support for employed and self-employed parents** - this should include

harmonisation of maternity and paternity pay, the ability to share parental leave and to take adoption leave.

- 6) **Government should create an opt-in pensions system on self-assessment returns, to reflect the auto-enrolment system for employees.** Government, pension providers and advice bodies should increase information and advice to self-employed people about pension options. Pensions providers should expand flexible pension products that enable self-employed people to save at their own pace. Government should match pensions contributions up to a level of 1% of gross income.
- 7) **Improve advice and support for self-employed people.** This should include the practicalities of running a business, including paying tax, invoicing, budgeting, risk awareness and planning around taking time off.

Options to adapt the employer role:

- 8) **Develop and promote modern approaches to workforce and people management, with a particular focus on non-standard contracts.** This would include looking at:
  - a) Ensuring clarity on the variability in hours a job may entail
  - b) Offering employees clear information about rights and entitlements
  - c) Planning shifts formally and in advance
  - d) Offering employees a degree of choice in their shifts
  - e) Taking employees' circumstances, such as their availability, into account wherever possible
  - f) Provision of line management support
- 9) **Companies should be required to undertake due diligence when hiring staff via agencies.** At minimum, legislation should ensure employers undertake due diligence to make sure the employment agencies they appoint are legitimate, responsible businesses, complying with all regulations and with fair sickness and deductions policies.
- 10) **Transparency requirements:** The government could require large companies to publish the contractual makeup of their staff. This would stimulate debate around strategies and hiring practices within organisations, as well as helping to identify potential poor practice.

## 1. Is the term 'worker' defined sufficiently clearly in law at present? If not, how should it be defined?

- **What should be the status and rights of agency workers, casual workers, and the self-employed (including those working in the 'gig economy'), for the purposes of tax, benefits and employment law?**

1.1 Employment status - the difference between being an employee, a worker or self-employed - determines people's rights and entitlements at work. Both employees and workers receive many basic entitlements, including the right to the minimum wage, paid sick leave, holiday and parental leave. The big discrepancy comes for those who are self-employed, who lack all basic employment rights except protection from discrimination. **Citizens Advice research in this area suggests that it is 'self-employed', rather than 'worker', status which is most in need of clearer legal definition, as it is the status which leaves people most open to exploitation.**

1.2 Employment status is based on case law and can be complex to define and assess. In cases of standard contracts of employment, employment status is usually clear. However, the labour market is changing. Recent analysis from Citizens Advice revealed that there are around 4.5m people in some form of insecure work in England and Wales.<sup>1</sup> This included 2.3m working shift patterns which varied, 1.1m on a temporary contract, 1m who regularly worked paid overtime and half a million on a zero-hours contract. **As working arrangements become more diverse, an increasing number of people lack clarity as to whether they are employees, workers, or self-employed - and entitled to the rights that flow from their employment status such as the right to national minimum wage and paid holiday.** People can often only determine their status with certainty by obtaining a Judgment from an employment tribunal (for employment rights) or HMRC (for tax purposes).

1.3 **A particular issue for determining employment status is the burden of proof.** At present, there is no clear legal definition of self-employed status. As a result, where the employer asserts that the person is self-employed, it is the worker who has to prove otherwise. If a worker is seeking to enforce a right based on their employment status as a worker or an employee, they are assumed *not* to hold employment rights unless they can clearly evidence that they meet the criteria for 'worker' or 'employee' status.

1.4 This leads to uncertainty over entitlements to holiday pay, redundancy pay, sick pay, the minimum wage and other rights. This is also bad for employers who face uncertainty about the status of their workforce. **In the worst cases, the ambiguity can be exploited by rogue employers who, by miscategorising their workers as self-employed, avoid paying both benefits and also tax and national insurance on behalf of their workers, as well as avoiding basic employment rights and protections.** A recent survey of

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<sup>1</sup> Analysis of ONS Labour Force Survey (2015). We define a worker as insecure if any of the following apply: zero hours contract; temporary contract; agency work; work more than 8 hours paid overtime per week; work variable shift patterns. The figure excludes students.

self-employed people using Citizens Advice services found that up to 460,000 people might be bogusly self-employed, costing the Exchequer £314 million a year.<sup>2</sup>

1.5 Because only a tribunal can make a final decision on a person's employment status under the current system, this means that individuals either have to pay high tribunal fees and potentially spend years pursuing their rights<sup>3</sup> (discussed in more detail in Question 3 below).

"I work in a pub where I used to be employed, but then was told I must be paid as self-employed because there was not enough work. The pub owner can now employ me when he wants for whatever hours he wants and can also decide how much I get paid per hour" **Citizens Advice survey respondent**<sup>4</sup>

**1.6 A burden of proof based on a lack of rights until proven otherwise is compounded by reduced enforcement options (discussed in more detail in Question 3 below) and a general lack of understanding of the differences between employment statuses** (discussed in more detail in Question 7 below). In order to address these issues, we propose a number of measures. Our principles of reform are that any changes should be:

1. Simpler than the current system
2. Enforceable
3. Balanced (between the interests of the worker, the employer and consumers)

#### **Recommendations:**

- Introduce a **statutory test of self-employment**, supported by a user-friendly online test. This would improve transparency and clarity for both employers and individuals. It would also improve enforcement: an individual could take a test and, if it found they had employment rights, the employer would have to prove otherwise at Employment Tribunal. This would shift the burden of proof. Some questions which could form the basis of such a test might include:
  - Do you have to do your work yourself, or can you ask someone else to do it for you?
  - In reality (rather than what the contract says), are you allowed to work for more than one customer?
  - Have you worked for the same customer for more than 12 weeks, or does more than 80% of your income over a year come from the same customer?

<sup>2</sup> Citizens Advice, "Neither One Thing Nor the Other", 2015:

<https://www.citizensadvice.org.uk/Global/CitizensAdvice/Work%20Publications/Neither%20one%20thing%20nor%20the%20other.pdf>

<sup>3</sup> The average time taken to deal with an multiple claimant case (such as the Uber case) by the first tier tribunal is over 4 years:[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/550952/tribunal-and-gpc-stats.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/550952/tribunal-and-gpc-stats.pdf)

<sup>4</sup> Citizens Advice, "Neither One Thing Nor the Other", 2015:

<https://www.citizensadvice.org.uk/Global/CitizensAdvice/Work%20Publications/Neither%20one%20thing%20nor%20the%20other.pdf>

- Are you able to negotiate the terms and conditions of your contract? I.e. who determines your hours / pay / equipment?
- Are you able to earn a profit over and above the hours that you work?

## 2. For those casual and agency workers working in the 'gig economy', is the balance of benefits between worker and employer appropriate?

**2.1 The growth of casual and flexible forms of work in recent years has offered certain benefits for both employers and employees.** For employers, the shift from manufacturing towards a service economy over the last few decades has also led to a move away from fixed, traditional working hours and new unpredictability in demand. In sectors such as care and hospitality, these factors can make it beneficial to hire staff on variable hours, or to bring them in temporarily during busy periods.

2.2 Yet there are advantages for many employees too. More flexible working patterns can help to accommodate those with caring responsibilities and other workers not able to work full-time, such as those studying or with health conditions or a disability. As patterns of work and the makeup of the workforce change - with more working couples, older workers and people changing careers - flexible employment options become more important.

**2.3 The challenge is to strike a fair balance between the benefits of flexible working that accrue to the employer and those to the employee:** that flexibility becomes a positive choice, rather than a source of insecurity.

**2.4 Citizens Advice research with people on non-standard contracts suggests that, at the moment, this balance is not always being met.** Confusion about rights and status, combined with challenges for employees in enforcing them, has led to many workers feeling they do not have choice or agency in how they work - and that they therefore experience insecurity rather than flexibility.

2.5 In 2015 Citizens Advice carried out research into non-standard employment contracts<sup>5</sup>, including a survey of our frontline staff and advisers and 47 in-depth interviews with members of the public engaged in this type of work. **We found many people on non-standard contracts did not feel they had agency and control over their working arrangements.** As Figure 1 below indicates, this reflects significant growth in the numbers describing themselves as 'involuntary' part-time or temporary workers over the last decade. Interviewees set out the main areas in which they felt they had little or no control over their working lives. These were:

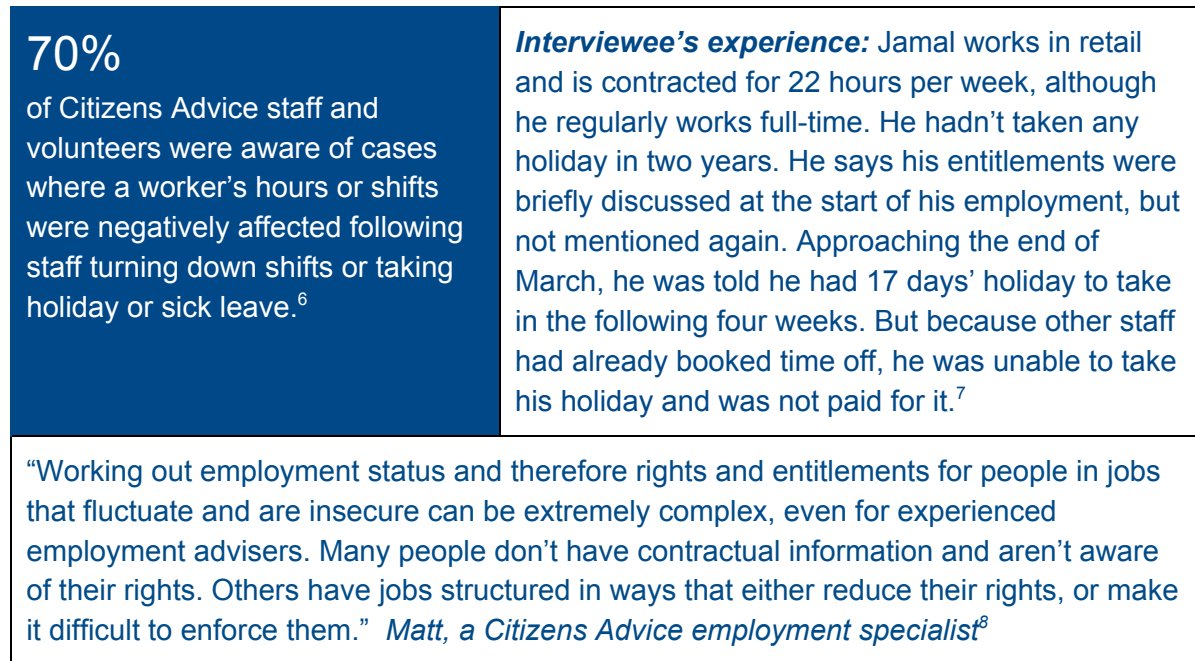
- The design of employment contracts;
- Shift and rota management;
- Knowledge of entitlements at work; and
- Confidence in using those entitlements.

2.6 Our research suggests that some employers are not using flexible contracts in

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<sup>5</sup> Defined as seasonal work, shift work, fixed-hours plus contracts (set hours with regular overtime), zero hours contracts and those working multiple jobs.

the most appropriate or responsible manner - and face few consequences for it. This is either because their employees do not understand their entitlements at work, or are afraid to use them because they worry about the consequences. In addition, workforce management practices, training and guidance have not kept pace with the increased degree of flexibility being used.



**Figure 1:**

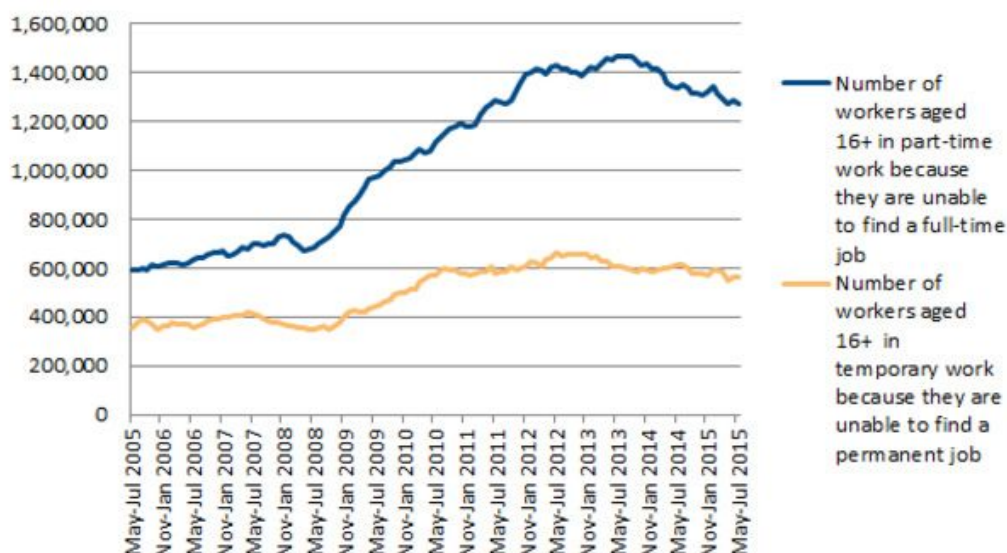
<sup>6</sup> Citizens Advice, "Second Choice Jobs", 2015:  
[https://www.citizensadvice.org.uk/Global/Migrated\\_Documents/corporate/second-choice-jobs-final--1-.pdf](https://www.citizensadvice.org.uk/Global/Migrated_Documents/corporate/second-choice-jobs-final--1-.pdf)

<sup>7</sup> Citizens Advice "Out of Hours", 2015 p.38:  
<https://www.citizensadvice.org.uk/Global/CitizensAdvice/Work%20Publications/Outofhours.pdf>

<sup>8</sup> Citizens Advice, "Second Choice Jobs", 2015 p.9:  
[https://www.citizensadvice.org.uk/Global/Migrated\\_Documents/corporate/second-choice-jobs-final--1-.pdf](https://www.citizensadvice.org.uk/Global/Migrated_Documents/corporate/second-choice-jobs-final--1-.pdf)



## The increase in involuntary part-time and temporary workers, 2005-2015



Source: Labour Force Survey, May 2005-July 2015

**2.7 Our research found that when someone on a non-standard contract lacked control over their working lives, this created a range of knock-on effects.** Interviewees highlighted challenges fluctuating hours and income created for:

- Managing day to day finances;
- Planning for the future;
- Receiving benefits;
- Maintaining good relationships with family and friends; and
- Staying in good physical and mental health.

### Interviewee's experience: Impact of non-standard contracts on family life

Anna works in care and lives with her husband and children. She is on a zero hours contract, but never works less than 14 hours per week. She generally works 24, but can work up to 40. Her schedule is very unpredictable: *"I've never had my wages be the same every month."*

The lack of stability makes it hard for her husband to find work that fits around her hours and caring for their children. They have also argued about her tendency to accept overtime; Anna explained they cannot plan anything in advance, even at weekends. She was worried her children 'miss out' - she can't guarantee she'll be around to take them to and from after school clubs, so they don't join, and she struggles to find care for them at short notice when her hours are changed.



### Interviewee's experience: Impact of non-standard contracts on benefits

Zaina works in a fast food restaurant on a zero hours contract. Her hours are often low so she is still entitled to Housing Benefit and, on certain weeks, partial Jobseekers' Allowance. This requires a significant degree of organisation; Zaina phones the Jobcentre and Housing Benefit office every week to report her hours.

Changes to her Housing Benefit in particular are often slow to be processed and, as a result, she has had multiple over and under-payments. She now owed £1,000, despite her efforts to keep the Local Authority updated. Zaina found it hard to work out whether her payments were correct and usually received no notice of changes to the amount.

*"The amount of debt they've put me in is unbelievable - they should have told me about it before it got that bad."*

### 2.8 Poorly-administered non-standard contracts pose risks to employers as well.

Managing large numbers of variable hours contracts is complex and staff turnover rates are likely to be high.

**2.9 Both employers and employees stand to benefit from better practice around the use of non-standard contracts, which could help to strike a fairer balance between the risks and benefits.** This could improve productivity and job retention, reduce debt, stress and mental ill health, and help people to budget, plan and fit work around caring responsibilities. In recent public polling carried out by Citizens Advice, 83% of people believed that having a steady income increased productivity, 84% said it helped them cope with stress, and 86% that it increased their loyalty towards an employer.<sup>9</sup>

### Interviewee's experience: the benefits of good practice

Emma is a lone parent with two young children. She needed work that was flexible enough to fit in with caring for them. Emma works two jobs - cleaning during the day and a bar job in the evening. However, despite the apparent challenges of balancing two roles, Emma felt both her employers understood her childcare responsibilities and tried to accommodate them wherever possible. Her cleaning work can be done at whatever time of day fits around childcare. Emma explained the fact she had never found it difficult to turn down shifts gave her peace of mind.

2.10 However, **the complexity generated by non-standard employment contracts creates a clear risk of misuse.** The promotion of good practice amongst employers alone will not be sufficient to counter this. Instead, we need to focus on the way in which affected

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<sup>9</sup> Citizens Advice, "The Importance of Income Security" 2016:  
[https://www.citizensadvice.org.uk/Global/CitizensAdvice/welfare%20publications/The%20Importance%20of%20Income%20Security%20\(Final\).pdf](https://www.citizensadvice.org.uk/Global/CitizensAdvice/welfare%20publications/The%20Importance%20of%20Income%20Security%20(Final).pdf)

workers can inform themselves of - and then enforce - their basic employment rights. This is discussed in more detail in Questions 3 and 6 below.

**Recommendations:**

Develop and promote modern approaches to workforce and people management, with a particular focus on non-standard contracts. This would include looking at:

- Ensuring clarity on the variability in hours a job may entail
- Offering employees clear information about their rights and entitlements
- Planning shifts formally and in advance
- Offering employees a degree of choice in their shifts and the ability to swap hours informally if necessary
- Taking employees' circumstances into account wherever possible
- Provision of line management support

Citizens Advice will be undertaking a programme of work on promoting good employment practice in 2017.

### **3. What specific provision should there be for the protection and support of agency workers and those who are not employees? Who should be responsible for such provision – the Government, the beneficiary of the work, a mutual, the individual themselves?**

3.1 Traditional forms of labour market organisation have changed, but the rights that developed alongside them - to sick pay, parental leave, rest breaks and paid holiday - are still widely thought to be necessary. Ensuring they are effective is vital for the protection and support of workers. We believe employment rights need to adapt so that they can continue to support the needs of those in non-standard employment. Citizens Advice research suggests action to ensure rights can be used should be:

1. Clear: accessible and straightforward information on status and rights
2. Enforceable: streamlined, coherent options for individuals to protect their rights and report abuses
3. Adaptive: Proactive monitoring of changing labour market trends and employment practices, to ensure we can maintain the balance between flexibility and basic security

#### **1) Clear rights: accessible, straightforward information on status and rights**

3.2 The pace of change means regulation and legislation is often no longer responsive enough to cover all developments. Its primary role should be to ensure as much clarity as possible on the criteria used to draw definitions and a guarantee of greater transparency on

employment practices. There is a particular need for increased clarity on self-employment status, given the lack of rights attached to it and the resulting potential for exploitation.

## **2) Enforceable: streamlined, coherent options for individuals to protect their rights and report abuses**

**3.3 Individuals need to be in a position to use greater clarity on their status to enforce their rights at work.** There are various channels through which they can do this - either by reporting abuses to an enforcement body or by tackling issues individually via an employment tribunal. However, at present there are challenges with both options.

**3.4 First, there are a number of agencies with some responsibilities for enforcing employment rights**, including the Gangmasters and Labour Abuse Authority (GLAA), the Employment Agency Standards Inspectorate (EASI) and HMRC. Others, such as The Pensions Regulator, Health and Safety Executive, National Crime Authority and local authorities also have enforcement roles. This creates the potential for confusion, duplication and inefficiency - for both employees and the use of public money - discussed in more detail in our response to Question 6 below.

**3.5 Second, the introduction of employment tribunal (ET) fees in July 2013 has created additional financial barriers for many workers wishing to enforce their rights.** In 2014 we surveyed 361 Citizens Advice clients who had been having problems at work.<sup>10</sup> We found that the current fee system made 82% of respondents less likely to claim or deterred them from claiming altogether. This reflected the 70% reduction we found for ET applications generally. Fees were also high in relation to income. Overall, 43% of respondents to our survey had a household income of less than £46 a week after essential bills. This includes almost half (47%) of Type B claimants, who would have to put aside all of their discretionary income for 6 months to save the £1,200 fees.<sup>11</sup>

**3.6 While the intention behind ET fees was to provide disincentives to ‘weak or vexatious claims’, there is no evidence that this has occurred.** In fact, official records show that fees have deterred more winning claims than losing ones – at hearings, the number of successful claims has fallen in relation to unsuccessful ones since fees were introduced. We found that the vast majority of respondents to our survey worked hard to avoid resorting to ET; 92% of respondents attempted to resolve their problem directly with their employer in the first instance.

**3.7 A fall in ET applications has wider implications, beyond those for workers who may be deterred. The case law generated by tribunals is where employment law lives and develops; it highlights grey areas and allows the law to adapt as the labour market changes.** Such a system will, if anything, require a *bigger* role in future as the pace of

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<sup>10</sup> Citizens Advice, “Fairer Fees: Fixing the employment tribunal system”, 2015: [https://www.citizensadvice.org.uk/Global/Migrated\\_Documents/corporate/fairer-fees-fixing-feesetreport.pdf](https://www.citizensadvice.org.uk/Global/Migrated_Documents/corporate/fairer-fees-fixing-feesetreport.pdf). The survey was available to those accessing Citizens Advice employment advice webpages between 28th October and 15th December 2014.

<sup>11</sup> Type B claims are more complex cases such as unfair dismissal or discrimination.

labour market change accelerates. This is another reason why the accessibility of the ET system is so vital.

**3.8 Finally, for rogue employers, non-compliance with the tribunal system, including non-payment of any award made against them, is a gamble that pays.** Taking steps to improve access to ETs and recovery of ET awards is an essential part of the Government's role in labour market enforcement.

#### Case study - Trying to get wages paid from the National Insurance Fund

Sam had worked as a site manager for 10 years in a property development company. He was informed by one of the company owners that there was no money to continue trading. Sam was owed two and a half months' wages. He contacted Acas and decided to pursue the dispute over unpaid wages. He went to his local Citizens Advice and was deemed eligible for legal aid. He completed an ET1 form, claiming approximately £12,000 for outstanding wages and redundancy. The employer did not respond and Sam was granted a default judgement. He was then advised to seek the money from the government's National Insurance Fund.

Sam sent the appropriate form and was paid £3,600 within four days. However, because the employer was not insolvent, he was not entitled to receive the full sum he had been awarded. He was advised that it would cost him £1,170 to force the employer into liquidation. This money would not be refundable, even if he was successful. After a number of months, Sam decided against taking further action.

*"Letting go of any hope of getting back that £8,500 has put a big hole in my life, not just for me but my children".*

### **3) Adaptive: Proactive monitoring of changing labour market trends and employment practices, to ensure we can maintain the balance between flexibility and basic security**

3.9 We suggest there is a need for a Fair Work Authority that has the status and resources to be proactive as well as reactive. Developments like case of *Aslam, Farrar and Others v Uber (2202511/2015)* - which concerned the employment status of 'Uber' taxi drivers and determined at first instance that they were workers - suggest that, rather than simply moving behind each innovation in labour market organisation, we need a body which is dedicated to monitoring and reporting on new developments, as well as enforcing and thinking about their implications for workers' rights, employment law and the benefit system.

#### **Recommendations:**

- **A legal definition of self-employment** and an intuitive online test to help workers determine their own status. Workers should be presumed to have rights

unless they clearly meet all the legal criteria for self-employed status. (See Question 1)

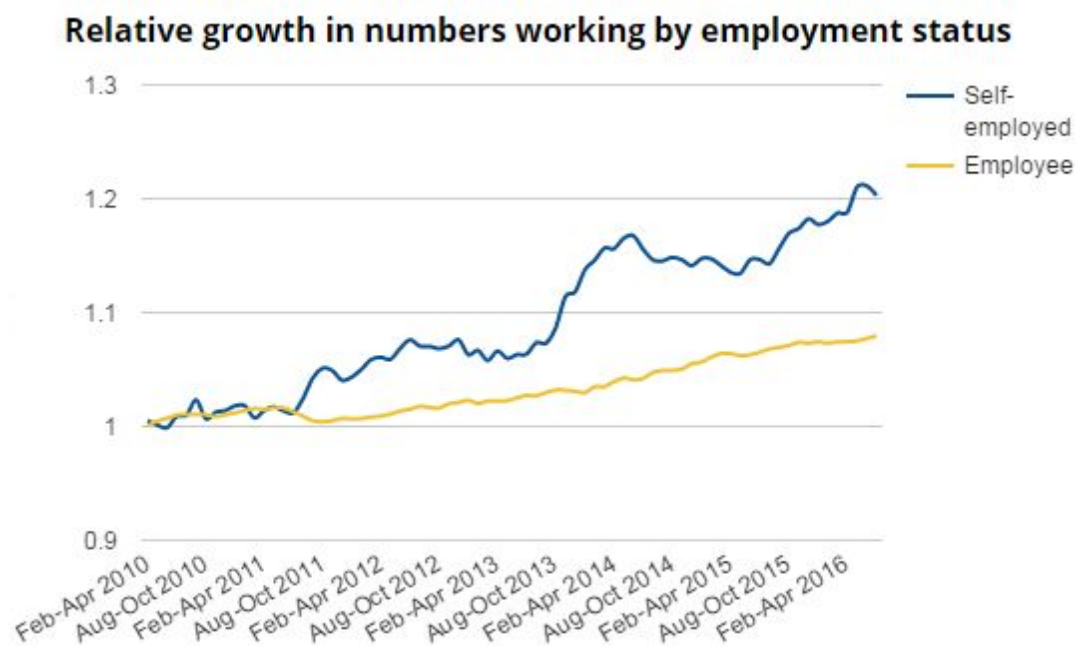
- **A Fair Work Authority:** A new dedicated organisation - which could be called the Fair Work Authority - should serve as a single body for enforcing workplace rights. It would have clear overall objectives and a comprehensive set of combined powers. It would serve a pro-active as well as reactive function, monitoring the trends in labour market organisation and their likely impact on rights in future, as well as working to uphold existing rights.
- **ET fees should be reduced.** There is a clear and continuing barrier to access to justice for our clients and the level of fees should be significantly reduced. There is willingness from claimants to make some contribution: 90% of our clients said they would not be put off by a £50 charge.

#### 4. What differences should there be between levels of Government support for the self-employed and for employees, for example over statutory sick pay, holiday pay, employee pensions, maternity pay?

How should those rights be changed, to ensure fair protection for workers at work?

**4.1 Self-employment has become a mainstream career option that has brought significant benefits to the economy;** two-thirds of the additional jobs created since 2008 are self-employed.<sup>12</sup> This growth also appears to be a settled feature in the labour market, with little sign of decline since the economy began to recover. Yet this now means that around **15% of the workforce lack almost all the basic employment rights we view as a vital source of support to other workers.**

Figure 2:



Source: ONS Labour Market Statistics. (Jan 2010 = 1)

**4.2 We believe that there is now an opportunity to bring support for the self-employed better into line with that available to employees.** This is not to say that rights and benefits should be identical - clear differences exist between those working for themselves and those for an employer. However, the current framework could be adapted to offer more of the most basic securities to those who are self-employed. Citizens Advice has campaigned for more secure self-employment over the last year and highlighted a number of areas where the self-employed could benefit from greater support.

<sup>12</sup> ONS. "Self-employed workers in the UK." 2014: <http://webarchive.nationalarchives.gov.uk/20160105160709/http://www.ons.gov.uk/ons/rel/lmac/self-employed-workers-in-the-uk/2014/rep-self-employed-workers-in-the-uk-2014.html>

### Statutory sick pay:

4.3 Currently, if self-employed people are unable to work due to sickness or injury, the only option available to them is to make a claim for Employment and Support Allowance (ESA). However, the benefit is designed for long-term sickness; the process for making a claim can be complex and the minimum waiting period is seven days. This immediately puts self-employed people experiencing short periods of illness at a disadvantage compared to their employed counterparts. A further imbalance is that ESA at the assessment rate (for at least the first 13 weeks) is currently £73.10, some £15 per week below the standard rate for Statutory Sick Pay (SSP).

### Citizens Advice client case study: The challenges of short-term sick pay in self-employment

Gary works as a self-employed landscape gardener. He recently became unwell with an ear infection and was unable to work for a period of two weeks. During this time, he was not receiving any income, which led him to claim ESA. His claim was lodged four days after he became ill, once his doctor confirmed that he would not be able to work again for at least another week. After another four days, his claim was approved, although he did not receive any money until the 12th day. He went back to work very soon after this. However, nearly two weeks without income left Gary in difficult financial circumstances; when he came to Citizens Advice he was struggling to meet household bills and had had to borrow money from family members.

### Recommendations:

- Review whether Employment Support Allowance is an effective way of providing income to eligible self-employed people if they are unable to work due to sickness.

### Pensions:

4.4 Citizens Advice carried out a number of focus groups across the country with self-employed people, to discuss their view and approach to pension saving.<sup>13</sup> This research was based on findings that, while self-employment has grown in recent years, the number of self-employed people saving into a pension has halved - a recent study suggested just 17% of self-employed people were actively saving into a pension.<sup>14</sup> This may be partially explained by falls in median income and the rise in self-employed people working part-time, meaning for many saving may simply be unviable. Yet even amongst self-employed people with a household income of more than £1,000 per week, only 24% are paying into a pension.<sup>15</sup> **The risk is that we see a growing group of people reaching**

<sup>13</sup> Citizens Advice "Shy of Retiring", 2016:

<https://www.citizensadvice.org.uk/Global/CitizensAdvice/Work%20Publications/shy-of-retiring.pdf>

<sup>14</sup> Labour Market Statistics & ONS Personal Pensions Statistics 2015; ONS. Wealth and Assets Survey. 2012

<sup>15</sup> NPI analysis for Citizens Advice. Family Resources Survey, DWP.



**pension age with inadequate savings to support them - and a growing inequality between retirees who were employed and those who were self-employed.**

“Pensions are meaningless for the self-employed - pensions are only worth having when your employer puts money in too.” *Liz, 54, editor, self-employed for ten years*

“ISA felt better for me, safer. If I need money I can take it out... With a pension account you can't just take your money out.” *Trevor, 61, leaflet deliverer, self-employed for eight years*

“If some of the policies and law [around pension schemes] are all made a bit friendlier to involve self-employed enterprises it would be good.” *Maria, 49, yoga instructor, self-employed for 5 months*

“I'm just hoping and crossing my fingers that the government will support me enough. In general I can't really see myself saving enough to have a nice pension pot.” *Rita, 44, interpreter, self-employed for 5 years*<sup>16</sup>

4.5 Clearly there are fewer financial incentives for self-employed people to save into a pension, given they lack employer contributions. However, our discussions with self-employed people also highlighted a number of other factors, including a lack of information and misunderstandings - particularly about tax breaks and the degree of flexibility offered by pension providers - a gap in the advice they might otherwise have from an employer and a lack of the prompts received by employees. Even those who felt that a pension would not be the right option for them at the moment said they would appreciate prompts, which would help them to consider retirement options.<sup>17</sup>

**Recommendations:**

- Government should create an opt-in pensions system on self-assessment returns, to reflect the auto-enrolment system for employees
- Government, pension providers and advice bodies should increase information and advice to self-employed people about pension options
- Pensions providers should expand flexible pension products that enable self-employed people to save at their own pace
- Government should match pensions contributions up to a level of 1% of gross income.

**Maternity pay and parental leave:**

4.6 The growth in self-employment options has been beneficial to many working parents. Self-employment enables many to split their time more flexibly between work and family.

<sup>16</sup> Citizens Advice, “Going Solo”, 2015: <https://www.citizensadvice.org.uk/about-us/policy/policy-research-topics/work-policy-research-surveys-and-consultation-responses/work-policy-research/going-solo/>

<sup>17</sup> Citizens Advice “Shy of Retiring”, 2016: <https://www.citizensadvice.org.uk/Global/CitizensAdvice/Work%20Publications/shy-of-retiring.pdf>

However, reaching a balance can be a challenge. Citizens Advice carried out interviews with a range of self-employed parents to explore the benefits and difficulties.

4.7 We found that self-employed people take much less time off after the birth of a baby than employed people; nearly half of self-employed parents reported taking three days or less off work when their child was born, including 21% who took no time off at all.<sup>18</sup> For some this is linked to the demands of running a business, but financial concerns and the discrepancies between financial support were also mentioned. Whilst self-employed mothers may be entitled to Maternity Allowance, self-employed fathers are not entitled to any paid parental leave, or to share parental leave, as employees are. Ultimately, improving support through the parental leave system for self-employed parents is a question of ensuring the provision is there for those who want it and would benefit from it.

#### **Interviewee's experience: Taking parental leave while self-employed**

Rebecca is self-employed and runs her own dance school. She recently had her second child - she was employed when her first was born and noticed the difference: *"With Charlie I had nine months off as I was employed - I had two weeks full pay and then six months at 90% pay and then three months as just the same as maternity allowance. Somebody else came in, took over my role... Whereas being self-employed, because it's my own business, I am still answering calls and still heavily involved."* She planned to return to work when her new baby was three months old and spoke of her money worries: *"if I was on Statutory Maternity Pay I wouldn't worry so much. It would have been more money".*

While she enjoys work, she had some concerns about returning so soon: *"I am obviously missing out on the development of the children... So much happens in such a small space of time that I feel quite sad that I won't get to do all the things that I did with Charlie [her first child]. For example, I spent quite a lot of time with his weaning, making all homemade things, but because I am working it won't be the same... I am nervous and a bit sad".*

**Recommendation:** We recommended that policymakers consider measures to level the playing field and align support for employed and self-employed parents - this should include the ability to share parental leave and to take adoption leave. While there would be small costs to doing this, we believe these would be offset through a focus on tackling bogus self-employment, discussed below.

#### **Holiday pay:**

4.8 A Citizens Advice survey of both employed and self-employed people found a stark contrast between the amount of annual leave taken by self-employed people compared to their employed counterparts.<sup>19</sup> Over a third of self-employed people (35%) have taken less

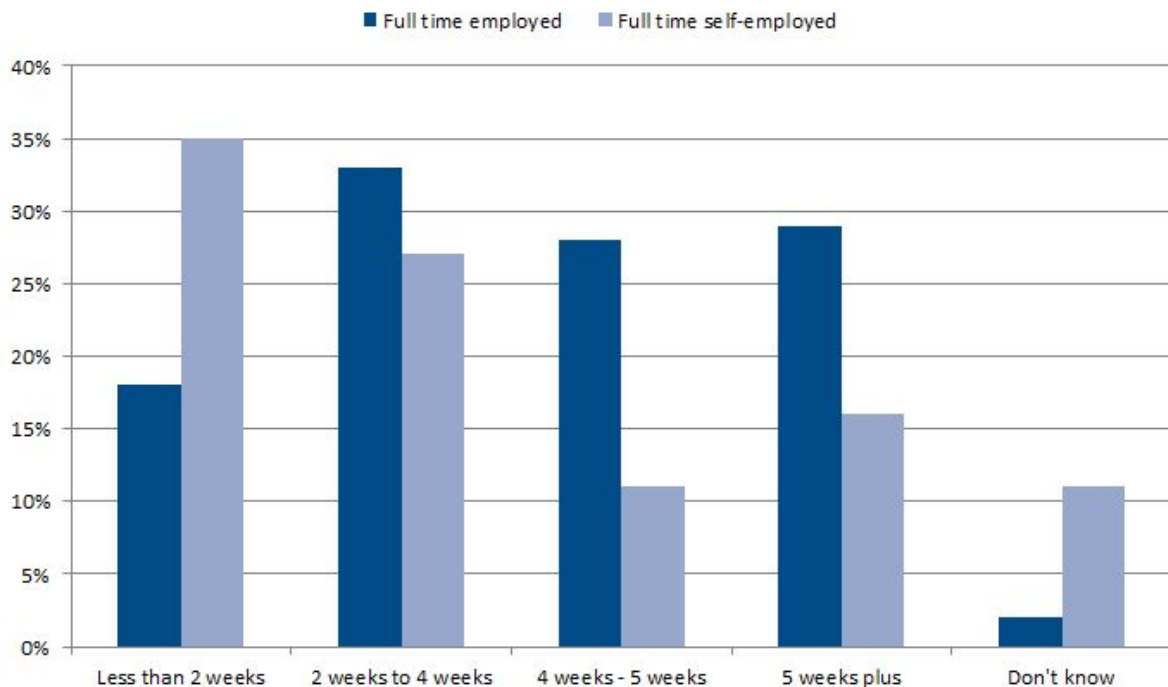
<sup>18</sup> Citizens Advice, "Who's the Boss? The family lives of self-employed people", 2015:

<https://www.citizensadvice.org.uk/Global/CitizensAdvice/Work%20Publications/Whos%20the%20boss.pdf>

<sup>19</sup> Citizens Advice commissioned YouGov to undertake an online poll of 1,303 working adults between the 9th and 15th November, 2015. The achieved sample consisted of 653 employees and 650 self-employed people.

than two weeks off in the past twelve months, including 14% who reported they had not taken a single day off. Our calculations suggest this could equate to 1.17 million people who have taken less than two weeks off over the past twelve months and 470,000 people who have not taken any time off at all.

**Figure 3: Annual leave taken in previous 12 months, by employment status**



4.9 Without employer support or additional NICs, it still seems unfeasible to guarantee the self-employed paid holiday. However, despite the additional flexibility they enjoy, our evidence suggests many are struggling to take time off work. This has implications for their wellbeing and productivity.

**Recommendations:** We would like to see self-employed people better supported to take time off through:

- Improved advice and guidance on business management and budgeting, to ensure self-employed people are supported to plan and budget for time off and are aware of its importance.
- Creation of 'trusted cover' referral databases for work substitutes - organisations such as local chambers of commerce could explore hosting local 'trusted cover' databases that self-employed people can use to find a reliable substitute for when they need to take time off work. This could particularly help skilled tradespeople or those relocating their business. The databases should include facilities such as draft contracts, as well as customer reviews and recommendations. Self-employed people would also be able to use this database in order to advertise their services if they are available to cover for others.

### **Rights and employment status:**

4.10 While we would like to see greater harmonisation of support offered to employed and self-employed people, to ensure all workers retain the security of basic rights to support during periods they may be unable to work, it is not possible to achieve complete parity. Employed workers' enhanced rights to things like holiday pay and dismissal protections are subsidised by the enhanced National Insurance contributions paid by their employers.

4.11 However, while these discrepancies exist, there will always be incentives for unscrupulous employers to engage in 'bogus' self-employment. A recent survey of self-employed people using Citizens Advice services found as many as one in ten could be bogusly self-employed.<sup>20</sup> This imposes significant costs to the Exchequer in the form of lost tax revenue, alongside the costs to the worker in losing out on rights and securities to which they should be entitled.

#### **Recommendations:**

- Introduce a **statutory test of self-employment**. This measure would improve transparency and clarity for both employers and individuals.
- **Improve access to enforcement of employment rights** through streamlined enforcement bodies and a reduction in employment tribunal fees - see Question 6

### **What help should be offered in preparing those people who become self-employed (with, for example, financial, educational and legal advice), and who should be offering such help?**

4.12 With self-employed people now accounting for 15% of the workforce, they encompass an increasingly diverse range of people - with particularly large increases amongst those in lower wage occupations.<sup>21</sup> They are **contending with a number of challenges**, including developing a business, remaining on top of tax and self-assessment, navigating the benefit system and lacking basic securities, such as paid time off or the minimum wage. The self-employed population also face financial pressures; in 2013-14, the median income from self-employment was £209 per week, which was just over half (54%) of the median income of those in employment.<sup>22</sup>

4.13 **All these issues highlight the need for robust advice and support to those planning to become self-employed** - as well as those who already are. Citizens Advice carried out a series of in-depth interviews with self-employed people from across the

<sup>20</sup> Citizens Advice, "Neither One Thing Nor the Other", 2015:  
<https://www.citizensadvice.org.uk/Global/CitizensAdvice/Work%20Publications/Neither%20one%20thing%20nor%20the%20other.pdf>

<sup>21</sup> Citizens Advice, "Going For Broke", 2015:  
<https://www.citizensadvice.org.uk/about-us/policy/policy-research-topics/work-policy-research-surveys-and-consultation-responses/work-policy-research/going-for-broke-how-self-employed-people-move-in-and-out-of-debt/>

<sup>22</sup> Citizens Advice, Who are the Self-Employed:  
<https://www.citizensadvice.org.uk/Global/CitizensAdvice/Work%20Publications/Whoaretheselfemployed.pdf>

country to find out about their progress through self-employment, as well as when and how they might benefit from additional advice and support.<sup>23</sup>

4.14 These interviews suggested that **routes into self-employment vary more widely than is commonly understood**. Few self-employed people we spoke to had followed the classic, 'entrepreneurial' model, with a planned move into self-employment to realise a business idea. Instead, significant numbers had drifted into self-employment unintentionally - either because they lacked regular employment options, needed to fit work around caring responsibilities, or encountered unforeseen opportunities.

4.15 This split indicated the **differing needs of self-employed people when starting out in business**. For those who had planned the switch, they tended to have found time to accumulate the skills and savings which would make this easier. However, those entering self-employment spontaneously did not always hold the financial and non-financial capital they needed to prepare them for starting a business.

4.16 **Support should reflect the time it takes to establish a new business** - a striking finding from the research was participants' desire for advice and support that was accessible over the longer-term. Low-earners and those without savings in particular would benefit from ongoing budgeting support, accessible credit products and more responsive support from the benefit system.

4.17 In terms of the form support should take, there was some demand for advice from public agencies, with **costs** a significant factor for many newly self-employed people.

"I'm trying to access support, but I'm not earning, so I didn't want to pay... In some places I have to pay and in other places I'm not eligible" *Maria, 49, yoga instructor, self-employed for 5 months*

"I went on a few courses for small businesses - I think it may have been HMRC and it was free. I got some help from the council as well. They were all very informative - they taught about how to do accounts, market the business." *Sonita, 55, nursery manager, self-employed for six years*

4.18 Many self-employed people also spoke enthusiastically about the potential benefits of **peer support**.

"I would have liked to have had a mentor... I think that should be someone outside your profession because they have a better overall view of things... someone to explain the necessary pitfalls of becoming self-employed." *Leon, 56, hairdresser, self-employed for 23 years*

"We need some sort of club... a group for self-employed people - it should be facilitated by someone, perhaps the local Chamber of Commerce." *Elaine, 61, education consultant, self-employed for two years*

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<sup>23</sup> Citizens Advice, "Going Solo", 2015: <https://www.citizensadvice.org.uk/Global/CitizensAdvice/Work%20Publications/GoingSolo.pdf>

4.19 There was some concern that **support currently on offer was too generic** and this made it less effective when the self-employed population was expanding and becoming more diverse. A few interviewees had received help via the Government's New Enterprise Allowance (NEA) scheme; while they appreciated the additional financial support, there was a general feeling that advisers lacked expertise and were not well-equipped to explain the process of becoming self-employed and the forms of support on offer.

"[On NEA] I should never have been signed off with my business plan... I knew nothing about market research and testing the market. Nothing like that was discussed [with my NEA adviser]... Knowing what I know now, because I've been on other workshops myself, my business plan wasn't ready at all." *Beverley, 53, artist/trainer, self-employed for 2 years*

"We got a few things from Federation of Small Businesses... but mostly they're not geared at the two person partnership that we are... I think they're mostly looking at something between 5 and 10 people as being small." *Grace, 50, media production, self-employed for 29 years*

"There needs to be an advice offer for people that helps them find the right way for them to be self-employed. They generally know what they want to do and can access generic information about what being self-employed involves but they need advice on how to make that fit their life." *Ella, 51, various businesses, self-employed for three years*

**Recommendations:**

Improved advice and support at start-up could benefit many self-employed people who currently want advice but are unable to find organisations suitable for them. It should focus on the varied demands and investments needed to set up a business - particularly for those entering without previous skills and experience. This should include:

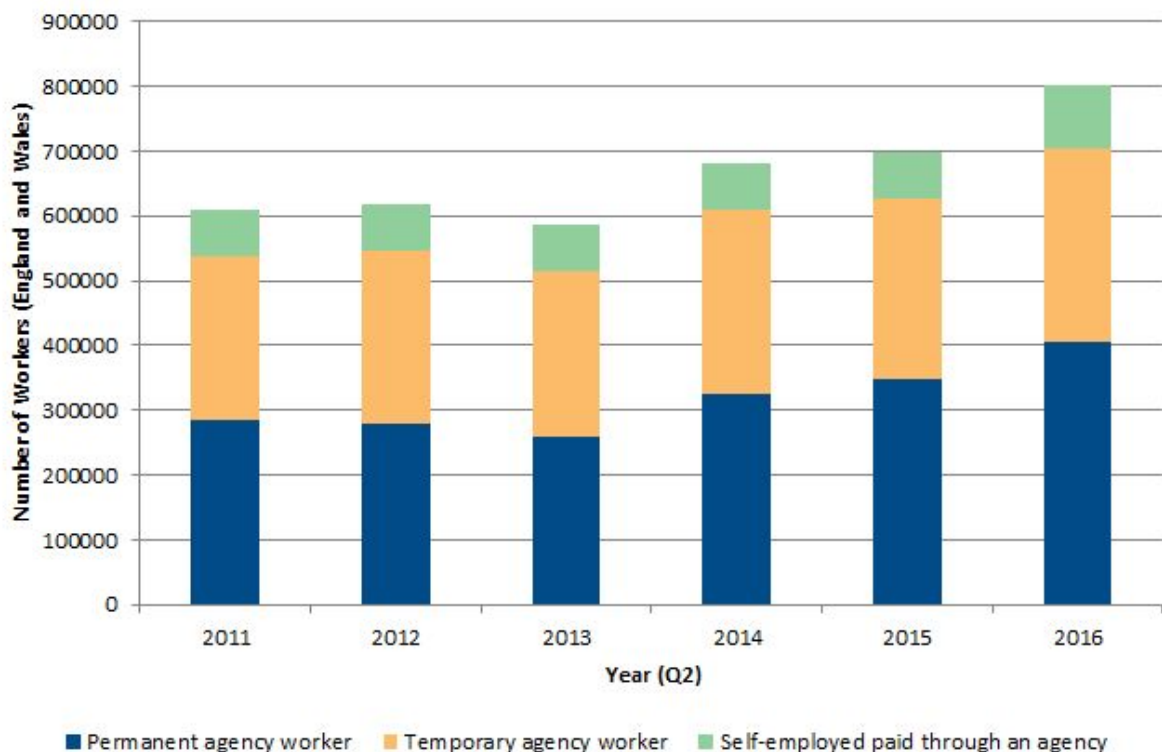
- the practicalities of running a business;
- paying tax;
- invoicing;
- budgeting for a potentially volatile income month-to-month; and
- ensuring risk awareness, planning and sufficient contingency funds.

## 5. Is there evidence that businesses are treating agency workers unfairly, compared with employees?

5.1 There are currently over 800,000 agency workers in the UK. **The total number of agency workers has increased by 31% over the last 5 years**, with a particularly large increase (42%) in the number of workers who consider themselves permanent agency workers. In 2015-16, we've seen a 20% increase in visits to the agency worker advice pages on the Citizens Advice website.

Figure 4:

### Number of Agency Workers



Source: Quarterly Labour Force Survey, England and Wales, Aged 16-64, 2011-2016, Q2.

Note: ONS record 'self-employed paid through an agency', who are not covered by the AWR 2011.

5.2 At Citizens Advice we provide help and guidance to many agency workers. We are aware that most employers do not treat their agency workers unfairly. Yet we also see a minority where this is not the case; for instance, we have over 200 reports of bad practice regarding just 10 employment agencies. **Rogue agencies can undercut responsible businesses who meet their obligations to their workers.**

5.3 The three most common issues of unfair treatment for agency workers which Citizens Advice staff have reported to us in the past 18 months are:

1. Unlawful pay deductions
2. Failure to pay statutory sick pay
3. Unequal treatment



## **1. Pay deductions:**

**5.4 Protections:** All employees and workers, including agency workers, are protected from unauthorised pay deductions to their salary. The only deductions allowed are tax, National Insurance (NI) or student loan deductions, or deductions authorised in a contract or consented to by the worker in writing before they are made.

**5.5 Unlawful deductions:** In theory, agency workers should not experience more unlawful pay deduction problems than other workers. However, we've found that some agencies can mislead agency workers about the deductions they will face and sometimes don't include them in the agency worker's contract. We've seen agency workers reporting deductions such as:

- £35 for not attending a work Christmas party;
- £500 in insurance costs for an accident that was not the agency driver's fault;
- £320 for property damages that were not explained;
- £900 withheld for absences when the agency worker had been at work;
- Agency fee deductions of up to 12% of salary.

### **Case study: Unfair deductions for agency workers**

Sarah came to Citizens Advice about deductions from her pay. She had a contract with an employment agency which sent her to work in various care homes. Her agency told her verbally that they would be responsible for deducting NI and tax from her wages. Her payslip contained deductions that she assumed were for these items, so she didn't think anything further of it at the time.

After some time Sarah became suspicious that her agency refused to put anything down in writing. She asked for employment documentation such as P60s but was refused. She called HMRC who did not have her on their records. Sarah realised she had paid hundreds of pounds in wage deductions fraudulently. However, by this point the agency had been passed to a holding company and was in liquidation. She ended up having to pay solicitor fees and making up her missing NI contributions out of her own pocket.

## **2. Failure to pay statutory sick pay**

**5.6 Protection:** Agency workers are entitled to statutory sick pay (SSP) if their earnings are higher than £112 per week and they are absent from work for four consecutive calendar days. If they have been working for an agency for at least 3 months, this entitlement should cover periods of sickness up to 28 weeks. If they have been there less than 3 months, they should get sick pay until the end of their period of incapacity for work, the end of the last assignment they had been working on or the end of a future contract, placement or assignment, where this has already been agreed.

**5.7 Unfair treatment:** While agency workers have clear rights to sick pay, our evidence suggests that this entitlement is often ignored - this is a particularly common issue for the agency workers we help at Citizens Advice. We've seen many instances of employment

agencies informing staff taken sick that assignments have suddenly come to an end and they should report to their local Jobcentre Plus. This is clearly a concern for government, as it involves employers attempting to shift the costs of SSP onto the state.

### **Case study: Failure to offer statutory sick pay**

James was employed for 18 months as an agricultural agency worker, who fell under the regulation of the Gangmasters and Labour Abuse Authority (GLAA). He had frequently not received wages or wage slips on time and they often included incorrect deductions.

James injured his leg and was signed off sick by his doctor. His agency frequently visited his address and discussed his sickness with his neighbours. They refused to pay the statutory sick pay that he was entitled to.

Citizens Advice advised him to complain to the GLAA. However, James was too frightened to do this in case other agricultural agencies he might rely on for work in the future found out and it affected his chances of employment. This is a common problem for agency workers - Acas research found many are afraid of asserting rights, because they often depend on employment agencies.<sup>24</sup>

### **3. Unequal treatment**

**5.8 Protections:** Under the Agency Worker Regulations 2010, after 12 weeks of employment in the same job, agency workers should be offered the same pay and holiday as other workers. This protection is intended to ensure that the additional flexibility allowed by agency work does not undermine wider rights.

**5.9 Unfair treatment:** It can be difficult to enforce this protection. Employers often don't make clear to agency workers what terms they are entitled to, and unscrupulous employers may even mislead their workers about this. Agency workers can, in turn, be fearful about asking for better treatment, especially if they worry about not getting further work. Issues about unfair pay and grading are the most common agency worker issue that Citizens Advice staff report to us.

The rights of agency workers are an important component of ensuring that unscrupulous employers do not get an unfair competitive advantage by exploiting Britain's flexible labour market. Regulation and enforcement also hasn't always kept up with agency practice - some agencies are finding ways to avoid their responsibilities and agency workers are often ill equipped to defend their rights.

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<sup>24</sup> Acas, "The impact of Agency Worker Regulations", 2015:  
<http://www.acas.org.uk/media/pdf/p/s/Acas-Employment-Relations-Comment-Agency-Worker-Regulations-Marc-h2015.pdf>

### **Case study: Unequal treatment on wages**

Jonathan was an agency worker who had worked for a single company for over a year. He was doing similar work to the permanent employees he worked alongside and believed he was essentially doing the same job. However, he knew they were being paid much more than he was.

He spoke to his agency about the problem, but they told him that he was in fact not the same grade as everyone else. There was no transparency over how the grading system was set and it was difficult for Jonathan to prove he was doing the same work as his colleagues.

## 6. Should there be steps taken to constrain the use by businesses of agency workers?

6.1 The large majority of employers use agencies responsibly and treat their agency staff fairly, but poor practice continues to exist, as set out in Question 5. Rogue agencies are not only bad for their staff but also for the responsible businesses that they undercut.

6.2 Nevertheless, a more diverse, service-sector dominated and mobile labour market means the demand for the flexibility offered by agency workers is likely to continue. **Rather than seeking to simply constrain businesses' use of agency staff, we believe a number of steps could be taken to improve the rights of agency workers, identify inappropriate use of insecure employment, and encourage good practice on the part of employers seeking to hire from agencies.** We set these measures out in more detail below.

### 1) Improving the rights of agency workers

#### ***More coherent enforcement: a Fair Work Authority***

6.3 Responsibility for upholding agency workers' and other labour rights is currently spread across many different organisations, with different powers and priorities. These include the Employment Tribunal Service, Gangmasters and Labour Abuse Authority (GLAA), the Employment Agency Standards Inspectorate (EASI) and HMRC. Others, such as The Pensions Regulator, Health and Safety Executive, National Crime Authority and local authorities also have enforcement roles.

6.4 Despite the proliferation of these bodies, the resources for enforcement at their disposal are often tight. In 2013-14, the Employment Agency Standards Inspectorate (EASI) had a budget of £585,410, to protect over 800,000 agency workers from unscrupulous employment practices.<sup>25</sup> Currently, 18 people have partial or total bans from running employment agencies<sup>26</sup> - our research suggests that, with more investment, there might be wider scope for enforcement.

6.5 Many unscrupulous employers who violate agency workers' rights also ignore national minimum wage, health and safety regulations or holiday pay. The last government recognised this when it announced the creation of a new Director of Labour Market Enforcement role to oversee some of these organisations.<sup>27</sup>

6.6 The government should now consider combining the specific expertise of current labour market enforcement functions into one well-resourced body. A new dedicated organisation

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<sup>25</sup> FOI Release, 2014:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/343304/bis-foi-2014-14968-employment-agency-standards-inspectorate-funding.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/343304/bis-foi-2014-14968-employment-agency-standards-inspectorate-funding.pdf)

<sup>26</sup> Department for Business, Innovation and Skills, "Employment Agency Standards Inspectorate's (EAS) people prohibited from running an employment agency or business", 2016:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/492104/BIS-16-29-employment-agency-standards-inspectorate-s-EAS-people-prohibited-from-running-an-employment-agency-or-business.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/492104/BIS-16-29-employment-agency-standards-inspectorate-s-EAS-people-prohibited-from-running-an-employment-agency-or-business.pdf)

<sup>27</sup> Department for Business, Innovation and Skills and the Home Office, "Tackling Exploitation in the Labour Market: Government Response", 2016:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/491260/BIS-16-11-government-response-to-tackling-exploitation-in-the-labour-market.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/491260/BIS-16-11-government-response-to-tackling-exploitation-in-the-labour-market.pdf)

- which could be called the Fair Work Authority - would have clear overall objectives and a comprehensive set of combined powers. It would serve a pro-active as well as reactive function, monitoring the trends in labour market organisation and their likely impact on rights in future, as well as working to uphold existing rights.

6.7 The creation of a Fair Work Authority would require careful thought to ensure both that existing enforcement expertise is properly harnessed and that other functions held by the enforcement organisations are not hindered. But this is a prize worth pursuing. A Fair Work Authority would be able to identify and target potential rogue employers proactively and use government money more efficiently. And it would, for the first time, give workers one clear place to check their rights and report problems.

### ***Better access to employment tribunals***

6.8 The government should also make it easier for workers to take action against unlawful treatment from their employer. Employment tribunal fees now range from £390 to £1,200. Our previous research found that more than four in five people with a problem at work are put off by the level of current employment tribunal fees.<sup>28</sup> By reducing the fees payable for individuals to seek remedy via an employment tribunal, the government could deter bad agencies from undermining agency workers' rights as well as making the system more accessible.

## **2) Identifying inappropriate use of insecure employment and encouraging good practice**

### **Transparency on workforce makeup**

6.9 To help understand how the economy is being reshaped by more flexible working arrangements and identify where we should be on the lookout for potential poor practice, the government should require employers to publish more information about the contractual makeup of their workforce. This should include the proportion of the workforce who are:

- Agency staff
- Self-employed
- On particular types of flexible contract, such as zero-hour contracts.

6.10 This could follow a similar model of the Equality Act 2010 (Gender Pay Gap Information) Regulations (2017), requiring employers to publish the data above on an annual basis.<sup>29</sup> Not only would this data help in terms of investigation and enforcement, it would also stimulate good practice within business and ensure that the senior levels of companies are aware of, and make proactive decisions about, the types of jobs that they offer.

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<sup>28</sup> Citizens Advice, "Fairer Fees", 2015:

<https://www.citizensadvice.org.uk/about-us/policy/policy-research-topics/work-policy-research-surveys-and-consultation-responses/work-policy-research/fairer-fees/>

<sup>29</sup> The Equality Act 2010 (Gender Pay Gap Information) Regulations 2017:

<http://www.legislation.gov.uk/ukdsi/2017/9780111152010>

### 3) Due diligence when choosing an agency

6.11 Employers currently have some legal responsibilities towards agency workers. If agency workers face discrimination in the workplace, for example, then it is the employer who's liable - not the employment agency. But employers don't have any responsibility if the employment agency they appoint fails to meet its legal obligations to its agency workers. This can create perverse incentives: rogue employers might accept cut-price quotes from agencies who are cutting corners when it comes to workers' rights, turning a blind eye to those violations.

6.12 At minimum, legislation should ensure employers undertake due diligence to make sure the employment agencies they appoint are legitimate, responsible businesses. This could include, for example, making sure that agencies they appoint have:

- policies that comply with the Agency Worker Regulations
- fair and proportionate deductions policies
- adequate policies for meeting their sick pay obligations.

#### **Recommendations:**

- **Improved enforcement of rights through a Fair Work Authority:** A new dedicated organisation - which could be called the Fair Work Authority - should serve as a single body for enforcing workplace rights. It would have clear overall objectives and a comprehensive set of combined powers. It would serve a pro-active as well as reactive function, monitoring the trends in labour market organisation and their likely impact on rights in future, as well as working to uphold existing rights.
- **Greater transparency on workforce makeup:** to encourage proactive decisions on job type and provide more information for investigation and enforcement.
- **Due diligence requirements for employers when hiring agency workers:** employers should undertake due diligence to ensure that agencies they use are legitimate and responsible businesses.

## 7. What are the issues surrounding terms and conditions of employees, including the use of zero-hour contracts, definitions of flexible contracts, the role of the Low Pay Commission, and minimum wage enforcement?

### Zero-hour and flexible contracts

7.1 Recent analysis from Citizens Advice revealed that there are around 4.5m people in some form of insecure work in England and Wales.<sup>30</sup> Some staff in these forms of employment - including agency workers, casual or temporary staff, and those on zero hour contracts - are classed as, at least, workers. This means that they are entitled to basic rights such as holiday pay, sick pay and national minimum wage. However, **our research suggests that there is a lot of confusion around status and rights for those on non-standard contracts, amongst both workers and employers.**

7.2 Citizens Advice carried out in-depth interviews with 47 people on non-standard contracts.<sup>31</sup> Although all would be classed as employees or workers, we found a **significant degree of confusion about what the flexible nature of their work meant for their rights and entitlements.** One of the most common was the assumption that they were only entitled to be paid for the time they were actually at work - time off for whatever reason would not be paid. This was particularly the case amongst those who worked a small number of hours.

“I don’t get paid holidays and I haven’t been sick enough over the last 4 years to take time off - but I assume I wouldn’t get paid for that either.”

7.3 Some types of job make it harder to understand what your employment rights are. Paid holiday entitlements vary from job to job, but most workers are entitled to at least statutory holiday leave and pay. Yet half of people on zero hours contracts report that they have no holiday entitlement, as do around two fifths of those on temporary contracts.<sup>32</sup> **The link between types of contract and understanding of entitlements is important, as it is precisely those jobs where entitlements are unclear that are growing.** The number of people on zero hours contracts rose by 150,000 in the last year, and now stands at 900,000. While numbers have fallen recently, there are still 200,000 more temps and agency workers than 5 years ago.<sup>33</sup>

7.4 Even for those aware of their entitlements, many described a **non-standard contract as creating a sense of precariousness, with a corresponding fear that asking for anything could put their job at risk in a competitive labour market.**

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<sup>30</sup> Analysis of ONS Labour Force Survey (2015). We define a worker as insecure if any of the following apply: zero hours contract; temporary contract; agency work; work more than 8 hours paid overtime per week; work variable shift patterns. The figure excludes students.

<sup>31</sup> Citizens Advice, “Out of Hours”, 2015: <https://www.citizensadvice.org.uk/Global/CitizensAdvice/Work%20Publications/Outofhours.pdf>

<sup>32</sup> Source: Labour Force Survey, Q2 2016

<sup>33</sup> Source: Labour Force Survey, Q2 2016



“I’m not sure if I signed anything to be honest. But because I’m on a fixed term contract, I get paid for what I do. It was clear when I started that this was the assumption. I wouldn’t rock the boat until I’ve got a permanent job.”

“I feel like I’m self employed and my employer would say ‘no chance’ if I asked for sick pay. There are plenty of taxi drivers who would like my job.”

“I’m worried about taking a holiday because I think they’ll just replace me if I’m away.”

**7.5 Our research showed that the views of employers on these issues varied.** Some of our interviewees expressed concern that their employers - or the line managers who were responsible day-to-day - simply did not understand the rights and entitlements of those on non-standard contracts. In other cases, there was clearer evidence of unscrupulous employers deliberately exploiting non-standard contracts to avoid guaranteeing basic rights.

#### **Case study: Interviewee’s experience of restricted access to entitlements**

Angela is a home care assistant on a zero hours contract. She was aware she should be entitled to maternity pay and when she asked, her line manager said he would look into it.

However, since then, she had been getting fewer hours each week. She was concerned this was because her employer wanted to offer less maternity pay were she to take it. This had resulted in financial hardship and increased her reliance on tax credits.

7.6 It is important to stress that not all of those interviewed had experienced these issues; there were cases of employers who had been clear with their staff about entitlements and used non-standard contracts in an appropriate and proportionate manner. However, a combination of lack of knowledge, insecure contracts and some cases of poor practice and exploitation had left many interviewees with a sense they were unable to rely on the basic rights and securities to which they were entitled.

#### **The role of the Low Pay Commission and minimum wage enforcement**

**7.7 Citizens Advice supported over 60,000 people who experienced issues with their pay and entitlements at work over the last year - accounting for over a quarter of all our employment advice.** We helped 14,000 people with problems directly related to their pay or payslip and we had over 200,000 views of our online advice for those experiencing difficulties getting paid. We also regularly help individuals who have concerns that their pay is less than the National Minimum or National Living Wage; we helped 3,000 people in this area directly last year, with 90,000 hits to these advice pages on our website.

7.8 We welcome the government's recent announcement that additional resources are being given to HMRC national minimum wage enforcement. This investment and the

creation of a Director of Labour Market Enforcement provide solid foundations. However there is more to be done to fully tackle challenges with labour market enforcement.

7.9 First, **enforcement has long been poorly resourced**. Even with the recent announcement of increases in funding, the HMRC team responsible for enforcing National Living Wage received just £13.2 million of funding in 2015/16.<sup>34</sup> So it had just 269 staff to protect the wages of over 30 million people in work. Yet the National Audit Office also estimates that there were around 209,000 jobs paying less than the legal minimum in 2015, with particular issues in certain sectors; it has been suggested more than one in ten workers in the care sector are being paid less than the minimum wage.<sup>35</sup> This suggests the scale of the challenge remains significant, even with additional resource.

7.10 Second, as discussed in Question 3 and 6 above, we believe **current enforcement channels could be streamlined and made more accessible** via the creation of a single Fair Work Authority and significant reductions to the fees payable to seek remedy via an employment tribunal.

#### Interviewee's experience: Challenges faced by good employers

Mark runs a nursery in the south of England. He has 38 members of staff, all of whom are paid the "Living Wage" (i.e. the voluntary rate above the National Living Wage). He provides as many benefits for his employees as he can, but this is making it more expensive for him to run his business. Mark explained he is very keen to "make sure we don't slip behind the legislation out of negligence and ignorance".

Mark's nursery has been losing customers, as his rates are necessarily higher than other local providers. He believes this is because they are not always providing the correct employee benefits, such as occupational pensions and sick pay. He worries that he will either need to cut his employees' benefits or risk losing his business if his customers continue to use other, less scrupulous providers.

#### Recommendations:

- **Improved access to information on rights and entitlements and enforcement options if necessary.** As discussed throughout this submission, we feel the current arrangements around enforcement could be improved through a reduction in employment tribunal fees and the streamlining of current enforcement agencies into a single Fair Work Authority.
- **Increased awareness-raising on employment rights, amongst both employers and the wider public.** While the National Minimum Wage is now a

<sup>34</sup> National Audit Office, "Ensuring Employers Comply with National Minimum Wage Regulations", 2016: <https://www.nao.org.uk/wp-content/uploads/2016/05/Ensuring-employers-comply-with-National-Minimum-Wage-regulations-Summary.pdf>

<sup>35</sup> Ibid., p.4.

widely-understood concept, there is far more confusion about entitlements to other basic rights, including sick pay, parental leave and paid holiday - particularly with regard to non-standard employment contracts.

## **8. What is the role of trade unions in representing the self-employed and those not working in traditional employee roles?**

8.1 There is a role and a need for collective bargaining in our labour market. Employment rights have traditionally been defended and strengthened via organised labour and representative bodies such as trades unions. At Citizens Advice, many of the 200,000 people we support with employment issues each year are not members of a trade union. This suggests there is a gap in representation and collective bargaining for those who are low paid, in insecure jobs or are self-employed. Adaptations to current union approaches, new unions or alternative platforms for collective bargaining should be investigated to ensure that those in these forms of employment do not lose out as a result of this gap.