



Response to Recommendations in University of Limerick Study on the Prevalence of Zero Hour Contracts and Low Hour Contracts in the Irish Economy'

National Women's Council of Ireland

4th January 2016

Introduction

Established in 1973, The National Women's Council of Ireland (NWCi) is the leading national women's organisation in Ireland, representing a diverse membership of over 180 groups and organisations along with a growing and committed individual membership. Our vision is of an Ireland with full equality between women and men

NWCI greatly welcome the invitation from Department of Jobs Enterprise and Innovation to contribute to the important discussion on low and variable hour contracts as an issue of significant concern to our members.

NWCI has previously engaged actively with the Low Pay Commission around the fact that a majority of those on low are women and we greatly welcome the Minister's highlighting of this issue. There are of course many points of intersection between the issues of low pay and precarious work, with research showing a sustained deflation of wages in sectors like retail and hospitality which are also at the frontline of 'If and When' contracts. These are of course sectors where women predominate.

However, given the tight timeframe and specific focus of the current consultation, this submission will focus exclusively on the University of Limerick Study ((UL Study) and its recommendations.

NWCI welcomed the commissioning of a report into this area by the Department. We were very happy to be able to contribute to the excellent research of the University of Limerick through participation in interview and sharing of written documentation. We commend the quality of the final report and its recommendations.

Submission prepared by NWCI Policy Officer Alice-Mary Higgins : Contact 01-6790100 alicemaryh@nwci.ie

Cross Cutting Concerns

NWCI do have a few cross cutting concerns which we wish to touch on before responding to each of the specific recommendations put forward in Section 8 of the UL Study

Care

The UL Study highlights that one issue ‘frequently raised by interviewees’ was;

“The extent to which employees with caring responsibilities require flexible working hours.”

““Interviewees noted that women require part-time work to accommodate their caring responsibilities and the lack of an affordable, accessible childcare system contributed to this need”

“Higher proportions of women than men work part-time hours in retail, accommodation/food, health and education. Interviewees generally agreed that women are more likely to work If and When hours and low hours because of their caring responsibilities and the lack of affordable, accessible childcare.”

NWCI have for many years called for investment in publicly subsidised, affordable, accessible, quality early years’ education and childcare as an essential aspect of Ireland’s national infrastructure and a core requirement for sustainable economic and social development.

However, we are also concerned that urgent legislative action be taken to address recent trends in the erosion of pay and working conditions. It would, we believe, be unfortunate if a reductive focus on childcare alone was allowed to deflect attention from other serious gendered concerns such as the systematic casualisation of many sectors where women predominate.

NWCI would be particularly concerned about and strongly reject any suggestion or implication from employer’s groups or others that it is employees who ‘require’ or have somehow driven the systematic move towards ‘If and When’ and other precarious contracts across so many of the sectors where women workers predominate. Such a narrative would be not only inaccurate but disingenuous. Any analysis of the speedy and widespread transition to such contracts across sectors such as retail and hospitality shows that it is not responding to any new or different demand from employees or their representatives but is an active initiative of employers. While those who try to balance caring responsibilities, most often women, may, in the absence of adequate or affordable public childcare, be more likely to accept part-time work, the fact that such work is increasingly likely to be on variable hour contract is driven by the commercial interests of employers and is seriously detrimental to employees.

Predictability

It is important to emphasise the distinction between ‘part-time’ and ‘flexible hours’. They cannot and should not be referenced interchangeably. This point is underscored by the QNHS 2014 figures cited in the UL report which found twice as many ‘part-time workers’ as ‘variable hour’ workers recognising a link with caring responsibilities. *“17% of employees who work part-time and 8% of employees who work constantly variable hours do so because of caring responsibilities”.*

The crucial difference between quality part time work and variable hour or ‘if and when’ contracts is, of course, predictability.

Predictability is essential to any individual trying to balance care and work. Moreover, most professional childcare providers require significant notice and long term predictable scheduling from parents. NWCI have heard from women who must regularly pay for the full week's childcare because they do not know which day or days they might be offered work. In this sense, far from facilitating women workers, If and When contracts and variable hour contracts can generate significant additional costs for those with caring responsibilities.

In fact, there is considerable concern that 'variable hours' far from accommodating those with care responsibilities can in fact be used to control or punish individuals through intentional clashing with known and predictable care responsibilities.

Progressive versus Regressive Trends

In many cases, these precarious contracts are replacing or eroding quality part time work, for example, the positive part-time provisions within the public service, either directly or indirectly through outsourcing to agencies. In this sense they are in fact undermining decades of hard won progress towards equality and work/life balance in the workplace. It is for example, unacceptable that a concept such as 'flexibility', historically associated with progressive evolution in the workplace, should now be twisted to justify deeply regressive practices.

Hard-won improvements around women's participation, retention or progression in the workplace have previously been made through the development of structured options for employees. These positive measures and the learning from them are diminished when lumped into a general narrative alongside negative trends.

NWCI are particularly concerned that no false causality should be drawn from that section of the UL report which notes that *"the extension of the working week and the increasing use of flexible working arrangements, including If and When contracts, has occurred at the same time that women's participation in the labour market has increased across all sectors of the economy."*

The QNHS 2014 does show a small increase in the proportion of all women who participate in the labour force from 55.4% to 55.9% between 2003 and 2014. However factors such as increasing economic pressures for many households are far more credible drivers than the prevalence of 'If and When' contracts and increased female participation in specific sectors of the economy e.g. science is more likely to reflect educational initiatives.

While many women workers on variable contracts would certainly prefer to be on quality part-time contracts, there are many more who would prefer to be on quality full-time contracts.

It is important to note that in the QNHS 2014 over 82% of those working part time and 93% of those on variable hours DID NOT identify care responsibilities as the main reason for such working conditions. Moreover, studies on 'Underemployment' show that the majority (53%) of those who consider themselves 'underemployed' and would like more hours are women.

The Wider Picture

Another overall concern which NWCI have in relation to the UL study, specifically in terms of its recommendations, is that many proposals focus on individual entitlements and there may perhaps be a need for a stronger focus on the wider picture.

Transparency

While there are welcome recommendations around transparency in Individual contracts it is also important that companies be required to be more transparent about their overall employment practices. For example, how many staff are on variable hour contracts, how are hours distributed? How many staff or below the poverty threshold? Whether or not such transparency can be made a general provision, it can certainly be required of companies seeking to avail of public monies through public procurement or grants. There is also need for wider debate about what might be regarded as an acceptable proportion of staff to be on low or variable hour contracts with due regard to company size, profitability and the active promotion of positive standards within each sector.

Tracking Trends

Such information is an essential component to ensure ongoing tracking of emerging trends in both good or bad practice and their social and economic implications. For example it is important that the rapid roll out of 'If and When' contracts is being seen as a pattern rather than a set of individual decisions as that enables a better response. Similarly, as discussed under care it is important that positive work/life initiatives are consistently recognised as quite distinct from involuntary 'flexibility'.

From Individual Contracts to Company Practice

It is not enough to look at the specific contracts of individuals in the context of companies which intentionally create an oversupply of available labour which can set employees in competition with each other for limited hours. A joined up approach is needed which acts as a necessary curb to such practices and positively reinforces the connections and solidarity between workers engaged in similar type work. See a suggested starting point in our comments under Recommendation 3.

Abusive Practices

NWCI would be concerned that while these recommendations seek to improve day to day practice there are not provisions to adequately identify, protect against or redress abusive practices.

One consistent concern expressed by NGOs and Unions throughout the Study was the power imbalance in variable hours contracts and their use as a means of control. The withholding of hours offers real potential for punishment or intimidation of staff who organises or complain about conditions.

There are also concerns such as 'hostile scheduling', NWCI have heard of a number of cases where shifts were deliberately and repeatedly scheduled to clash with care needs – for example; constant evening shifts for a mother with secondary school children.

Women can be particularly apprehensive of a reduction in hours which places them below the 19 hours needed to qualify for FIS. There are also gendered concerns around the potential for sexual exploitation in situations where multiple staff could be expected to 'compete' for available hours.

A Few Supplementary Suggestions

- Building on the current right of an individual to request a reduction in working hours, specific legislative provision should be made which entitles an employee to make a request for an increase in working hours. There should also be a clear provision which allows an individual employee to request a review of a repeated pattern of scheduling.
- Further measures are also needed recognise, prevent and redress abusive practices such as 'hostile scheduling'.
- NWCI recommend that 'Predictability' and 'Adequacy' should both be recognised as central framing concerns in future research.
- A strong gender analysis must be recognised as central to all future research in this area.
- This study should serve as a useful case study to encourage earlier identification of and response to other good and bad practice trends in employment.
- In addition to legislative recommendations, there is urgent need for the setting of clear official standards and distinctions round what can be considered 'decent part-time work' and what must be regarded as 'precarious work'. For example a clearer definition of 'flexible' is needed, with one crucial factor perhaps being that it is in fact requested by and negotiated by an employee. These distinctions and standards could then be reflected in a practical way across a range of policy and practice, from consideration of what constitutes 'a reasonable offer of work' to social clauses within public procurement or grant making.
- The Low Pay Commission should be supported and encouraged to give greater consideration to the intersection between low pay and precarious work as part of their strengthened focus on women.

NWCI Comments on the Recommendations in Section 8 of the UL Study

(UL Recommendations in Bold)

1. We recommend that the Terms of Employment Information Acts 1994 to 2012 be amended to require employers to provide the written statement on the terms and conditions of the employment on or by the first day of employees' commencing their employment. This requirement should also apply to people working non-guaranteed hours on the date of first hire.

NWCI support this recommendation

2. We recommend that the Terms of Employment Information Acts 1994 to 2012 be amended to require employers to provide a statement of working hours which are a true reflection of the hours required of an employee. This requirement should also apply to people working non-guaranteed hours.

NWCI support this recommendation.

However, we believe that beyond individual contracts wider transparency should be required at company and sectoral level around overall contracting practices; e.g. the proportion of staff on variable hour contracts, the typical minimum or median hours worked etc.

3. We recommend repealing Section 18 of the Organisation of Working Time Act 1997 and introducing either a new piece of legislation or a new section into the Organisation of Working Time Act 1997 to include the provisions in recommendations 4-8 below.

NWCI broadly support the repeal of Section 18 which has not proven adequate to the prevention of unfair employment practices. We also support replacement with recommendations 4 to 8, with more specific comments on those recommendations below.

However, there is one important aspect of the current Section 18 we believe should not be lost and should be in some way reflected in any new text; When Section 18, Part 2(b) and Section 18, Part 4 are read together it seems clear that an employee who makes themselves available is entitled to 25 percent of the hours of their 'type of work' done, based on the greatest number worked by an equivalent employee. This provision potentially seems to disincentivise bad rostering practices and sets an important precedent in recognising links between conditions for multiple individual employees and wider company practice.

Section 18

2(b) in a case falling within paragraph (b) or (c) of that subsection where work of the type which the employee is required to make himself or herself available to do has been done for the employer in that week, at least 25 per cent. of the hours for which such work has been done in that week

*(4) The reference in subsection (2) (b) to the hours for which work of the type referred to in that provision has been done in the week concerned shall be construed as a reference to the number of hours of such work done in that week by another employee of the employer concerned or, in case that employer has required 2 or more employees to do such work for him or her in that week and the number of hours of such work done by each of them in that week is not identical, **whichever number of hours of such work done by one of those employees in that week is the greatest.***

4. We recommend that legislation be enacted to provide that:

i. For employees with no guaranteed hours of work, the mean number of hours worked in the previous 6 months (from the date of first hire or from the date of enacting legislation) will be taken to be the minimum number of hours stipulated in the contract of employment.

ii. For employees with a combination of minimum guaranteed hours and If and When hours, the mean number of hours worked in the previous 6 months (from the date of first hire or from the date of enacting legislation) will be taken to be the minimum number of hours stipulated in the contract of employment. iii. A mechanism will be put in place whereby, after the minimum number of hours is established, employers and employees can periodically review the pattern of working hours so that the contract accurately reflects the reality of working hours. iv. Where after 6 months an employee is provided with guaranteed minimum hours of work as per subsection (i) and (ii), but is contractually required to be available for additional hours, the employee should be compensated where they are not required by an employer in a week. The employee should be compensated for 25% of the additional hours for which they have to be available or for 15 hours, whichever is less.

NWCI partially support this recommendation however do believe that the opportunity could also be taken to increase the compensation threshold. The '15 hours' is too rarely received currently given that a standard working week is usually 40 hours (25% of which will be 10 hours and usually less). If the intention is that that the calculation of the 25% would now be based only on the hours beyond the minimum, (the recommendation is a little unclear) that will almost certainly be less than 15 hours.

For the women who make up the majority of those on part-time variable hours, that 25% on top of a minimum may amount to only a couple of hours. In order to further support low hour workers and actively encourage best practice by business, NWCI believe that in addition to the establishment of a minimum, the supplementary compensation threshold should be raised to 30% and regularly reviewed.

Moreover, there is a need for clarity around conditions for employees with no guaranteed hours of work during the first six months. Will they be entitled to 15 hours or 25% of availability?

NWCI also believe that an employee should be entitled to request and be given an upward review and resetting of their "minimum" on an annual or biannual basis based on a calculation of the mean number of hours worked in the previous year or two years.

Monitoring of this measure by the Department will also be important to ensure that no pattern of intentional undersetting of minimum hours emerges.

5. We recommend that an employer shall give notice of at least 72 hours to an employee (and those with non-guaranteed hours) of any request to undertake any hours of work, unless there are exceptional and unforeseeable circumstances. If the individual accepts working hours without the minimum notice, the employer will pay them 150% of the rate they would be paid for the period in question.

NWCI strongly support this recommendation.

However it does not adequately address the issue of predictability. For those with care responsibilities, a minimum of weekly or monthly notice is often needed to schedule care.

6. We recommend that an employer shall give notice of cancellation of working hours already agreed to employees (and those with non-guaranteed hours) of not less than 72 hours. Employees who do not receive the minimum notice shall be entitled to be paid their normal rate of pay for the period of employment scheduled.

NWCI support this recommendation

However as stated above it does not adequately address the issue of predictability.

7. We recommend that there shall be a minimum period of 3 continuous working hours where an employee is required to report for work. Should the period be less than 3 hours, for any reason, the employee shall be entitled to 3 hours' remuneration at the normal rate of pay.

NWCI support this recommendation in relation to all variable hour contracts, although provision for certain exceptions might be considered in the case of specific long-term scheduled part-time work – (e.g. regular lunchtime or morning work)

The new EU Directive on recognition of travel-time between start and end of work should also be considered in relation to this provision. For example, where two three hour periods are scheduled in close succession but different locations (e.g. in cleaning services), the travel time should also be paid.

8. We recommend that employer organisations and trade unions which conclude a sectoral collective agreement can opt out of the legislative provisions included in recommendations 4-7 above, and that they can develop regulations customised to their sector. Parties to a sectoral collective agreement should be substantially representative of the employers' and workers' class, type or group to which the agreement applies.

NWCI recognise and support the importance of sectoral agreements such as JLC's . However we believe it is important that an opt out of legislative provisions is not an automatic assumption of the conclusion of or existence of a sectoral agreement, which could be primarily focused on other issues such as pay level.

Rather it would need to be specifically agreed by both parties (employers and trade unions) that they were happy that appropriate provisions around working hours had been included in a sectoral agreement and were suitable and adequate to replace the legislative provisions. The higher standards should always be assumed to take precedence.

In terms of "substantial" representation, it is important that sectoral agreements adequately cover terms and conditions for part time staff or temporary workers. If, for example , a sectoral agreement were to solely address terms and conditions for full time or permanent staff, then other types of worker in that sector should still have automatic recourse to the standard legislative provisions,

9. When negotiating at sectoral level, we recommend that employer organisations and trade unions examine examples of good practice which can provide flexibility for employers and more stable working conditions for employees, such as annualised hours and banded hours agreements.

NWCI support this recommendation.

However we believe that in cases where sectoral negotiations are not successful or particular employers do not agree to abide by such terms, the Government should clearly reserve the right to introduce sector specific legislative requirements around provisions such as banded hour contracts.

10. We recommend that the Government examine further the legal position of people on If and When contracts with a view to providing clarity on their employment status.

As stated in our preamble, NWCI believe that the prevalence of 'If and When contracts' must be recognised as a fundamental concern not only for the individuals, mainly women, on such contracts but in terms of Ireland's wider economic and social sustainability. There is a need for example to look at the power imbalance around such contracts and issues around defacto, if not contractual, expectations of availability

Further examination is needed, not only of the 'legal position of people' on such contracts but of the speed and manner in which such contracts has been adopted by employers. It is crucial we not only learn from good practice but conduct equally stringent examination of bad practice and how it is spread. Further examination and legislative response is certainly needed and as the majority of those on 'If and When' contracts are women, NWCI would hope and expect to take an active role in such an examination.

11. We recommend that the Department of Social Protection put in place a system that provides for consultation with employer organisations, trade unions and NGOs, with a view to examining social welfare issues as they affect people on If and When contracts and low hours.

NWCI are very keen to contribute to any further examination of this area conducted by the Department of Social Protection. While in-work income supports play a vital role in keeping many families above the poverty threshold, businesses must not be allowed to deflect their responsibilities to those working for them.

However, it is important that such consultation is not simply confined to looking at income supports but that it also feeds into a joined up inter-departmental approach. Analysis and monitoring of areas like in-work poverty and social protection needs should be linked to pro-active social clauses and other policy levers across all Departments. For example, is it acceptable that companies with a large proportion of employees on variable hours or paid below the FIS threshold, can receive Government procurement contracts or enterprise grants? Is it not more economically advantageous to ensure that public monies are directed towards companies who pay a living wage with secure contracts?

12. We recommend that the Government develop a policy for an accessible, regulated and high-quality childcare system that takes into account the needs of people on If and When contracts and low hours.

NWCI support this recommendation and believe that investment in an accessible, regulated, high-quality and affordable childcare system must be a national priority. One immediate step which should be taken to ensure our early years and childcare system supports those in 'low hours' working would be by raising the current ECCE hours from 15 to 20 per week. This would not only facilitate parents, usually mothers, in accessing employment which meets the FIS threshold of 19 hours, it would also ensure that childcare workers could, if necessary, qualify for FIS.

13. We recommend that Government establish an interdepartmental working group to allow for greater cooperation between government departments on policies which affect patterns of working hours.

NWCI support this recommendation (See comments in recommendation 11)

14. We recommend that the Central Statistics Office have a rolling Quarterly National Household Survey Special Module on Non-Standard Employment which includes questions on non-guaranteed hours.

NWCI support this recommendation and would ask that the development of such a module be gender proofed and that any information arising be gender disaggregated.