CHAPTER 5

CONTRACTS, CONTRACTORS AND CONSULTANTS

THE OBJECTIVES OF THIS CHAPTER ARE TO:

1 REVIEW THE MAJOR DUTIES AND RIGHTS WHICH DERIVE FROM THE CONTRACT OF EMPLOYMENT

2 DESCRIBE THE RANGE OF HOURS AND SHIFT PATTERNS SPECIFIED IN CONTRACTS

3 EVALUATE THE ADVANTAGES AND DISADVANTAGES ASSOCIATED WITH DIFFERENT APPROACHES TO TEMPORAL FLEXIBILITY

4 EXAMINE THE REASONS FOR GROWTH IN ATYPICAL CONTRACTUAL ARRANGEMENTS AND OF REGULATION IN THIS AREA

5 DEBATE THE ADVANTAGES AND DISADVANTAGES OF EMPLOYING CONSULTANTS

6 ASSESS THE RECENT TREND TOWARDS MORE OUTSOURCING OF ACTIVITIES TRADITIONALLY CARRIED OUT IN-HOUSE

Although a great deal is written about 'psychological contracts' and 'contracts for performance', the association between employer and employee remains at base a legal relationship governed by 'a contract of employment'. Whatever expectations employers and employees have of one another when the employment begins, the basic terms and conditions will be agreed and understood at the start and may, if necessary, be enforced in a court. In law the existence of such a contract confers on both parties important obligations as well as giving the employee access to significant legal rights which are not available to people who work under different contractual arrangements.

Employment contracts are very varied, and in recent years all industrialised countries have seen a trend away from what are usually described as being 'traditional' arrangements in which employees are employed on an open-ended basis for 38 hours or so over a 5-day standard 'working week' towards a variety of different alternative types of contract. In some industrial sectors we have seen a move away from employment altogether as people have chosen, or been required, to switch to self-employment. These developments have given employers more options in terms of how they resource their organisations and there is evidence that some are making use of the outermost ring of Atkinson's flexible firm model (*see* Chapter 4) to a greater extent than they were previously. The more consultants, specialist employment agencies and outsourcing specialists that exist and the more effective the services they provide, the more they are considered to provide a viable alternative to the more traditional forms of employment.

CONTRACTS OF EMPLOYMENT

As far as the law is concerned around 80 per cent of people who work in the UK are employees. This means that they have a contract of employment with their employer, with the duties and privileges that that implies. The employer may be an individual, as with most small businesses, or the contract may be with a large corporation. Throughout this book we use terms like 'organisation' and 'business' more or less interchangeably and 'employer' is the legal term to describe the dominant partner in the employment relationship. This derives from the old notion of a master and servant relationship and indicates that the employee (or servant) has obligations to the employer or master and vice versa. In contrast, those who are self-employed or subcontractors have greater autonomy, but no one standing between them and legal accountability for their actions.

The law makes an important distinction between the two groups, employees having access to a wider range of legal rights than non-employees. While some areas of employment law apply to all workers, others only apply to employees. Non-employees are deemed to be working under 'a contract for services' rather than 'a contract of service' as is the case for employees. In 2004 the main statutory rights that applied to each were those shown in Table 5.1.

In addition to the statutory rights conferred by Acts of Parliament, a range of common law duties are owed by employers to employees and vice versa which do not apply in the case of other forms of relationship. The major obligations are as follows:

Table 5.1 Access to statutory employment rights

Employment rights which apply to all workers:	Employment rights which apply only to employees:
• Equal pay for equal work • Non-discrimination on grounds of sex, race, religious belief, sexual orientation and disability • Right not to have unauthorised deductions from pay • Basic health and safety rights • Minimum wage • Working time regulations • Data protection rights • Time off to care for dependants • Part-time workers regulations	• Right to a statement of terms and conditions of employment • Right to an itemised pay statement • Statutory Sick Pay • Time off for public duties • Twenty-six weeks' maternity leave • Trade union rights • Minimum notice periods • Fixed-term workers regulations • Statutory Maternity Pay (after six months' service) • Additional maternity leave (after one year's service) • Unfair dismissal rights (after one year's service) • Parental leave (after one year's service)

1 Owed by employers to employees:
   - a general duty of care
   - a duty to pay agreed wages
   - a duty to provide work
   - a duty not to treat employees in an arbitrary or vindictive manner
   - a duty to provide support to employees
   - a duty to provide safe systems of work

2 Owed by employees to employers:
   - a duty to cooperate
   - a duty to obey reasonable/lawful instructions
   - a duty to exercise reasonable care and skill
   - a duty to act in good faith

3 Owed by employers to employees and vice versa:
   - to maintain a relationship of mutual trust and confidence

4 Owed by employees and ex-employees:
   - duty of fidelity

A contract of employment, contrary to common perception, need not exist in written form. It is much more satisfactory for both parties if there is documentary evidence of what terms and conditions have been offered and accepted, but a contract of employment exists whether agreed verbally on the telephone or sealed with no more than a handshake. Where there is any doubt about whether someone is an employee or not, the courts look at the evidence presented to them concerning the reality of the existing relationship between the two parties. If they consider, on balance, that it is governed by a 'contract of service' rather than a 'contract for services', they will consider the worker to be an employee and entitled to the full range of rights outlined above.

WINDOW ON PRACTICE

A case heard in the House of Lords illustrates the importance of employee status. Mrs Carmichael and a colleague were employed as tour guides at a power station run by National Power PLC. They started working for the company on a casual basis in 1989, undertaking about four hours work each week as and when they were needed. By 1995 they each were working around 25 hours a week, so they decided to ask for written particulars of their terms and conditions of employment. The company refused on the grounds that they were casual workers and not employees. The women won their case in the lower courts, but the company decided to appeal right up to the House of Lords. At this stage the women lost their case on the grounds that there was no mutuality of obligation. They could, and indeed had, turned down requests to work without suffering any disciplinary action. They were therefore not employees and not entitled to the rights associated with full employment status.

An employment contract comes into existence when an unambiguous offer of employment is made and is unconditionally accepted. Once agreed neither side can alter the terms and conditions which govern their relationship without the agreement of the other. An employer cannot therefore unilaterally cut employees' pay, lengthen their hours of work, reduce their holiday entitlement, change their place of work or move them to another kind of work. To do so the employer either has to secure the employees' agreement (by offering some kind of sweetener payment) or has to ensure that the right to make adjustments to terms and conditions is written into the contract by means of flexibility clauses. Where an employer forces changes through without securing the agreement of employees directly, or in many cases through negotiation with union representatives, legal action may follow. An employee may simply bring a claim for breach of contract and ask that the original contract be honoured. In such circumstances compensation may or may not be appropriate. Alternatively, where the employer's breach is serious or where it is one of the implied duties listed above that has not been honoured, employees are entitled to resign and claim constructive dismissal in an Employment Tribunal, in which case their situation is treated as if they had actually been dismissed (*see* Chapter 9).

Table 5.2 provides a checklist for preparing a contract of employment.

WORKING PATTERNS

Aside from payment arrangements, for full-time workers the pattern of hours which they are expected to work is the most important contractual issue. The total number of hours worked by the average full-time worker in the UK fell substantially for much of the past 150 years, but started to rise again in the 1990s (Harkness 1999). In 1850 the normal working week was established as 60 hours spread over six days of 10 hours each. The average number of hours weekly worked in 2003, including paid and unpaid overtime, was 44 hours for men and 39 hours for women (Labour Market Trends 2003a). Interestingly, in the last two or three years there is evidence that

Table 5.2 Checklist for preparing a contract of employment

1. Name of employer; name of employee.
2. Date on which employment began.
3. Job title.
4. Rate of pay, period and method of payment.
5. Normal hours of work and related conditions, such as meal-breaks.
6. Arrangements for holidays and holiday pay, including means whereby both can be calculated precisely.
7. Terms and conditions relating to sickness, injury and sick pay.
8. Terms and conditions of pension arrangements.
9. Length of notice due to and from employee.
10. Disciplinary rules and procedure.
11. Arrangements for handling employee grievances.
12. (Where applicable) Conditions of employment relating to trade union membership.

people have started working rather fewer hours again, the number working in excess of 45 hours a week falling by nearly 10 per cent (Office for National Statistics 2003).

A return to the downward trend in terms of hours worked may be a direct response to new regulation in this area. The European Union's Working Time Directive was introduced into UK law in 1998 as a health and safety initiative (*see* Chapter 22). Among other measures, it seeks to ensure that no one is required to work more than an average of 48 hours a week against their will. In some countries legislation limiting working hours is primarily seen as a tool for reducing unemployment. In France, for example, the 'loi Aubry' was introduced limiting people to an average working week of only 35 hours (EIRR 1998).

ACTIVITY 5.1

Would you like to see legislation passed in the UK limiting to 35 the number of hours in a week that each person can work?

What would be the main arguments for and against the introduction of such legislation?

The past two decades have also seen some increase in the proportion of the working population engaged in shiftworking. This is nothing new in the manufacturing sector where the presence of three eight-hour shifts has permitted plants to work round the clock for many years. Recently, however, there has been a substantial rise in the number of service-sector workers who are employed to work shifts. They, unlike most factory-based staff, are not generally paid additional shift payments to reward them for working unsocial hours. According to IDS (2000), the change has come about because of moves towards 'a 24-hour society' which have followed on from globalisation, the emergence of e-commerce and consumer demand. Each year more and more people are reported to be watching TV and making phone calls in the early hours of the morning, while late-night shopping has become the norm for a third of adults in the UK. Banks, shops, airports and public houses are now round-the-clock operations. The result is a steadily increasing demand for employees to

work outside the standard hours of 9–5, Monday to Friday, a trend long established in the USA where fewer than a third of people work the standard weekday/daytime shift (IDS 2000, p. 1).

While some people remain attached to the 'normal' working week and would avoid working 'unsocial hours' wherever possible, others like the flexibility it gives them, especially where they are rewarded with shift premia for doing so. Shift-working particularly appeals to people with family responsibilities as it permits at least one parent to be present at home throughout the day. Several types of distinct shift pattern can be identified, each of which brings with it a slightly different set of problems and opportunities.

Part-timer shifts require employees to come to work for a few hours each day. The most common groups are catering and retail workers employed to help cover the busiest periods of the day (such as a restaurant at lunchtime) and office cleaners employed to work early in the morning or after hours in the evening. This form of working is convenient for many and clearly meets a need for employers seeking people to come in for short spells of work.

Permanent night shifts create a special category of employee set apart from everyone else. They work full time, but often have little contact with other staff who leave before they arrive and return after they have left. Apart from those working in 24-hour operations, the major categories are security staff and maintenance specialists employed to carry out work when machinery is idle or when roads are quiet. There are particular problems from an HR perspective as they are out of touch with company activities and may be harder to motivate and keep committed as a result. Some people enjoy night work and maintain this rhythm throughout their working lives, but for most such work will be undertaken either reluctantly or for relatively short periods. Night working is now heavily regulated under the Working Time Regulations 1998.

Double day shifts involve half the workforce coming in from early in the morning until early afternoon (an early shift), while the other half work from early afternoon until 10.00 or 11.00 at night (a late shift). A handover period occurs between the two shifts when everyone is present, enabling the organisation to operate smoothly for 16–18 hours a day. Such approaches are common in organisations such as hospitals and hotels which are busy throughout the day and evening but which require relatively few people to work overnight. Rotation between early and late shifts permits employees to take a 24-hour break every other day.

Three-shift working is a well-established approach in manufacturing industry and in service-sector organisations which operate around the clock. Common patterns are 6–2, 2–10 and 10–6 or 8–4, 4–12 and 12–8. A further distinction can be made between discontinuous three-shift working, where the plant stops operating for the weekend, and continuous three-shift working, where work never stops. Typically the workforce rotates between the three shifts on a weekly basis, but in doing so workers suffer the consequences of a 'dead fortnight' when normal evening social activities are not possible. This is avoided by accelerating the rotation with a 'continental' shift pattern, whereby a team spends no more than three consecutive days on the same shift.

Split shifts involve employees coming into work for two short periods twice in a day. They thus work on a full-time basis, but are employed on part-timer shifts to cover busy periods. They are most commonly used in the catering industry so that chefs and waiting staff are present during meal times and not during the mornings

and afternoons when there is little for them to do. Drawbacks include the need to commute back and forth from home to work twice and relatively short rest-periods in between shifts in which staff can wind down. For these reasons split shifts are unpopular and are best used in workplaces which provide live-in accommodation for staff.

Compressed hours shifts are a method of reducing the working week by extending the working day, so that people work the same number of hours but on fewer days. An alternative method is to make the working day more concentrated by reducing the length of the midday meal-break. The now commonplace four-night week on the night shift in engineering was introduced in Coventry as a result of absenteeism on the fifth night being so high that it was uneconomic to operate.

WINDOW ON PRACTICE

The banking group Lloyds TSB has recently introduced a 'work options scheme' to help it recruit and retain effective performers. It aims to help employees to find ways of meeting both their work and home obligations without having to compromise one or the other. According to the group's website, the major options offered are:

- reduced hours – working less than a full-time schedule
- job sharing – two individuals sharing the duties of a full-time position
- variable hours – varying the start and finish time of a standard day
- compressed workweek – working a full working week in fewer than five days a week
- tele-working – working at home or off-site for up to three days a week.

Source: www.lloydstsbjobs.com/pages/what_we_offer.html.

FLEXIBLE WORKING HOURS

Another way of dealing with longer operating hours and unpredictable workloads is to abandon regular, fixed hours of working altogether. This allows an organisation to move towards the 'temporal flexibility' we discussed in Chapter 4. The aim is to ensure that employees are present only when they are needed and are not paid for being there during slack periods. However, there are also advantages for employees. Three types of arrangement are reasonably common in the UK: flexitime, annual hours and zero-hours contracts.

Flexitime

A flexitime system allows employees to start and finish the working day at different times. Most systems identify core hours when everyone has to be present (for example 10–12 and 2–4) but permit flexibility outside those times. Staff can then decide for themselves when they start and finish each day and for how long they are absent at lunchtime. Some systems require a set number of hours to be worked every day, while others allow people to work varying lengths of time on different days provided

they complete the quota appropriate for the week or month or whatever other settlement period is agreed. This means that someone can take a half-day or full day off from time to time when they have built up a sufficient bank of hours.

There are great advantages for employees working under flexitime. Aside from the need formally to record time worked or to **clock in**, the system allows them considerable control over their own hours of work. They can avoid peak travel times, maximise the amount of time they spend with their families and take days off from time to time without using up holiday entitlement. From an employer's perspective flexitime should reduce the amount of time wasted at work. In particular, it tends to eliminate the frozen 20-minute periods at the beginning and end of the day when nothing much happens. If the process of individual start-up and slowdown is spread over a longer period, the organisation is operational for longer. Moreover, provided choice is limited to a degree, the system encourages staff to work longer hours at busy times in exchange for free time during slack periods.

Annual hours

Annual hours schemes involve an extension of the flexitime principle to cover a whole year. They offer organisations the opportunity to reduce costs and improve performance by providing a better match between working hours and a business's operating profile. Unlike flexitime, however, annual hours systems tend to afford less choice for employees.

Central to each annual hours agreement is that the period of time within which full-time employees must work their contractual hours is defined over a whole year. All normal working hours contracts can be converted to annual hours; for example, an average 38-hour week becomes 1,732 annual hours, assuming five weeks' holiday entitlement. The principal advantage of annual hours in manufacturing sectors, which need to maximise the utilisation of expensive assets, comes from the ability to separate employee working time from the operating hours of the plant and equipment. Thus we have seen the growth of five-crew systems, in particular in the continuous process industries. Such systems are capable of delivering 168 hours of production a week by rotating five crews. In 365 days there are 8,760 hours to be covered, requiring 1,752 annual hours from each shift crew, averaging just over 38 hours for 46 weeks. All holidays can be rostered into 'off' weeks, and 50 or more weeks of production can be planned in any one year without resorting to overtime. Further variations can be incorporated to deal with fluctuating levels of seasonal demand.

The move to annual hours is an important step for a company to take and should not be undertaken without careful consideration and planning. Managers need to be aware of all the consequences. The tangible savings include all those things that are not only measurable but capable of being measured before the scheme is put in. Some savings, such as reduced absenteeism, are quantifiable only after the scheme has been running and therefore cannot be counted as part of the cost justification. A less tangible issue for both parties is the distance that is introduced between employer and employee, who becomes less a part of the business and more like a subcontractor. Another problem can be the carrying forward of assumptions from the previous working regime to the new. One agreement is being superseded by another and, as every industrial relations practitioner knows, anything that happened before, which is not specifically excluded from a new agreement, then becomes a precedent.

Zero hours

A zero-hours contract is one in which individuals are effectively employed on a **casual** basis and are not guaranteed any hours of work at all. Instead they are called in as and when there is a need. This has long been the practice in some areas of employment, such as nursing agencies and the acting profession, but it has recently been used to some extent in other areas, such as retailing, to deal with emergencies or unforeseen circumstances. Such contracts allow employers to cope with unpredictable patterns of business, but they make life rather more unpredictable for the individuals involved. The lack of security associated with such arrangements makes them an unattractive prospect for many.

ACTIVITY 5.2

What types of job would you regard as most appropriate for the following variations of the conventional 9-to-5 working pattern?

1 Shift working
2 Part-time working
3 Job sharing
4 Flexible hours
5 Compressed hours
6 Annual hours

What types of job would not be suitable for each of these?

ATYPICAL CONTRACTUAL ARRANGEMENTS

Recent decades have seen the growth of contractual arrangements that differ from the permanent, open-ended, full-time, workplace-based form of employment that has always been regarded as representing the norm. As was shown in Chapter 1, there is considerable disagreement about the significance of these trends. For some they mark the 'beginning of the end' for jobs as we have come to experience them over the past 100 years, while for others they represent a modest adjustment of traditional practices in response to evolving labour market developments and to industrial restructuring. Either way they have important implications for the effective management of people.

Contracts of limited duration

Contracts of employment vary in all manner of ways. One of the most important distinctions relates to their length. Here it is possible to identify three basic forms:

- **Permanent**: This is open-ended and without a date of expiry.
- **Fixed term**: This has a fixed start and finish date, although it may have provision for notice before the agreed finish date.

- **Temporary**: Temporary contracts are for people employed explicitly for a limited period, but with the expiry date not precisely specified. A common situation is where a job ends when a defined source of funding comes to an end. Another is where someone is employed to carry out a specified task, so that the expiry date is when the task is complete. The employer is obliged to give temporary workers an indication in writing at the start of their employment of the expected duration of the job.

Around half of all employers in the UK, including a good majority of public sector bodies, employ some people on a fixed-term basis or make use of agency temps. In 2003 a total of 1.5 million people worked under some form of non-permanent contract, which is 6.4 per cent of all employees (Labour Market Trends 2003b). This is appreciably more than the 5 per cent who were employed on such a basis in the 1980s, but represents a substantial fall over the past few years; in 1998 the figure was close to 1.8 million. As unemployment has fallen and the economy has grown employers have found that they have to offer permanent positions if they are to attract effective employees. Although only around a quarter of temporary staff now claim that they would prefer a permanent job, in the mid-1990s this figure was close to half.

Some of the reasons for employing people on a temporary or fixed-term basis are obvious. Retail stores need more staff immediately before Christmas than in February and ice cream manufacturers need more people in July than November, so both types of business have seasonal fluctuations. Nowadays, however, there is the additional factor of flexibility in the face of uncertainty. Will the new line sell? Will there be sustained business after we have completed this particular contract? In the public sector fixed-term employment has grown with the provision of funds to carry out one-off projects, while the signing of time-limited service provision agreements with external private-sector companies has also become a great deal more common.

Often temporary staff are needed to cover duties normally carried out by a permanent employee. This can be due to sickness absence or maternity leave, or it may occur when there is a gap between one person resigning and another taking up the post. Another common approach is to employ new starters on a probationary basis, confirming their appointments as permanent when the employer is satisfied that they will perform their jobs successfully.

Some argue (e.g. Geary 1992) that managers have a preference for temporary staff because the use of such people gives them a greater degree of control over labour. This control derives from the fact that many temporary staff would dearly love to secure greater job security in order to gain access to mortgages and to allow them to plan their future lives with greater certainty. As a result temporary workers are often keenest to impress and will work beyond their contract in a bid to gain permanent jobs. Their absence levels also tend to be low. Because they work under the constant, unspoken threat of dismissal, they feel the need to behave with total compliance to avoid this. Managers sometimes take advantage of such a situation and push people into working harder than is good for them.

The law on the employment of fixed-term workers has changed in recent years and this may well in part account for the reduction in their numbers. Until October 1999 it was possible to employ staff on fixed-term contracts which contained clauses waiving the right to claim unfair dismissal. This meant that the employer could terminate the relationship by failing to renew the contract whether or not there was a good reason for doing so. It was thus possible substantially to avoid liability for claims of

unfair dismissal by employing people on a succession of short contracts. For fixed-term contracts entered into after October 1999 waiver clauses no longer apply. Henceforth employers who do not renew a fixed-term contract have had to be able justify their decision just as they do with any other dismissal, if they want to avoid court action. Temporary and fixed-term workers also gained a number of further rights via the Employment Act 2002 which implemented the EU's Fixed-term Work Directive. This seeks to ensure that temporary employees enjoy the same terms and conditions as permanent employees undertaking equivalent roles, that employers inform them of permanent vacancies and allow them access to training opportunities. The new law also seeks to limit the number of times that an employer can renew a fixed-term contract without making it permanent without good reason. After October 2006 people who have been employed on a temporary basis for four years or more will be entitled to permanent contracts unless the employer can objectively justify less favourable treatment. People entering temporary contracts after October 2002 are also now entitled to redundancy payments if they are laid off.

A special type of contract is that for apprenticeship. Although this is not to be seen as a contract of employment for the purpose of accumulating employment rights, it is a form of legally binding working relationship that pre-dates all current legislative rights in employment, and the apprentice therefore has additional rights at common law relating to training. An employer cannot lawfully terminate an apprentice's contract before the agreed period of training is complete, unless there is closure or a fundamental change of activity in the business to justify redundancy.

Part-time contracts

At one time part-time working was relatively unusual and was scarcely economic for the employer as the national insurance costs of the part-time employee were disproportionate to those of the full-timer. The part-time contract was regarded as an indulgence for the employee and only a second-best alternative to the employment of someone full time. This view was endorsed by lower rates of pay, little or no security of employment and exclusion from such benefits as sick pay, holiday pay and pension entitlement. The situation has now wholly changed.

Since the 1960s the proportion of the employed workforce on part-time contracts has increased dramatically. Over a quarter of us (seven million) now work on a part-time basis, compared to just 9 per cent in 1961. Table 5.3 shows that this proportion

Table 5.3 Proportion of the total workforce working part time in EU countries (2002)

Country	Per cent	Country	Per cent
Greece	4.5	Austria	18.9
Spain	8.0	Belgium	19.4
Italy	8.6	Denmark	20.6
Portugal	11.3	Germany	20.8
Luxembourg	11.7	Sweden	21.4
Finland	12.4	UK	25.0
France	16.2	Netherlands	43.8
Ireland	16.5	EU Average	18.2

Source: Table compiled from data in Eurostat, *Labour Force Survey*, 2003.

is greater than that in most other EU countries, although there is some difficulty of definition. What is part time? At the moment the British method of calculation classifies anything less than the normal weekly hours at the place of work to be part time, so a part-timer could be working six hours a week or 35. Whatever the definition used, it is clear that the number of part-timers across the EU is steadily growing.

Women account for four-fifths of all part-time workers in the UK, 44 per cent of all female workers being employed on a part-time basis and only 10 per cent of men. Male part-timers are overwhelmingly in the 16–19 and over 65 age groups, suggesting that full-time work is the preference for most men between leaving school and retiring. In the case of women the age pattern is markedly different. Around a quarter of women work on a part-time basis in their twenties, but this figure rises to 40 per cent for women aged 30–34 and to 50 per cent for those aged 35–39. After that the proportion declines somewhat until close to retirement. Among women, therefore, part-time work appears very frequently to be undertaken during the time that their children are at school and that it is the preference for many. Among women with dependent children who work part time, government statistics report that 94 per cent do not want a full-time job (Labour Market Trends 2003c).

Many part-timers work short shifts and sometimes two will share a full working day. Others will be in positions for which only a few hours within the normal day are required or a few hours at particular times of the week. Retailing is an occupation that has considerable scope for the part-timer, as there is obviously a greater need for counter personnel on Saturday mornings than on Monday mornings. Also many shops are now open for longer periods than would be normal hours for a full-time employee, so that the part-timer helps to fill the gaps and provide the extra staffing at peak periods. Catering is another example, as is market research interviewing, office cleaning, clerical work and some posts in education.

Unjustified discrimination against part-time workers has effectively been outlawed in the UK since 1994 when it was held by the courts potentially to amount to indirect discrimination on grounds of sex. Since 2000, however, statute has required that all part-timers and full-timers are treated equally. The Part-time Workers (Prevention of Less Favourable Treatment) Regulations provide that part-time workers are to be given the same pay per hour and the same terms and conditions of employment as full-time colleagues undertaking the same or similar work. All benefits must also be provided to part-timers on a pro-rata basis. Moreover, the regulations state that employers cannot subject workers to a detriment of any kind simply because they work part time. This means, for example, that both part-time and full-time workers must be given equal access to training. It also means that the fact that an employee works part time should not be taken into account when deciding who is to be made redundant. Unlike other forms of direct discrimination, however, in the case of part-timers employers can seek to justify their actions on objective grounds.

Distance working

In the quest for greater flexibility many employers are beginning to explore new ways of getting work done which do not involve individuals working full time on their premises. Working overseas, selling in the field and home-working are the most obvious types of distance working, but advances in information technology have led to increased interest in the concepts of teleworking and tele-cottaging. The term *tele* is the Greek for distant, which is familiar to us in words such as telegram and television.

However, despite the possibilities for such arrangements deriving from new technologies, as few as one in every 50 UK employees are mainly based at home, only a further 2 per cent or so being categorised as 'occasional teleworkers' (IDS 2002c, p. 2).

The main advantage, for both the employer and the employee, is the flexibility that teleworking can provide, but the employer also benefits from reduced office accommodation costs and potential increases in productivity. Employees avoid the increasingly time-consuming activity of commuting to work and can manage their own workload around their home responsibilities and leisure interests. But there is a downside too. Many find working from home all the time to be a rather isolating experience and miss the social life and sense of belonging to a community of colleagues that comes with traditional employment.

The main problem for employers, aside from fostering staff morale, commitment and a sense of corporate identity, is the need to maintain a reasonable degree of management control when the workforce is so geographically diffused. Drawing up an appropriate job specification is thus particularly important in the case of teleworking jobs. It is important to set out clearly defined parameters of action, criteria for decisions and issues which need reference back. Person specifications are also crucial since in much distance working there is less scope for employees to be trained or socialised on the job. In addition, 'small business' skills are likely to be needed by teleworkers, networkers, consultants and subcontractors.

Attention also needs to be given to the initial stages of settling in distance workers. Those off-site need to know the pattern of regular links and contacts to be followed. Those newly recruited to the company need the same induction information as regular employees. In fact, those working independently with less supervision may need additional material, particularly on health and safety. Heightened team-building skills will also be needed to encompass staff who are working on a variety of different contracts and at different locations.

The final key aspect of employing distance workers is the need for a close link between pay and performance. Managers must be able to specify job targets and requirements accurately and to clarify and agree these with the employees concerned. Where a fee rather than a salary is paid, the onus is on the manager to ensure the work has been completed satisfactorily.

Self-employment

In the UK just over three million people are self-employed, which is around 11 per cent of the total workforce. The proportion is somewhat higher in London and the south-east than elsewhere in the country because that is where the industries which employ most self-employed people are most common. Weir (2003) shows that demand for the services of self-employed people is lowest in manufacturing and in the public services. By contrast there are many more opportunities for self-employment in the construction, retailing, property, business services and personal services industries. Three-quarters of self-employed people work for themselves or in partnership with one other person and they are heavily concentrated in skilled trades and professional services occupations. They also tend to be a good deal older than average workers, as many as 31 per cent of older workers employing themselves.

The 1980s saw a substantial growth in the number of self-employed people, but the growth slowed down in the 1990s and has now apparently come to an end. Why this should be is not clear, but it may simply reflect a preference among most people

for employment if they are able to secure a job which they enjoy. The growth in self-employment in previous decades, like the growth in temporary working, may therefore simply be a reaction to conditions of relatively high unemployment and low job security. What is clear is that most employed people earn considerably more than most self-employed people (Weir 2003, p. 449). While around 17 per cent of self-employed people earn well in excess of the national average, the big majority earn substantially less. Some running fledgling businesses struggle to earn anything at all. Some of these earnings figures may be subject to some under-reporting for tax avoidance reasons, but they firmly dispel the myth that self-employment is a route to affluence and an easy life. Many more self-employed people work longer hours for less reward than those employed by organisations.

Increasing the proportion of the workforce that is hired on a self-employed basis has both attractions and drawbacks for employers. While self-employed people typically cost more per hour to employ, they only need to be paid for the time they actually spend completing a job or can simply be paid a set fee for the completion of a project irrespective of how long it takes. The fact that they can be asked to tender for work in competition with others tends to further reduce costs, as does the fact that a self-employed person manages their own taxation and pension arrangements. So overall there are often major savings to be made in replacing certain jobs in an organisation with self-employed people. Moreover, as was shown at the start of this chapter, huge swathes of employment rights such as unfair dismissal and paid maternity leave apply only to employees and not to those employed on a subcontracted basis. The negative implications derive from the inevitable fact that a self-employed person is not obliged to work exclusively for one employer or even to work uniquely in the interests of any one organisation. The relationship is thus more distant and conditional on external influences for its continuance. This can mean that only the minimum acceptable levels of quality are achieved in practice and that the contribution made by the worker to longer-term business development is severely limited. An employer can buy a self-employed person's expertise, but cannot draw on the full range of their energies and commitment as is possible in the case of well-managed employees to whom a longer-term commitment has been made and with whom a closer personal relationship has been forged.

CONSULTANTS

Some management consultants are self-employed people who have gained considerable experience over some years and are in a position to sell their expertise to organisations for a fee. Many more are employed by larger firms which also provide a range of other business services. These tend to be younger people who have substantial, specialist, technical knowledge of particular areas of business activity. Consultants offer advice about issues faced by organisations, but they are also in a position to carry out research, to design new policies and procedures, and to brief or train staff in their effective use. Nowadays a lot of their work involves selling already developed IT products to clients and assisting them to put these into operation. In the HR field this is true of consultancies that specialise in job evaluation and in the provision of personnel information systems.

In many ways consultants thus provide a service analogous to that of an accountant, a lawyer or a financial adviser. However the service is packaged, organisations

are being invited to buy their professional expertise and to apply it (or not) as they see fit. Substantial demand for such services over recent years has meant that consultancy has grown into a major multi-billion pound international industry employing hundreds of thousands of highly qualified people, many of whom are in a position to charge their clients upwards of £3,000 per day. Yet, despite their having been a fixture on the management scene for decades, there remains considerable cynicism about consultancy as a trade (*see* the poem below entitled 'The Preying Mantis'). The following quotation from the leading industrialist Lord Weinstock is born of disappointing experiences:

> Consultants are invariably a waste of money. There has been the occasional instance where a useful idea has come up, but the input we have received has usually been banal and unoriginal, wrapped up in impressive sounding but irrelevant rhetoric. (Caulkin 1997)

WINDOW ON PRACTICE

The Preying Mantis

Of all the businesses, by far,
Consultancy's the most bizarre.
For, to the penetrating eye,
There's no apparent reason why,
With no more assets than a pen,
This group of personable men
Can sell to clients more than twice
The same ridiculous advice,
Or find, in such a rich profusion,
Problems to fit their own solution.
The strategy that they pursue –
To give advice instead of do –
Keeps their fingers on the pulses
Without recourse to stomach ulcers,
And brings them monetary gain,
Without a modicum of pain.
The wretched object of their quest,
Reduced to cardiac arrest,
Is left alone to implement
The asinine report they've sent.
Meanwhile the analysts have gone
Back to client number one,
Who desperately needs their aid
To tidy up the mess they made.
And on and on – ad infinitum –

The masochistic clients invite 'em.
Until the merciful reliever
Invokes the company receiver.
No one really seems to know
The rate at which consultants grow.
By some amoeba-like division?
Or chemobiologic fission?
They clone themselves without an end
Along their exponential trend.
The paradox is each adviser,
If he makes his client wiser,
Inadvertently destroys
The basis of his future joys.
So does anybody know
Where latter-day consultants go? ('Bertie Ramsbottom')

Source: Ralph Windle (1985) *The Bottom Line*. London: Century Hutchinson. Reprinted by permission of the Random House Group Ltd.

The use of consultants is thus a matter about which managers are very divided. In some companies, and increasingly in public-sector organisations, they are employed regularly and found to offer a useful if expensive service. Elsewhere it appears almost to be a matter of policy to resist their blandishments and to tap into alternative sources of advice. The best approach, as with all major purchasing decisions, is to employ them only in situations where there is a good business case for doing so and where they are likely to add value. The most likely scenario is where the organisation needs specialist advice and cannot gain access to it through its internal resources. In the HR field an example would be the need to develop a competitive employment package for an individual who is being sent on long-term expatriate assignment to a country with which people within the organisation are largely unfamiliar. It makes sense in such a situation to take advice from someone who has technical knowledge of the tax systems, pay rates and living standards in that country. Another common situation in which consultants are employed in the HR field is to administer psychometric selection tests to candidates applying for jobs and then to interpret and provide feedback on the results. However, there can also be other reasons for their employment, as Duncan Wood (1985) found in his interviews with well-established HR consultants:

1. To provide specialist expertise and wider knowledge not available within the client organisation.
2. To provide an independent view.
3. To act as a catalyst.
4. To provide extra resources to meet temporary requirements.
5. To help develop a consensus when there are divided views about proposed changes.
6. To demonstrate to employees the impartiality/objectivity of personnel changes or decisions.
7. To justify potentially unpleasant decisions.

ACTIVITY 5.3

What personnel problems currently facing your organisation do you think might best be approached by using outside consultants? Why? How would you specify the requirements?

What personnel problems currently facing your organisation would you not remit to outside consultants? Why not?

The likelihood of securing a positive outcome when employing consultants depends on two conditions being present. First, it is essential that the consultant is given very clear instructions both about the nature of the issue or problem that they are being asked to advise about, and about what the client expects of them. Second, they should only be employed once it has first been established that they are likely to be able to provide knowledge and ideas that cannot be sourced in-house, and that the costs associated with their employment are justified.

WINDOW ON PRACTICE

Typical views about using outside consultants

A Favourable views

1. The HR manager knows what to do, but proposals are more likely to be implemented if endorsed by outside experts.
2. The outsider can often clarify the HR manager's understanding of an issue.
3. Specialist expertise is sometimes needed.
4. The HR manager has insufficient time to deal with a particular matter on which a consultant could work full time.
5. The consultant is independent.
6. Using consultants can be cheaper than employing your own full-time, permanent specialists.

B Less favourable views

1. The HR function should contain all the necessary expertise.
2. In-house HR specialists know what is best for the company.
3. Other members of the organisation are prejudiced against the use of outside advisers.
4. Using consultants can jeopardise the position of the HR specialists and reduce their influence.

OUTSOURCING

Consultants are mainly employed to give advice or to carry out a defined project. In employing them an organisation is effectively subcontracting part of its management process. But organisations can and do subcontract out to specialist service providers a great deal more. The outsourcing of functions which either could be or were previously carried out in-house has become more common in recent years. It is a trend that creates its own momentum because the more outsourcing that occurs, the bigger and better the providers become, making it an increasingly viable proposition for more organisations. Of particular interest to readers of this book is the strong trend that can now be discerned towards the outsourcing (either in whole or in part) of activities that have traditionally been carried out by the HR function in organisations.

According to Colling (2000) the organisational functions which are most commonly outsourced by UK organisations are ancillary services such as cleaning, catering, security, transportation and buildings maintenance. There is nothing new about organisations subcontracting such functions to external providers, but there is clearly an increased trend in that direction. Twenty years ago most larger corporations and the entire public sector managed these ancillary services themselves, employing their own people to carry them out. This is less and less true. Increasingly managers are keen to focus all their energies on their 'core business activities', by which they mean those activities which are the source of competitive advantage and which determine the success or failure of their organisations. There is thus a desire to minimise the amount of management time and effort which is spent carrying out more marginal activities. The decision to outsource is made easier by the fact that specialist security, cleaning and catering companies are often in a position to provide a higher-quality standard of service at a lower cost than can be achieved by in-house operations. This is because for them the provision of ancillary services is the core business and they have the expertise, up-to-date equipment, and staff to run highly efficient operations. Moreover, their size means that they can benefit from economies of scale that are not available to the far smaller locally run operations.

The nature and standard of services that the external company provides are determined by the service level agreement that is signed. This will usually follow on from a competitive tendering exercise in which providers of outsourced services compete with one another to secure a three- or five-year contract. If the standards of service fall short of those set out in the agreement, the purchasing organisation is then able to look elsewhere, and can in any case sign a new agreement with a different provider at the end of the contract. This should ensure that high standards are maintained, but the evidence suggests that outsourcing frequently disappoints in practice. Reilly (2001, p. 135) lists all manner of problems that occur due to poor communication, differences of opinion about the service levels being achieved and different interpretations of terms in the contract. These occur because it will always be in the interests of the providing company to keep its costs low and in the interests of the purchasing company to demand higher standards of service and value for money.

In practice the theoretical advantages of outsourcing thus often fail to materialise. Serious cost savings are often difficult to achieve, largely because the Transfer of Undertakings laws require existing staff to be retained by the new service provider on their existing terms and conditions, yet standards of service may actually decline. Loss of day-to-day control means that problems take longer to rectify because complaints have to be funnelled through to managers of the providing company and

cannot simply be addressed on the spot. It is also hard in practice to replace one contractor with another, as well as being costly, because there are a limited number of companies that are both viable over the long term and interested in putting in a bid. So great care has to be taken when adopting this course of action. Expectations need to be managed and deals should only be signed with providers who can demonstrate a record of satisfactory service achieved in comparable organisations.

These potential obstacles have not stopped a number of large corporations from outsourcing large portions of their HR functions in recent years. The service level agreements that are signed typically involve a specialist provider taking over responsibility for the more routine administrative tasks that are traditionally carried out by in-house HR teams. These include payroll administration, the maintenance of personnel databases, the provision of intranet services which set out HR policies, recruitment administration and routine training activities. Such arrangements enable the organisation to dispense with the services of junior HR staff and to retain small teams of more senior people to deal with policy issues, sensitive or confidential matters and union negotiations.

ACTIVITY 5.4

Make a list of all the major activities carried out by your organisation's HR function. Which of these could realistically be outsourced and which could not and why?

SUMMARY PROPOSITIONS

5.1 The law distinguishes between 'employees' and 'workers', the former enjoying a wider range of statutory and contractual rights than the latter.

5.2 Once a contract is established its terms cannot be broken by either party without the consent of the other.

5.3 Patterns of work vary considerably. The traditional Monday to Friday, 9–5 pattern is increasingly giving way to new shift patterns and contractual arrangements.

5.4 In recent years we have seen a growth in the number of 'atypical contracts' such as those which provide work on a temporary or fixed-term basis.

5.5 New technologies allow a greater proportion of people to work from home. This development brings all manner of new challenges for HR managers.

5.6 The use of outside consultants to undertake HR activities is rising.

5.7 Larger organisations and public-sector bodies are increasingly outsourcing functions that are not considered to be 'core' to their operations. This includes some HR activities.

GENERAL DISCUSSION TOPICS

1 What are the advantages and disadvantages of part-time working for the employer and for the employee? In what ways do the age and domestic situation of the employee alter the answer?

2 The chapter indicates some of the problems in employing consultants and specialist outsourcing companies. How can these be overcome?

3 What is the future for teleworking?

FURTHER READING

Beynon, H., Grimshaw, D., Rubery, J. and Ward, K. (2002) *Managing Employment Change: The New Realities of Work*. Oxford: Oxford University Press
This provides a critical perspective on many of the trends introduced in this chapter. The authors draw on seven case studies of UK organisations to explore why employment restructuring is occurring and its consequences.

Colling, T. (2000) 'Personnel management in the extended organisation', in S. Bach and K. Sisson (eds) *Personnel Management: A Comprehensive Guide to Theory and Practice in Britain*. Oxford: Blackwell
This article gives an excellent summary of research into the increased use of outsourcing in the UK and the implications of the trend for HR practice. The author explores all the problematic issues and presents useful case study evidence.

Incomes Data Services (IDS) publications
Incomes Data Services regularly publish studies focusing on different types of contractual arrangement which draw on the experiences of larger UK employers. Recent publications have covered *Annual Hours*, IDS Study 721 (January 2002), *Flexitime Schemes*, IDS Study 725 (March 2002), *Teleworking*, IDS Study 729 (May 2002) and *Outsourcing HR Administration*, IDS Study 746 (Spring 2003).

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An extensive range of additional materials, including multiple choice questions, answers to questions and links to useful websites can be found on the Human Resource Management Companion Website at **www.pearsoned.co.uk/torrington**.