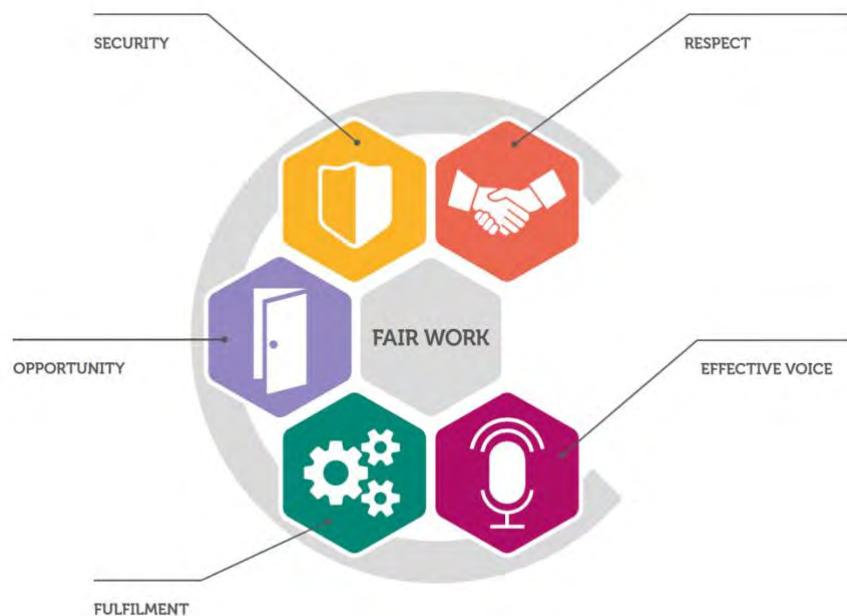


Fair Work in Scotland

A Guide for Union Representatives



August 2023



Introduction

In August 2023, the Jimmy Reid Foundation published a report, ***Assessing Fair Work in Scotland***, supported by the Alex Ferry Foundation. The report concluded that the voluntary approach to Scotland's Fair Work initiative had made some limited but positive improvements to working lives, particularly in the broader public services. However, it has not yet delivered major results, as evidenced by the continued prevalence of poor-quality work across Scotland's labour market. If Scotland is to claim to be a Fair Work Nation in 2025, much more needs to be done to turn the worthy ambition into reality.

The report examined Fair Work and its impact on the workplace, using the experiences of workplace representatives. The findings showed that Fair Work has good name recognition in the public and voluntary sectors if little traction in the private sector. However, a detailed understanding of the principles and measures to deliver Fair Work was limited. Fair Work has improved working lives over a range of bargaining issues and has been used effectively by representatives in negotiations. It had been most effective in raising minimum wage levels with less progress in delivering on the other principles. Representatives recognised that Fair Work can contribute towards improving working lives. However, they needed more information, better guidance, and more robust enforcement to make further progress. They also looked to their trade unions to do more to support representatives.

This guide introduces the Fair Work initiative and provides a toolkit for union representatives. It includes the steps that workplace union representatives can adopt jointly with employers and unilaterally if needed.

You can read the full report on our website: <https://reidfoundation.scot>

Fair Work in Scotland

The Scottish Government has determined that Scotland will become a Fair Work Nation by 2025. To this end, it established the Fair Work Convention (<https://www.fairworkconvention.scot>) in 2015, which, in turn, authored the Fair Work Framework consisting of five aspirational dimensions: voice, security, respect, opportunity and fulfilment. Scottish Government policy aims to progress along these dimensions by various voluntary means and by using devolved levers such as procurement and grant conditions. Employment law is reserved to Westminster.



Trade unions in Scotland called for the creation of Fair Work, welcomed its aspirations and now serve on the Fair Work Convention. However, they also recognise the limitations of Fair Work and have been critical of its implementation. STUC Congress in 2022 acknowledged that while there was the potential to radically reform workplaces and enhance workers' lives, the pandemic had highlighted that Fair Work in Scotland remains the exception as opposed to the rule for too many workers.

The Scottish Government introduced its 'Fair Work First' procurement rules in October 2018, adding more teeth to the process (<https://www.gov.scot/publications/fair-work-first-guidance-2>). This made the Fair Work criteria the default (but not universal) approach to public procurement, *'Details will vary depending on the size of companies and the circumstances of different sectors, but Fair Work First means investment in skills and training, no exploitative zero hours contracts, action on gender pay, genuine workforce engagement, including with trade unions, and payment of the Real Living Wage.'*

In July 2023, the Scottish Government extended Fair Work encouragement to public sector grants. Organisations will need to demonstrate they pay at least the real Living Wage and provide channels for workers to have an effective voice as a condition of the application.

How union representatives have used Fair Work

The Reid Foundation report interviewed a wide range of union representatives to examine their experience of Fair Work. These were mainly workplace representatives, although some had broader responsibilities as branch officials.

Almost all of the representatives in the public sector interviewed had heard of Fair Work, but most had a limited understanding of its principles or measures. Knowledge was strongest in central government and NHS Scotland, with most able to articulate some of the principles and actions taken. This was weaker the further away from the centre they worked. Less than one-third of representatives had done any updating of their knowledge of Fair Work. Of those, several referenced circulars from their union or mentions in union publications or at conferences. A handful regularly visited the FWC website or had seen its publications.

Around one-third of representatives had used Fair Work to negotiate with employers. Examples included:

- Pay claims.
- Promoting industry rates of pay.
- Moving fixed term to permanent contracts.
- Including Fair Work in the organisation's procurement contracts and policies.
- Facility time.
- Annual leave.
- Training and education provision.
- Improving recruitment processes.
- Challenging zero-hours contracts and fire and rehire practices
- Cuts to allowances.
- Trade union recognition.

Fair Work was frequently deployed defensively in negotiations. For example, when employers sought to do something contrary to Fair Work principles. While it certainly didn't replace traditional negotiating leverage, such as industrial action, Fair Work was viewed as a helpful leverage in negotiations by a significant number of representatives. When asked why Fair Work was not used, representatives commonly described a lack of information, scope or clarity about what it means in practice. This applies to representatives and employers, particularly middle managers and below. Several representatives commented that Fair Work was used at the employer level but had not fed through to local negotiations.

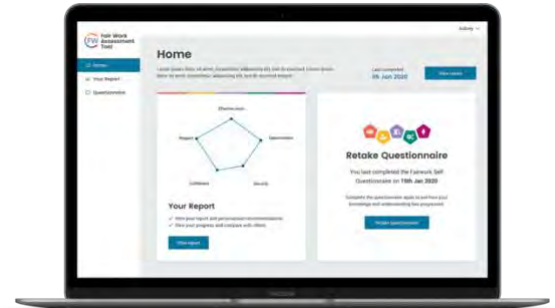
Representatives interviewed were not opposed to Fair Work and recognised that it could improve working lives. However, they indicated that it requires more information, better guidance, and robust enforcement to progress further. These views are reflected in the Reid Foundation report recommendations.

How union representatives can assess Fair Work

Union representatives can access several existing tools to help assess their experience of Fair Work in the workplace and start a discussion about how to improve implementation.

Fair Work Employer Support Tool, <https://fairworktool.scot>

There is a Fair Work Employer Support Tool promoted by the Fair Work Convention, the Scottish Government and its agencies. It provides a fairly basic questionnaire that gives registering organisations an overview of their performance under the five Fair Work principles. Workplace representatives might use this tool to complete the questionnaire with their employer doing it simultaneously. They could then compare results to identify differences in perception of progress and use that as a basis for discussion.



Fair Work Convention. How fair is your work? <https://quiz.fairworkconvention.scot>

The Fair Work Convention has an online self-assessment tool designed to help anyone assess their experience of fair work and suggest actions to improve it. It is currently in beta status and is being updated. While it is currently relatively limited, it may provide a starting point for workplace representatives to begin discussing Fair Work in their workplace.

CIPD Scotland, Fair Work resource area, <https://www.cipd.org/uk/about/public-policy/supporting-local-good-work-standards/scotland-fair-work-convention/>

The Chartered Institute of Personnel and Development (CIPD) has a comprehensive resource area for Fair Work in Scotland. The CIPD is a partner with the Fair Work Convention, arguing that Fair Work is central to achieving inclusive growth and improving job quality and productivity for all employees. Under each principle, they include resources that set out their views, research and insights, and guidance and factsheets. While these resources address Fair Work from an employer perspective, their guidance and research identify the benefits of collective representation and working constructively with trade unions. Union representatives can use the resources to evidence positive Fair Work practices in some of the Fair Work principles.

There are a range of trade union guides to aspects of Fair Work that workplace representatives can use to review Fair Work in the workplace. For example, most unions have guides to workplace equality, and the TUC has an Equality Duty Toolkit (https://www.tuc.org.uk/sites/default/files/extras/equality_toolkit.pdf). The STUC also has a range of resources on Fair Work and organising (<https://stuc.org.uk/fair-work-organising>).

Actions for Workplace Representatives

We recommend that union representatives start with a few basic Fair Work actions:

1. Ensure they understand the Fair Work principles and how they apply to their organisation. Ask for training from their trade union or develop a joint training plan with the employer.
2. Publicise Fair Work in local union publications, social media platforms and workplace meetings.
3. Undertake a short survey of members to seek their views on how well the employer abides by Fair Work principles.
4. Propose a joint evaluation with the employer using the Fair Work Employer Support Tool.
5. Establish a Joint Fair Work task group to advise the bargaining machinery on developing an action plan. This should collect the available evidence or propose the necessary data collection and analysis.
6. Agree on a joint statement setting out the baseline position the organisation has reached. Ensure senior management signs up to the action plan and personally demonstrates their commitment.
7. Agree on how the organisation intends to meet Fair Work principles and set priorities. This should ensure Fair Work is built into all policies, not simply a cosmetic addition.
8. Agree on a regular monitoring process to evaluate progress on Fair Work.

If the employer is unwilling to take meaningful action, representatives could consider steps including:

1. Undertake a union assessment of how well the employer meets Fair Work principles following the member survey. This could still use the Fair Work Employer Support Tool or at least ask key questions, including:
 - Do the collective bargaining arrangements or other employee voice mechanisms genuinely engage with the workforce in a two-way process? Are representatives consulted before decisions are made?
 - Is there adequate facility time to ensure Fair Work is delivered?
 - Do line managers understand Fair Work? Has it been included in management training, and has senior management demonstrated their commitment?
 - How does the employer ensure all the workforce can enter and progress with the organisation? How does the employer prioritise and monitor diversity?
 - What training opportunities and plans exist? Monitor spending on training and development and who is receiving it.
 - How secure is employment within the organisation? Does the employer use zero-hours or temporary/fixed-term contracts? Have fire and rehire practices been used?
 - Do pay and conditions reflect the cost of living crisis, and how is pay progression evaluated? Is pay policy transparent throughout the organisation?
 - Are flexible working arrangements fair and adequate? Is the compressed working week available in practice?
 - Does the sick pay scheme and absence management arrangements ensure staff security?
 - What are the pension arrangements, and are they applied equitably across the workforce?

- Do workers find their jobs fulfilling? Is there a positive workforce culture that respects workers? Have any job design initiatives been implemented? What level of job autonomy has been introduced? Has training been undertaken to address any negative behaviours?
 - How is health and safety organised? Are safety concerns taken seriously? Is sickness absence monitored for signs of organisational failure, such as mental health? Are occupational health arrangements adequate and independent?
2. Identify workforce data that may be relevant to evidence of Fair Work action. For example, turnover, diversity, tribunal applications, health and safety reports, sickness absence, grievance and disciplinary actions.
 3. If the employer is reluctant to make progress, identify any levers that might apply to the organisation. For example, are they the recipient of public sector contracts or grants?
 4. If internal persuasion fails, seek advice from the trade union on appropriate external actions, including industrial action, publicity, raising with the government, contract providers etc.

Conclusion

This guide describes the Fair Work initiative in Scotland as a largely voluntary effort to raise employment standards using the powers of the devolved administration, including soft power encouragement and harder-edged procurement and grant awarding powers. The public sector is Scotland's major employer and can lead by example. Fair Work reflects a broad consensus across civil society and politically in Scotland that poor work drives negative outcomes beyond the labour market. Insecure work, long hours and low pay impact families and communities and are key drivers of inequality.

To move beyond aspiration to implementation that delivers fundamental change to employment culture, the Reid Foundation report looked at various proposals to make Fair Work more effective. It also made recommendations that are within the powers of the Scottish Government, employers and trade unions to implement.

At the workplace level, Fair Work has improved working lives over a range of bargaining issues and has been used effectively by representatives in negotiations. However, more could be achieved if union representatives were better equipped to use Fair Work more effectively. We hope this guide will assist union representatives in this task.

CAN SCOTLAND BECOME A FAIR WORK NATION IN 2025?
From ambition to delivery

PRINCIPLES
Define, refresh and communicate Fair Work principles.
Fully incorporate health and safety, flexible working and self-employment.

ENFORCEMENT
Call out poor employers.
Deliver and fund sectoral collective bargaining.
Proper evaluation weighting and monitor compliance.

PROCUREMENT
Widen Fair Work First and the National Performance Framework to all Fair Work dimensions.
Use all the levers of government, including skills, tax and incentives.

NATIONAL WORKFORCE FRAMEWORK
Staff governance framework for the public sector. Leading by example and setting a Fair Work template.

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For further information please visit our website, <https://reidfoundation.scot>,

or email: contact@reidfoundation.scot