

ASSESSING FAIR WORK IN SCOTLAND

A Jimmy Reid Foundation
report supported by the
Alex Ferry Foundation

August 2023



The Jimmy Reid
Foundation

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Executive Summary

- The Scottish Government has determined that Scotland will become a Fair Work Nation by 2025. To this end, it established the Fair Work Convention 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.
- Successive Scottish governments have sought to develop a distinctive approach to industrial relations in Scotland since devolution. From the Memorandum of Understanding with the STUC to the Fair Work Convention, this collective approach can fairly be contrasted with the anti-trade union stance of the current UK Government.
- Fair Work is a response to a broad consensus across civil society and politically in Scotland that poor work drives negative outcomes beyond the labour market. Fair Work has had a limited but positive impact, particularly on coverage of the Real Living Wage. However, surveys suggest there is a long way to go to fully embed Fair Work across the economy, and systematic differences in access to Fair Work remain. Most workers are overworked, with few training opportunities, and even before the cost of living crisis hit, one-third struggled to pay their bills. One-fifth of workers have no voice at work, and collective bargaining coverage is falling.
- Trade unions in Scotland welcome Fair Work and use it in their activities. However, the outcomes are mixed. The initiative has improved working lives in the public sector, with less low pay and agreements on improved working conditions. In the private sector, voluntarism has limitations, particularly in sectors less likely to engage with the policy.
- Our interviews with union representatives indicate 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 is limited. Strong in central government but weaker the further an organisation is from the centre. Fair Work has improved working lives over a range of bargaining issues and has been used effectively by representatives in negotiations. Representatives recognise that it can contribute towards improving working lives. They believe it requires more information, better guidance, and robust enforcement to progress further. Trade unions can also do more to support representatives.
- While Fair Work has broad support in principle, the main complaint of almost all those interviewed in this study has been the slow pace of change and effective implementation. We have therefore examined a range of proposals for making Fair Work more effective. We make 19 recommendations for action that cover better communication, tackling poor employment practices, and promoting sectoral collective bargaining in areas where the government has the most leverage. Levers like procurement, grants, skills and economic policy need to be used more

proactively, along with better labour market data and monitoring. A National Workforce Framework would allow the public sector to lead by example, coupled with further action on flexible working and health and safety. There is a strong case in principle for devolving employment law to Scotland. However, that case needs to be developed and then promoted.

- The final chapter examines the available support tools to help workers and employers develop Fair Work. From the evidence collected from workplace representatives, we set out recommendations for further action and a toolkit of steps that workplace union representatives can adopt, hopefully in partnership with employers but unilaterally if needed.
- We conclude that the voluntary approach to Scotland’s Fair Work initiative has 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. We offer this report as a contribution to that work.

August 2023.

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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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. Little is known about the impact of Fair Work in the workplace, and evaluating its impact is challenging due to limited Scottish workplace data.

This study examines Fair Work and its impact on the workplace, building on an earlier Jimmy Reid Foundation assessment¹. We will discuss the scope of the initiative and seek to identify from workplace representatives their experiences. We will recommend further action and a toolkit of steps that workplace union representatives can adopt from this evidence. In this report, we use the description of *workplace representative* to mean those union representatives who directly represent workers, from shop stewards to branch officers covering one or more workplaces.

We are grateful for the time and contributions of workplace representatives and others that enabled this study and for the support and funding of the Alex Ferry Foundation.



¹ G. Gall, *Fair Work in Scotland – a critical assessment*, (Reid Foundation, 2021), <https://reidfoundation.scot/2021/06/critique-of-scottish-governments-fair-work-policy-published/>

1. Fair Work in Scotland

The Journey to Fair Work

From the outset of devolution, successive Scottish governments have sought to develop a distinctive approach to industrial relations in Scotland. The Labour-Liberal coalitions from 1999 to 2007 and the subsequent SNP administrations signed Memorandums of Understanding (MoU) with the trade union movement in Scotland through the STUC². These were designed to establish a partnership while recognising each other's roles and functions. The high-level aspiration was *'to make Scotland a vibrant economy, stable and innovative, to deliver a high standard of living to all her citizens.'*

The practical application of these MoUs was to apply partnership working principles to the relationship between trade unions and government. This was delivered through formal dialogue with the STUC and individual affiliates., and informal engagement at an early stage in policy development. For example, when a civil service group was established to take forward legislation, there would be early contact and discussion with the relevant trade unions. Trade unions were invited to serve on legislation teams and had an opportunity to influence Bills and policy at an early stage. This didn't mean there was always agreement. For example, over the use of private finance, but it did mean fewer surprises, and both sides understood each other's position when there was a public falling out.

While there were few formal places for trade union representatives on public bodies, there was a drift in that direction following the MoU, particularly in bodies with a direct role in the workplace, such as skills. It didn't always work, with Scottish Water having an employee interest director rather than the union preference for a trade union representative. In contrast, NHS Boards have employee directors appointed by the trade unions. University Principals reacted somewhat hysterically to an elected governing body chair and two places for trade union representatives.³

While this engagement was at a reasonably high policy level, the broad principles started to feed into industrial relations structures. The best example was introducing a new HR policy in NHS Scotland in 1999. This was subsequently given a statutory basis in the NHS Reform (Scotland) Act 2004 through the Staff Governance Framework⁴. This allowed those involved (trade unions, NHS employers and the Scottish Government) to modernise employment practices based on partnership working.

² Memorandum of Understanding between the Scottish Government and the STUC (May 2015)

https://stuc.org.uk/files/Document%20download/Memorandum%20of%20Understanding/375794_SGand_STUC_Memo_WEB.pdf

³ Watson, D, *Dragging university bosses out of the Middle Ages* (2015)

<http://unisondave.blogspot.com/2015/09/dragging-university-bosses-out-of.html>

⁴ NHS Scotland, *Staff Governance Framework*, <https://www.staffgovernance.scot.nhs.uk>

It sought to turn a fractious industrial relations culture into a partnership model. An independent evaluation by Nottingham University concluded, *'In our view, partnership in NHS Scotland has matured into probably the most ambitious and important contemporary innovation in British public sector industrial relations.'*⁵ That doesn't mean it is perfect. The 2019 review of partnership working undertaken by the Scottish Centre for Employment Research, University of Strathclyde, highlighted several challenges, including resources and reach⁶. However, they concluded, *'it is clear that partnership working in NHS Scotland delivers impressively on employee voice at all levels.'*

While pay policy was a regular bone of contention, along with the claimed 'social wage' trade-off between pay restraint and benefits, the policy of no-compulsory redundancies was another example of a different approach in Scotland. However, it was limited to central government, leaving local government workers at risk, and the funding of council services has been a point of difference to the present day.

The Scottish approach occasionally rubbed off on reserved issues, with the Partnership on Health and Safety in Scotland (PHASS) being one example. However, the UK Conservative Government can still undermine industrial relations through its control of employment law. The campaign against the 2015 Trade Union Bill did draw a high degree of political consensus in Scotland, with even Conservative MSPs giving only muted support to their Westminster colleagues in the Scottish Parliament debate. The idea that a UK Government can direct the detail of industrial relations in a Scottish council or health board was firmly rejected by the Scottish Parliament.

The Scottish Government took some actions to minimise the impact through public sector guidance. For example, while public bodies have to report their facility time to the UK Government, Scottish guidance puts facility time in its proper context with the joint STUC/Scottish Government publication guidance;⁷

'We believe that facility time adds value to the management of public sector organisations by providing a framework for constructive consultation and negotiation with employers, ensuring the effective voice of workers and improving workplace relations. The Scottish Government considers that facility time is an investment in the prevention of workplace disputes, providing savings to both the public sector and the public purse, through a reduction of negative impacts on staff time and the number of working days lost through industrial action. In addition, involving the trade unions as partners in public sector

⁵ N.Bacon & P.Samuel, *Partnership in NHS Scotland 1999-2011*, (Nottingham University, 2012)
<https://www.staffgovernance.scot.nhs.uk/media/1384/nottingham-report.pdf>

⁶ Findlay, Stewart & Lindsay, *Review of Partnership Working in NHS Scotland* (2019),
<https://innovatingworks.org.uk/dist/assets/NHSScotland-Partnershp-Final-Report-31-January-2019.pdf>

⁷ Facility time reporting (2018), <https://www.gov.scot/publications/guidance-facility-time-reporting-public-sector-employers/>

organisations also contributes to our success and the well-being of our employees and facility time is an essential part of achieving this.'

The Scottish Living Wage was significantly boosted thanks to this partnership approach between the Scottish Government and the STUC. The Government agreed to fund field workers, which resulted in many more organisations in Scotland becoming Living Wage Employers. Today the number has reached 2,900, higher than any other country in the UK, and 91% of workers in Scotland earn at least the living wage. This was good news for workers as they got higher wages, improving health and job motivation. It's good for employers because it reduces turnover, improves productivity and attracts better staff through reputational gain. The wider community benefits through lower benefit costs, less stress on the NHS and cash into the local economy. Most of the public sector (excluding local government) was required to pay the Scottish Living Wage, and an agreement was eventually reached on procurement legislation through a workable 'get around' perceived barriers in EU procurement rules. The latest procurement survey indicates that the Scottish Living Wage has slowly become the norm in public procurement.



Fair Work Initiative

The current Fair Work initiative came out of the *Working Together* review⁸, chaired by Jim Mather and had a broad-based membership from employers, trade unions and academics. The aim was to identify best practices to promote workplace collective bargaining and innovation. In many ways, the strength of this report was in the description of industrial relations in Scotland. It dispelled many myths about relations between unions and employers, highlighting the positive relationships that rarely get media coverage. Scotland does benefit from higher union density than the rest of the UK, but this report went further in setting out the range and depth of industrial relations practice.

This report followed the Christie Commission on the future delivery of public services⁹. It was chaired by a former STUC General Secretary, with a UNISON official (this author) as an expert advisor – an approach inconceivable from the UK Government of the time. The report emphasised empowering staff, saying, *'We believe that front-line staff, along with people and communities are best placed to identify how to make things work better. It is critical that managers at all levels support staff in empowering users and communities, and to give fresh meaning to their own work.'* This included support for Systems Thinking approaches championed by John Seddon, which challenged the pervasive thinking of the time in favour of shared services. The report concluded, *'The objective of*

⁸ Working Together Review (2014)

<https://www.webarchive.org.uk/wayback/archive/20170107140812/http://www.gov.scot/Publications/2014/08/4647>

⁹ Christie Commission on the future delivery of public services (2011) <https://www.gov.scot/publications/commission-future-delivery-public-services/pages/10/>

public services must be to provide a positive and creative environment for the workforce, which will require a substantial shift in attitude within many existing organisations.'

The Scottish Government established the Fair Work Convention (FWC) in April 2015¹⁰. The first significant output from the FWC was the 'Fair Work Framework' (FWF) the following year¹¹. This framework expanded on the MoU by covering how the private sector and other public sector employers should treat their workers. Its aspirational vision was *'that, by 2025, people in Scotland will have a world-leading working life where fair work drives success, wellbeing and prosperity for individuals, businesses, organisations and society.'*



The FWF was 'enthusiastically' welcomed by the STUC General Secretary, arguing that *'Such an explicit statement of the importance of fair work and the role of unions in delivering it is not to be found anywhere else in the world.'*¹² It has to be seen in the context of the attacks on trade unions by the UK Government of the time through the Trade Union Bill. The Reid Foundation published a critique of the FWF at the STUC in April 2018¹³. The primary criticism of the FWF was *'that while it had laudable aims it is completely woeful in providing the mechanisms by which to achieve these aims.'* In particular, it

¹⁰ Fair Work Convention, <https://www.fairworkconvention.scot>

¹¹ Fair Work Framework (2016), <https://www.fairworkconvention.scot/wp-content/uploads/2018/12/Fair-Work-Convention-Framework-PDF-Full-Version.pdf>

¹² STUC on Fair Work Framework, (March, 2016), <https://stuc.org.uk/media-centre/news/1230/stuc-on-fair-work-framework>

¹³ Reid Foundation Quick Note, *Failure of the Fair Work Framework*, <https://reidfoundation.scot/2016/04/failure-of-the-fair-work-framework/>

had no accreditation system like the Scottish Living Wage, limited use of procurement powers, or periodic assessment of progress.

The Scottish Government's 'Fair Work First' announcement in October 2018 added more teeth to the process. 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.'*¹⁴

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 application¹⁵. Wellbeing Economy and Fair Work Secretary Neil Gray said:

'Public sector funding should be used for the wider benefits needed in a wellbeing economy, such as the promotion of fair work – including the creation of more high quality, well paid jobs. This in turn will support stronger businesses, and vibrant, healthy communities.' How this new provision will be applied in practice remains to be seen. In particular, how 'effective voice' will be evaluated.

The Scottish Government has a system of National Performance Indicators (NPI). These include a section on Fair Work and Business. Specific Fair Work indicators include employees on the living wage, gender pay gap, gender balance, contractually secure work, and employee voice¹⁶. The vagueness of the employee voice concept has been a criticism of Fair Work, with some employers claiming one-to-one meetings with managers and team meetings should meet the criteria. However, in the National Performance Indicators, the measurement is now, *'The percentage of employees who agree that they are affected by collective agreement, defined as whether agreement between trade union and employer affect pay and conditions.'* There are some general criticisms of NPI, not least the quality of outdated data, reflecting a broader concern about Scotland's limited labour market

The voluntary approach reflected another Scottish Government initiative, the Scottish Business Pledge¹⁷. To achieve Pledge status, the organisation has to meet the first three core Business Pledge elements by ensuring all employees (excluding Modern Apprentices and those under 18) are paid the real Living Wage or above, have no inappropriate Zero Hours contracts, and are taking action to close the gender pay gap. Next, they must commit to at least five of the seven other Pledge elements to

¹⁴ 'Fair Work First' announced by FM, (Oct. 2018), <https://www.gov.scot/news/fair-work-first-announced-by-fm/>

¹⁵ Encouraging Fair Work, (July, 2023), <https://www.gov.scot/news/encouraging-fair-work/>

¹⁶ Scottish Government, National Indicator Performance, <https://nationalperformance.gov.scot/measuring-progress/national-indicator-performance>

¹⁷ Scottish Business Pledge, <https://scottishbusinesspledge.scot>

achieve over time. Only 820 organisations (0.5% of businesses in Scotland) have made the Pledge so far, and it is evident from the website that little has happened with the Pledge in recent years. Most of the signatories have come from sectors with traditionally better terms and conditions of employment, and very few from the hospitality sector.

One of the challenges in delivering Fair Work is getting engagement from a wider range of employers. Melanie Sims (University of Glasgow) studied employer coordination in Scotland, and highlighted, *'A lack of systematic attention to coordination means that channels of consultation of employers are often relatively ad hoc, which risks a lack of legitimacy and representativeness.'* Her key argument is that social partners are shaped by the context of the structures, institutions and ideas within which they operate¹⁸. This makes the case for stronger Fair Work institutions, including sectoral collective bargaining, to strengthen the effectiveness and legitimacy of employer coordination.

The FWC has published an action plan to help deliver the aspirations in the Framework and ensure Scotland becomes a leading Fair Work nation by 2025. The latest version outlines actions to promote fair and inclusive workplaces across Scotland. This incorporates actions on tackling the gender pay gap, the disability employment gap, and an anti-racist employment strategy, driving Fair Work practices for all¹⁹. The political context remains a sustained attack on trade union rights by the UK Government, with the Strikes (Minimum Service Levels) Bill described as a full-frontal assault on the right to strike²⁰. The action plan commits the Scottish Government to *'do all it can within devolved powers to promote and embed fair and inclusive working practices.'* At the same time, urging the UK Government to adopt a fair work approach to employment reforms and oppose any regression of employment and trade union rights.

The Fair Work action plan points to the success of the Scottish Living Wage with accreditation proportionately five times as many as in the rest of the UK. It also claims Scotland outperformed the UK on the full-time median Gender Pay Gap since 2003 and reduced the Disability Employment Gap. After a slow start, progress is being made on procurement, with the Fair Work First criteria being applied to some £ 4 billion of public funding since 2019. Updated Statutory Guidance under the Procurement Reform (Scotland) Act 2014 was published in May 2022. This also extends the Fair Work First criteria to include specific references to providing flexible working and not using fire and rehire practices. The Scottish Government has also announced the introduction of a requirement for the recipients of public sector grants to pay at least the real Living Wage and provide appropriate, effective voice channels.

¹⁸ M.Simms, *The dynamics shaping experiences and prospects of employer coordination in a Liberal Market Economy: The case of Scotland*, (EID, 1-23, 2003), <https://eprints.gla.ac.uk/299279/1/299279.pdf>

¹⁹ Fair Work Action Plan (December 2022)
<https://www.gov.scot/binaries/content/documents/govscot/publications/strategy-plan/2022>

²⁰ TUC slams "full-frontal assault" on the right to strike (Jan, 2023), <https://www.tuc.org.uk/news/tuc-slams-full-frontal-assault-right-strike-ministers-steamroller-strikes-bill-through-commons>

Elements of Fair Work have also been introduced into the inward investment process managed by Scottish Development International (SDI). 8,533 jobs were created or safeguarded through inward investment in 2022/23, an increase of 9% compared with the previous year. More than 99% of these jobs - 8,519 in total - pay above the real living wage²¹. SDI also claims that *'inward investment projects not only deliver high-quality, well-paid jobs, they can also act as a catalyst to accelerate innovation in fast-growing industries.'* While this is good news about the Living Wage, most inward investment is in sectors like digital, where market pay rates are above that level anyway. In its reports, SDI does not reference other Fair Work principles, such as collective bargaining. The Scottish Government is committed to Fair Work principles in their Green Freeports. However, as this is a joint venture with the UK Government, it remains to be seen if this commitment is enforced.

The Fair Work Convention has also undertaken several sector inquiries into Fair Work. In 2019 they published a report *Fair Work in Scotland's Social Care Sector 2019*²². The report called for urgent interventions to improve the quality of work and employment for the 200,000-strong workforce in Scotland. It made five recommendations, including for the Scottish Government to support the creation of a new sector body that establishes minimum standards for fair work terms and conditions and to reform social care commissioning. The Independent Review of Adult Social Care report fully incorporated recommendations from the Fair Work Convention's inquiry. However, three years later, the FWC expressed frustration over the delay in implementing the Social Care Inquiry recommendations, saying, *'The urgent priority must be supporting the workforce and delivering fair work through a sectoral bargaining agreement.'* The report of the Advisory Group on Economic Recovery (June 2020) also recommended that collectively bargained Fair Work Agreements should be put in place in the social care sector, and in the hospitality sector, with a view to concluding agreements within a year.

“There isn't enough money and that's a lot to do with the value of the profession, the way the profession is considered in society.”

Other inquiries have examined challenging sectors, including the construction and hospitality industries. The construction inquiry found that while many employers have implemented Fair Work in their business, the construction industry is not consistently delivering fair work and made 26 recommendations for change²³. They also surveyed workers' experiences during the pandemic,

²¹ SDI, *Inward investment continues to deliver for Scotland*, (June 2023), <https://www.sdi.co.uk/news/inward-investment-continues-to-deliver-for-scotland?returnurl=%2fnews>

²² Fair Work in Scotland's Social Care Sector 2019 (FWC, 2019) <https://www.fairworkconvention.scot/our-report-on-fair-work-in-social-care/>

²³ Building Fair Work into the Construction Industry, (FWC, 2022), <https://www.fairworkconvention.scot/fair-work-in-scotlands-construction-industry-2022/>

highlighting issues around inadequate sick pay, health and safety and flexible working²⁴. Several webinars have been held to look at specific Fair Work challenges, including a Just Transition to a net zero economy. The Just Transition Commission in its latest advice to the Scottish Government has said, *'Fair work considerations must be a central and explicit focus of all Just Transition Plans. Many of the new jobs required by our Energy transition will be in construction, and there is a risk local communities may not enjoy the full benefit of this unless a stable and settled workforce can be created within the areas where this work needs to occur.'*²⁵

The FWC has also developed practical tools to help workers assess Fair Work in the workplace and a support tool for employers. This was followed by strategic partnerships with CIPD Scotland and the Scottish Council for Voluntary Organisations (SCVO).

The Scottish Government often references the importance of Fair Work in their plans for the Scottish Economy. For example, the then First Minister, Nicola Sturgeon, when welcoming the Fair Work Action Plan, said, *'Fair work is not only right in principle, it also results in better health and greater wellbeing for workers. In turn, this drives creativity, innovation and productivity. It also reduces staff turnover, which means increased profitability for businesses'*.²⁶ These messages are usually put in the context of what more could be done if employment rights were devolved and Scotland was an independent country. John Swinney, speaking at a reception to celebrate Scottish economist Adam Smith, reiterated the SNP's focus on Fair Work and the importance of this to the economy and society. It appears unlikely that the new First Minister will signal a significant policy change. However, the test will remain the speed of implementation.

²⁴ *Fair Work in Scotland: Workers' Experiences through COVID-19' survey*, (FWC, April 2021), <https://www.fairworkconvention.scot/wp-content/uploads/2021/03/Fair-Work-Convention-FWC-COVID-19-2021-07-For-Public.pdf>

²⁵ Just Transition Commission, *Letter to Minister* (15 February 2023), <https://www.justtransition.scot/wp-content/uploads/2023/06/Letter-from-Chair-of-JTC-to-Cab-Sec-NZJT-Further-advice-on-draft-ESJTP-14-April-2023-web-edit.pdf>

²⁶ *Scotland can choose a different path, and create a more equal and prosperous country*, (SNP, March 2019), <https://www.snp.org/scotland-can-choose-a-different-path-and-create-a-more-equal-and-prosperous-country/>

2. Responses to Fair Work

Working life in Scotland

It can be argued that Fair Work is a response to a broad consensus across civil society and politically in Scotland that poor work drives negative outcomes way beyond the labour market. Insecure work, long hours and low pay impact families and communities and are key drivers of inequality. More than half of households in poverty in Scotland are in work. We also know from international evidence that unequal societies do worse on every measure.

The CIPD Working Lives Scotland 2022 report gives a very mixed picture of fair work in Scotland²⁷. It highlights a shift in approaches to flexible working post-pandemic, although less so for the low-paid. They group survey responses around the five Fair Work criteria. A quarter of workers report negative impacts on their mental health, and nearly half report going to work despite not being well enough. A tightening labour market has improved feelings of job security, but two-thirds are overworked, and even before the cost of living crisis hit, one-third struggled to pay their bills. Around half of workers report positively about career progression and training opportunities, while one-third are overqualified for their current job. While there was some improvement in effective voice ratings, 19% of employees say they have no voice channel at all at work. As the Fair Work Convention co-chairs highlight in their introduction, *'The report also suggests that there is a long way to go to fully embed fair work across the economy. Many indicators have returned to pre-pandemic levels and systematic differences in access to fair work remain. One stark example of this is the findings for key workers, who continue to experience poorer access to fair work across the board.'*

Workers in non-unionised workplaces without effective representation often rely on Citizens Advice Scotland (CAS) for support. They report high levels of unfair treatment at work, responding to around 50,000 cases per year. As they put it, *'In Scotland we like to see ourselves as a generally fair, socially just country. Sadly, the evidence seen by CAB advisers every day tells a different story. We know that many Scots who are unemployed face severe hardship. But many who do have jobs are living on low incomes and also facing extremely unfair conditions at work.'*²⁸ CAS has also highlighted that 19% of workers in Scotland are unsure of their employment rights.

"A fairer Scotland where people as citizens and consumers are empowered and their rights respected."

²⁷ Working Lives Scotland 2022, (CIPD, June 2022), https://www.cipd.co.uk/Images/working-lives-scotland-2022_tcm18-109949.pdf

²⁸ Gowans, R, *Exposed: the dismal state of workers' rights in Scotland*, (CAB, 2015), <https://www.cas.org.uk/news/exposed-dismal-state-workers-rights-scotland>

The Westminster Scottish Affairs Committee conducted an inquiry into future working practices in Scotland. They highlighted the growing use of insecure work and unfair working practices. The introduction of fees for applications to employment tribunals (since revoked) had cut applications, and more than half of all employees who win a case at an employment tribunal do not receive the compensation they are due. They concluded, *'We are deeply concerned by the unfair and illegal employment practices we have heard about during this inquiry. Although it appears that these issues affect only a small proportion of workers, it is not known how prevalent unfair employment practices are in Scotland. We recommend that the Government commission a study to assess the extent of unfair employment practices in Scotland—to establish how many workers suffer from unfair or illegal employment practices, and whether there are particular issues in certain sectors.'*²⁹

The Learning and Work Institute published a report last year, *Good Jobs in Scotland*, which painted a less than glowing picture of the labour market in Scotland some seven years after the Fair Work Framework was announced³⁰. They found that there has been a relative improvement in pay in Scotland, and trade union membership has remained stable between 2011 and 2019. However, other measures of job quality – underemployment, employer investment in development opportunities, and over-employment, have worsened.

- The use of zero-hours contracts has risen in Scotland, but temporary work (both voluntary and involuntary) has fallen over the same period.
- Underemployment fell in the decade before the pandemic but rose from 9.5% in 2019 to 11% in 2021.
- Fewer employers in Scotland are providing development opportunities (79% in 2011 and 70% in 2019), likely limiting individuals' opportunities for progression.
- Throughout the past decade, trade union membership remained relatively steady in Scotland (29% of employees in Scotland were members of a trade union in 2011 and 2019).
- One in 8 workers in Scotland are over-employed, which is relatively high compared to other parts of the UK.

These findings are reinforced by broader surveys of poverty in Scotland that show that over one million people in Scotland are living in poverty (1,030,000 – 19% of the population), including 240 000 children

²⁹ Scottish Affairs Committee, *The future of working practices in Scotland*, (March, 2018), <https://publications.parliament.uk/pa/cm201719/cmselect/cmsscotaf/449/44902.htm>

³⁰ Learning & Work Institute, *Good Jobs in Scotland*, (2022), <https://learningandwork.org.uk/resources/research-and-reports/good-jobs-in-scotland/>

(I in 4). The COVID pandemic exposed the extent of existing inequalities and exacerbated poverty levels.

The higher proportion of workers being paid the Real Living wage is important, but this doesn't mean they are not low-paid. It is not the same as paying the union-negotiated rates or the median or mean wages per hour per sector. The Scottish Government also tends to claim, or at least imply, that improvements in labour market data in Scotland are related to its Fair Work interventions. This evidence is not strong, as highlighted in a previous Reid Foundation paper³¹. While describing these claims as a 'falsehood' may be going too far, there is limited evidence to establish the connection or correlation between developments on the ground, whether positive, neutral or negative, in attaining the five Fair Work dimensions and the actions and policies of the Scottish Government. It is a long-standing problem that workforce data in Scotland is limited. The FWC has recommended that the Scottish Government invest in improving workplace data quality, particularly regarding workers with protected characteristics.

The Carnegie UK Trust published a report, *What Next for Fair Work in Scotland?*, which examined the impact of the pandemic on Fair Work³². They highlighted how the pandemic deepened existing inequalities in access to good work and impacted incomes and pay packets. The rise of precarious work, the strain on work-life balance, and well-being were also highlighted. They also recognised that the trade union movement performed strongly during the crisis, negotiating at the highest level with the government and attracting new members who were represented and supported. However, levels of trade union membership and collective agreements are relatively low in international terms.

The impact of the pandemic and the role of trade unions was covered in a Europe-wide report on the experiences of care workers, *On the Corona Frontline*³³. While the pandemic hit countries differently, there were many common features for care workers, and the report also highlights the pivotal role trade unions and their members played during the pandemic.

Creative Scotland commissioned a review of Fair Work in Scotland's creative and cultural sectors last year³⁴. While this report is from a government body and focuses on employer experiences, it highlights an understanding gap between the principles of Fair Work and what they are actually doing. This is a challenging sector for Fair Work, as the trade unions often highlight, due to the high level of precarious

³¹ G. Gall, Fair Work in Scotland – a critical assessment, (Reid Foundation, 2021), <https://reidfoundation.scot/2021/06/critique-of-scottish-governments-fair-work-policy-published/>

³² Carnegie UK Trust, What next for Fair Work in Scotland?

³³ FES, *On the Corona Frontline*, (March 2021), <http://unisondave.blogspot.com/2021/03/on-corona-frontline-european.html>. The Scotland report in that series by D.Watson, <https://library.fes.de/pdf-files/bueros/stockholm/17550.pdf>

³⁴ Culture Radar, Review of Fair Work, (May 2022), https://www.creativescotland.com/_data/assets/pdf_file/0005/92777/Review-of-Fair-Work-FINAL-Aug-2022.pdf

employment, competition and funding. As with other sectors, the pandemic highlighted these pre-existing issues. This is starkly put in one survey response, ‘We bring them in young, flog them to death, give them low pay and then kick them out when they are in their 30s. Why would you join an industry that looks so decimated?’ They set out some implementation solutions here.



Figure 3: Key solutions for Fair Work implementation in the creative and cultural sectors, 2022

The Mental Health Foundation published a report highlighting the link between Fair Work and mental ill health³⁵. Mental ill health costs Scotland around £11bn a year, and it is estimated that mental health problems cost Scottish employers £2 billion annually. They focused mainly on the damage precarious work and zero-hours contracts have on mental ill-health.

IPPR Scotland highlighted the impact of insecure and low-paid work in their post-pandemic study, ‘Delivering a Fair Work Recovery in Scotland’³⁶. They found that one in five workers surveyed in Scotland typically receive two weeks’ notice or less of their working hours, and one in 10 employees (over 200,000 people in Scotland) feel their work does not offer them a stable and predictable income. Their modelling showed that a lone-parent household with one child earning £9 an hour is unlikely to reach a living income, and even on £15 an hour, would have to work full time to achieve that bar. These figures underline how critical good quality work and routes out of low

The challenge of the next parliament is to deliver transformative action on the ground – turning world-leading targets into world-leading progress

³⁵ Mental Health Foundation, Fair Work Consultation Scotland, (2022), <https://www.mentalhealth.org.uk/our-work/policy-and-advocacy/fair-work-consultation-scotland>

³⁶ IPPR Scotland, Delivering a Fair Work Recovery in Scotland, (2021), <https://www.ippr.org/files/2021-08/delivering-a-fair-work-recovery-in-scotland-august21.pdf>

pay are to financial security. Poor quality work is concentrated in a handful of sectors, including retail, hospitality, childcare and social care, which supports the focus the Fair Work Convention has given to those sectors.

Employer organisations often reference Fair Work on their websites. In the main, they simply explain Fair Work and provide links to the Fair Work Convention and Scottish Government guidance. Some go further with positive encouragement and case studies. The Food and Drink Federation Scotland is a good example of this: '*Scotland's fair work principles offer a valuable model for food and drink, helping you attract and retain people at all levels of the business.*'³⁷

The voluntary sector broadly supports Fair Work, and the Scottish Council for Voluntary Organisations (SCVO) is a strategic partner of the FWC. However, they often point to the need for government and councils to fund Fair Work properly. In addition, even when service delivery is funded, that still leaves non-grant-funded activities, creating the potential for pay inequality within and between voluntary organisations³⁸. This was highlighted in a report for Glasgow Council for the Voluntary Sector, *Fair Work in the Third Sector in Scotland*³⁹. This report also highlights concerns in relation to the security and opportunity dimensions of fair work, different perceptions of employee voice, and the varying experiences of managers and workers.

Not everybody is impacted by unfair work in the same way. Women's employment remains characterised by undervaluation, low pay, discrimination, and insufficient and unreliable working hours. This is particularly true for young women, disabled women and Black and minoritised women. Single parents, 91% of whom are women, also face multiple and specific barriers to good-quality employment. These issues have been highlighted to the Scottish Government and the Fair Work Convention in submissions from the Close the Gap campaign.⁴⁰ There are also challenges for young workers, who often face unfair work in particular sectors. The Scottish Living Wage does not have age-related rates in the statutory provision⁴¹. The self-employed are also generally ignored in discussions

³⁷ Food and Drink Federation Scotland, Fair Work, <https://www.fdfscotland.org.uk/dfd/what-we-do/people-and-employment/fair-work/>

³⁸ Third Force News, SCVO calls for dialogue with ministers on fair work proposals, (Dec. 2022), <https://tfn.scot/news/scvo-calls-for-dialogue-with-ministers-on-fair-work-proposals>

³⁹ P.Findlay and J.McQuarrie, *Fair Work in the Third Sector in Scotland*, (Scottish Centre for Employment Research), (July 2023), <https://www.gcvss.org.uk/wp-content/uploads/2023/07/Fair-Work-Research-Report-GCVS.pdf>

⁴⁰ Close the Gap, Scotland can't become a fair work nation without realising fair work for women, (Feb. 2022), <https://www.closesthegap.org.uk/news/blog/scotland-cant-become-a-fair-work-nation-without-realising-fair-work-for-women/>

⁴¹ P.Findlay, R, Stewart & P.Anderson, Fair Work in Modern and Graduate Apprenticeships in Scotland, (SCER, 2022), <https://dera.ioe.ac.uk/38177/1/fair-work-modern-graduate-apprenticeships-scotland.pdf>

about Fair Work at a time when this form of employment is growing⁴². A point the Reid Foundation raised in evidence to a Westminster committee⁴³. Others argue that bogus and low-income self-employment, underemployment and precarious employment undermine claims of the vitality of the job market⁴⁴.

We should emphasise that many of the challenges facing Fair Work in Scotland are replicated worldwide. Gallup's *State of the Global Workplace 2023* highlights improving but still low engagement levels, growing 'quiet quitting', staff turnover, and record employee stress levels⁴⁵.

From the above, we can see that while Fair Work has impacted working lives in Scotland, the fundamentals of low pay, poor working conditions and the absence of effective voice in many workplaces remain a feature of the Scottish labour market.

Trade union responses

The STUC and its affiliates have a long-standing position of support for the Fair Work initiative⁴⁶. Senior trade union representatives serve on the Board of the Fair Work Convention, and trade unions have welcomed many of its initiatives. However, that support is not unconditional. There are frequent calls from affiliates for the rhetoric of fair work to match the reality. In particular, in critical sectors like child care, social care, hospitality and construction. Disputes in the public sector are not uncommon, even those that you would expect to be covered by Fair Work principles. This also indicates that trade union independence is not compromised by its support for Fair Work. In the private sector, unions have frequently complained that Fair Work principles have not given them access to organise workers in contracts funded by the Scottish Government.



⁴² I.Kapasi, *Scottish 'Fair Work Vision' Must Consider Self-Employed & Start-ups*, (University of Leeds, 2021), <https://cees.leeds.ac.uk/news/scottish-fair-work-vision-must-consider-self-employed-start-ups/>

⁴³ M.Danson, *Sustainable employment in Scotland*, (Reid Foundation), <https://committees.parliament.uk/writtenevidence/76342/pdf/>

⁴⁴ B.Wray, *'Slave economy'? CommonSpace investigation finds employment figures 'skew' reality of modern work*, (Common Weal, 2019), <https://sourcenews.scot/slave-economy-commonspace-investigation-finds-employment-figures-skew-reality-of-modern-work/>

⁴⁵ Gallup, *State of the Global Workplace: 2023 Report*, <https://www.gallup.com/workplace/349484/state-of-the-global-workplace.aspx>

⁴⁶ STUC, Fair Work, <https://stuc.org.uk/fair-work-organising/fair-work>

Trade unions have voiced concerns about the vagueness of the definition of the five Fair Work dimensions and the consequent ability of employers to define them how they wish in relation to their behaviour towards their employees. 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. Delivery of Fair Work remains a vital issue for trade unions. As a UNISON FoI request on social care contracts highlighted, few councils monitored contracts thoroughly, and the Fair Work element of bid evaluation was marginal. Self-evidently social care is delivered by people, so this weighting should have been significant⁴⁷. Local authority commission practices have not always supported Fair Work in the social care sector. A study published in the Industrial Law Journal found that, *'despite evidence of hourly rates of pay of front-line adult social care workers increasing, the policy had not always improved staff incomes due to a trend towards reducing sleepovers because of their increased costs at the SLW rate. Furthermore, the policy, restricted as it was to one category of staff, compressed and disrupted existing pay differentials while not providing providers with the resources to address this problem.'*⁴⁸

In particular, the Fair Work dimension on employee voice has not always been interpreted as trade union recognition or collective bargaining. For example, in receipt of substantial public funding, social care charities like Cornerstone and Turning Point attempted to derecognise trade unions and replace them with a tame employee forum⁴⁹. In fairness, the language on this issue has hardened more recently, and the Scottish Government's National Performance Framework now include collective bargaining. Union density is higher in Scotland than in the rest of the UK, although it has not increased since the Fair Work Framework was introduced.

Fair Work should benefit good employers, who should not be undercut by a race to the bottom. For example, NHS Education for Scotland awarded a contract to Amazon in 2021. They confirmed to SHA Scotland that the Fair Work criteria were not applied to evaluating bids for this contract. Scottish Government procurement policy was just ignored.

As the Institute for Employment Rights said in its Charter of Workers' Rights for Scotland⁵⁰, the nation is not immune to precarious work conditions, with insecure hours and wages, meaning an uncertain

⁴⁷ UNISON Scotland, *Social care procurement: Delivering quality services*, (June, 2018), <https://unison-scotland.org/wp-content/uploads/Bargaining-Briefing-100-social-care-1.pdf>

⁴⁸ I.Cunningham and others, *Introducing Fair Work through 'Soft' Regulation in Outsourced Public Service Networks: Explaining Unintended Outcomes in the Implementation of the Scottish Living Wage Policy*. (ILJ, Vol.52, Issue 2, June 2023), <https://academic.oup.com/ilj/article/52/2/312/6777759#409179865>

⁴⁹ See also, I, Cunningham, *The influence of 'soft' fair work regulation on union recovery: A case of re-recognition in the Scottish voluntary social care sector*, ((Sept. 2021), <https://onlinelibrary.wiley.com/doi/pdf/10.1111/irj.12362>

⁵⁰ *Charter of Workers' Rights for Scotland* (IER, 2019) <https://www.ier.org.uk/projects/charter-of-workers-rights-for-scotland/>

lifestyle. It's not immune from low pay. It's not a country where every workplace has a recognised trade union and recognised trade union procedures.

Too much of the Fair Work Action Plan is about *encouraging* good employers. But as the Charter specifically recognises, the case for Workers' Rights does not depend on the whims of employers. It depends on enforceable standards.

ONS data suggests that Scotland is something of a hotspot for zero-hours contracts, with 105,000 Scottish workers, 3.9% of the workforce, having no set working hours. In comparison, England has 3.5%, 2.8% in Wales and 1.3% in Northern Ireland.⁵¹

The STUC and their affiliates have used Fair Work in their bargaining and campaign activities. For example, the STUC agreed to a Fair Work Charter for Severe Weather in 2018, encouraging employers, workers and unions to agree on a specific policy that will apply in severe weather conditions⁵². While voluntary, it is reasonably persuasive in the public sector. Trade union nominees also serve on the Just Transition Commission, established to advise the Scottish Government on securing a fair transition to a low-carbon economy. Its reports have set an international benchmark on this issue.

UNISON Scotland has set out what Fair Work would look like in a National Care Service⁵³. They argue that the eradication of unfair work in care requires a TU voice at workplace, employer, IJB and national level if employer practice, ethical commissioning and sectoral bargaining are all to be aligned to Fair Work goals. They have made similar arguments in submissions on early learning and childcare. Members in FE Colleges used the Fair Work policy on facilities time to secure improved provision in the sector. While welcoming Fair Work, they have regularly urged the Scottish Government to go faster and further and encourage the Convention to take a firm position on employment practices that do not meet any reasonable definition of Fair Work. They point to NHS Scotland's PIN policies as a model approach when promoting good employment practices. These go beyond collective agreements and offer practical guidance on various issues.

⁵¹ R.McCurdy, *Scotland is zero-hours contract hotspot of UK* (Insider, May 2023), <https://www.insider.co.uk/news/scotland-zero-hours-contract-hotspot-29993673>

⁵² Scottish Government, *Severe weather: fair work charter*, (Nov. 2018) <https://webarchive.nrscotland.gov.uk/20220725112113/http://www.gov.scot/publications/severe-weather-charter/>

⁵³ UNISON Scotland, *What would fair Work look like in a National Care Service* (Oct. 2021), <https://unison-scotland.org/wp-content/uploads/Care-Futures-2-Fair-Work-in-an-NCS-pdf.pdf>

Unite has highlighted the failure to enforce the relevant industry agreements in the construction sector as part of the Scottish Government's Fair Work First position⁵⁴. Infrastructure projects across Scotland had been proceeding outside the applicable collective bargaining arrangements. Like other unions, they used Fair Work principles in negotiations during the pandemic, which secured improved safety, sick pay, and other provisions from the Scottish Government. Unite has also actively challenged poor employment practices in the hospitality sector, a focus of the Fair Work Convention. Insecure work, fair tips, and low pay highlight how little progress has been made in a key industry for the Scottish economy. With UNISON and the GMB, they also challenged pay cuts at Scottish Water, arguing that *'Scottish Water bosses are accountable to all of us, yet this pay cut imposition completely ignores the fair work principles the Scottish Government claims to promote, so this is also a test for Ministers as well.'*⁵⁵

Civil Service unions reached a groundbreaking agreement on Fair Work with the Scottish Government, covering employment relations, working hours, living wage, work fulfilment, equality, union recognition and facility time for union representatives⁵⁶. PCS has deployed Fair Work arguments in support of campaigns for shorter working hours and a 4-day week. Prospect's Right to Disconnect campaign received a welcome boost when the FWC co-chairs said they *'encourage employers to work with unions and their workforce to develop protections against 'always on' working, delivering solutions through the fair work principles of effective voice and respect.'*⁵⁷

The EIS has invoked Fair Work arguments in its campaign to improve teachers working conditions and well-being. A report for the EIS found, *'Scottish teachers are exposed to poor working conditions which are influencing the job that they do. Additionally, over 50% of Scottish teachers are dissatisfied in their job, and over 40% are looking to leave the job over the next 18 months.'*⁵⁸ They have similarly deployed Fair Work to challenge the use of zero-hour contracts in FE colleges.

⁵⁴ Unite seeks clarity on 'Fair Work First' from first minister Sturgeon, (Oct. 2018), <https://www.unitetheunion.org/news-events/news/2018/october/unite-seeks-clarity-on-fair-work-first-from-first-minister-sturgeon/>

⁵⁵ Unite: *Trade unions launch workplace ballot at Scottish Water over £3,000 loss of pay*, (March 2021), <https://www.unitetheunion.org/news-events/news/2021/march/trade-unions-launch-workplace-ballot-at-scottish-water-over-3-000-loss-of-pay/>

⁵⁶ Scottish Government, *Fair work: agreement between Scottish Ministers and the recognised civil service unions*, (aug. 2019), <https://www.gov.scot/publications/fair-work-agreement-between-scottish-ministers-and-the-recognised-civil-service-unions/>

⁵⁷ Prospect, *Scottish Fair Work Convention backs Right to Disconnect*, (Sept. 2021), <https://prospect.org.uk/news/scottish-fair-work-convention-backs-right-to-disconnect?s=fair%20work%20Scotland&f=all>

⁵⁸ J.Ravalier & J.Walsh, *Scotland's Teachers: Working Conditions and Wellbeing* (March 2018) <https://www.eis.org.uk/Content/images/Health%20and%20Safety/EIS%20Report%20August%202017.pdf>

The GMB union has often highlighted Fair Work when in disputes with employers. During the pandemic, it found little support for the Fair Work agenda from the parcel company Yodel when they sacked a safety representative challenging the employer over dangerous working conditions. 'Instead of engaging with our members, Yodel's response has been to suspend and then sack our workplace health and safety representative. It makes a mockery of the so-called "fair work" agenda.' During the GMB 2020 pay campaign, their public services organiser said, '*If Scotland really aspires to be a nation of fair work, then the Scottish Government should do the right thing and recognise that there needs to be a reckoning on the value of these workers.*'⁵⁹

USDAW was involved with the Scottish Government's Steering Group developing a new retail strategy for Scotland, '*We welcome the focus on fair work in the strategy and look forward to being involved in the development of the Fair Work Agreement, which we want all employers to sign up to.*'⁶⁰

As the Scottish Government launches its new retail strategy, Usdaw calls for better pay and conditions in the sector, and a level playing field for online and high street retail

The examples outlined above clearly demonstrate that trade unions in Scotland understand Fair Work and use it in their activities. However, the outcomes are mixed. The initiative has had some impact in the public sector, and the Scottish Government has been prepared to seriously negotiate solutions to public sector pay disputes during the current cost of living crisis. Much quicker than their UK counterparts, which has led to less strike action in Scotland. However, Fair Work's success in the private sector is less clear. This is to be expected as the Scottish Government has many more levers to use when implementing Fair Work across the public sector, even when they are not the direct employer. In the private sector, voluntarism has limitations, particularly in sectors less likely to engage with the policy.

Political responses

The Scottish Parliament has the Economy and Fair Work Committee, which focuses on Fair Work as part of its remit. It has held several inquiries into Fair Work related issues and taken evidence from trade unions. They are currently looking at the disability employment gap. The Parliament's research unit attempts to plug some of the gaps in labour market data. This year they have published briefings on the gender pay gap, earnings in Scotland and a labour market update. The earnings data shows

⁵⁹ GMB Scotland, *Frontline Workers To Tell First Minister: "After The Applause, Pay Up For Key Workers"*, (July 2020), <https://www.gmbscotland.org.uk/newsroom/frontline-workers-to-tell-first-minister>

⁶⁰ USDAW, *Launch of Scottish Government retail strategy*, (March 2022), <https://www.usdaw.org.uk/About-Us/News/2022/Mar/As-the-Scottish-Government-launches-its-new-retail>

that Scotland is around the median for the UK, although if you take London and the South East out of the picture, Scotland is one of the higher-paying nations and regions in the UK⁶¹.

The Fair Work Convention published a manifesto for the 2021 Scottish Parliament Elections⁶². As a creation of government, the manifesto was pretty bland but called on all political parties to commit to the ambition of Scotland becoming a Fair Work Nation by 2025. However, it did recognise that more decisive action is needed if Scotland is to achieve that ambition. The asks were:

- Creating sector-level fair work processes that bring employers, unions and policymakers together.
- Improving the experience of fair work for disabled workers, ethnic minority workers, women, younger workers, older workers and LGBT+ workers.
- Using the powers of the Scottish Parliament to improve the safety net for workers with a specific focus on sick pay and unemployment support.
- Making fair work a condition of all public funding available and public contracts awarded to employers as a means of improving and embedding higher fair work standards.
- Improving workers' access to training and the more effective use of their skills.
- Giving more workers access to 'voice' arrangements at work, including union membership and recognition, with a particular focus on young workers beginning with the Youth Guarantee.
- Improving data quality at a Scottish level around employment relations, protected characteristics, geography and class.

In response, the SNP manifesto confirmed its policy in government and went a little further, although these developments were not included in the first government programme:

Our Fair Work First programme makes adoption of fair work practices part of the criteria for winning public contracts and receiving grants. It uses the financial power of government to make fair work the norm. ... The principles of Living Hours - ensuring workers get the hours they need to make ends meet are reflected in Fair Work First good practice and promoted through Fair Work First where this applies to grants or procurement. If re-elected, we will go further and support a specific accreditation programme for Living Hours in the same way we have supported Living Wage accreditation. ... We will review our Fair Work First criteria for contracts and government support grants to include specific reference to fire and rehire tactics.

Scottish Labour took a different line. While it welcomed the ambition of Fair Work, it criticised the pace of change and introduced the concept of 'Good Work':

⁶¹ SPICe, *Earnings in Scotland 2022*, (Feb. 2023),

<https://digitalpublications.parliament.scot/ResearchBriefings/Report/2023/2/27/e0888682-8f9a-46f0-9448-5a588c583f58>

⁶² Manifesto 2021 Scottish Elections, (FWC, March 2021) <https://www.fairworkconvention.scot/wp-content/uploads/2021/03/Manifesto.pdf>

'Scottish Labour will go much further, developing a Good Work Plan, which will not merely encourage good work, but will require compliance. Good Work will promote the quality of work and fairness in line with trade union charters developed by UNISON, Unite and USDAW in their respective sectors. We will use all the levers of government to revitalise collective bargaining, including sectoral bargaining, coupled with a more robust social dialogue and the promotion of trade union membership.'

They also proposed new mechanisms to help deliver Good Work:

'A Scottish Monitoring Agency will ensure that procurement conditions are achieved. Scottish Labour's Better Business Pledge will be a key part of the Good Work Plan, requiring all businesses that benefit from public procurement to commit to using no zero-hours contracts or similar insecure work practices, paying the Scottish Living Wage and producing a clear carbon reduction plan. ... Establish a Better Business Scotland certification scheme for businesses who want to work with the public sector to ensure they meet our Good Work criteria, which includes not using zero-hours contracts, collective bargaining, paying the Scottish Living Wage, and having a clear carbon reduction plan.'

The Scottish Green Party also supported Fair Work principles and proposed using existing powers to:

- Use public procurement to require firms to recognise trade unions, ban precarious contracts, and pay at least the real living wage, respecting union-negotiated rates for work.
- Make public procurement and receipt of Scottish Government support conditional on compliance with Fair Work standards.
- Facilitate the creation of national collective bargaining structures in areas linked to the public sector which do not currently have high levels of collective bargaining, such as social care and childcare.

There was no positive or negative mention of Fair Work in the Scottish Conservative Manifesto. There was a commitment to funding skills training, but otherwise, the workforce was largely absent from their economic thinking. There was a commitment to the principle of a Just Transition, *'We must make sure that our transition to a renewable Scotland is fair and creates opportunities, rather than leaving a legacy of unemployment and damaged communities.'* The concept of Fair Work is not entirely absent from Conservative thinking. Theresa May established an inquiry led by Matthew Taylor, although the outcome was less than radical, and even the modest recommendations have not been fully implemented. Even George Osborne recognised that subsidising low-wage employers made no sense, hence introducing his so-called 'living wage'. Sadly, the current UK Conservative Government continues to undermine the trade unions and collective bargaining, the most significant element of a Fair Work Nation.

The Scottish Liberal Democrat manifesto supported Fair Work principles. In particular, social care said, *'The social care workforce should be respected for the work they do, and we will make it a requirement that any care service by any provider must comply with fair work requirements which are set nationally.'* They also said they *'will adopt and extend the current principles of fair work.'*

From the above, it is clear that an overwhelming majority in the Scottish Parliament supports Fair Work principles, with at least Scottish Labour and the Scottish Greens prepared to go further than the benign voluntarism of the Scottish Government, and even the Conservatives are not actively opposing. The encouragement approach goes beyond simply explaining the lack of enforcement powers reserved to Westminster. This reply to a question tabled by Mark Ruskell MSP, shows that they are opposed to ‘penalising’ bad employers in principle.

‘Through our Fair Work First approach, fair work criteria is being applied to public sector grants, other funding and contracts where it is relevant and proportionate to do so. This approach encourages employers to adopt fair work practices, rather than penalising those who cannot and provides the best opportunity to engage and support employers.’⁶³

This encouragement has included discussions with Amazon, as outlined in a response to a question from Katy Clark MSP, the Minister for Business, Fair Work and Skills met Amazon on several occasions to discuss Fair Work issues, emphasising the benefits of Fair Work for both Amazon staff and the organisation.⁶⁴ We are not told their response and have seen little evidence of any penalties. Indeed, as stated above, an NHS Education contract was awarded to Amazon without any Fair Work evaluation.

There is also a majority in the Scottish Parliament in favour of devolving employment law to Scotland, although the scope of that devolution needs further work. Gordon Brown’s recent Commission on the UK’s Future report proposed making employment law a shared responsibility, which is weaker than Scottish and UK Labour’s recent manifesto pledges⁶⁵. Devolving employment law would make enforcement easier and probably provide some relief from the UK Conservative’s assault on workers’ rights. However, in the meantime, more can be done using devolved powers, and we will return to this in a later chapter.

⁶³ Question reference: S6W-06080, (Feb. 2022), <https://www.parliament.scot/chamber-and-committees/questions-and-answers/question?ref=S6W-06080>

⁶⁴ Question reference: S6W-05646, (Jan.2022), <https://www.parliament.scot/chamber-and-committees/questions-and-answers/question?ref=S6W-05646>

⁶⁵ *Report of the Commission on the UK’s Future*, (Nov. 2022), <https://labour.org.uk/wp-content/uploads/2022/12/Commission-on-the-UKs-Future.pdf>

3. Trade Union Representatives and Fair Work

Introduction

An essential element of this study is to examine the experience of trade union representatives of Fair Work. We did this through interviews with trade union representatives, primarily at the workplace level, using questionnaires, face-to-face interviews in person or over Zoom, and in focus groups. These were all completed under the Chatham House rule, so no names are disclosed in the findings.

More than one hundred trade union representatives were interviewed. These were mainly workplace representatives, although some had broader responsibilities as branch officials. While focusing on workplace representatives, the findings were discussed with lay and full-time officials who strategically applied Fair Work principles.

It is not claimed that those interviewed are a representative sample of workplace representatives. In part, they are self-selecting by responding to requests to complete a questionnaire or being interviewed. A large number of trade union representatives in Scotland and data protection constraints mean such a survey would be impractical. However, various methods were used to seek volunteers, resulting in workplace representatives being interviewed from most trade unions in Scotland, although there is a substantial weighting towards the public sector. The findings show a high degree of consistency and were confirmed in interviews with practitioners.

The core questions were:

Q1 What do you know of the Scottish Government's 'Fair Work' policy? Please briefly outline what you know of its principles and measures.

Q2 When have you known this since? Please give the year.

Q3 Do you regularly update your knowledge of 'Fair Work' by, for example, looking at the Scottish Government or Fair Work Convention's websites?

Q4 What have you used 'Fair Work' for at work for? Please give examples.

Q5 How did you use 'Fair Work'?

Q6 How did you find the experience of using 'Fair Work' at work? For example, did you find using it of benefit or of no benefit? Please give examples.

Q7 If you have not used 'Fair Work' at work, why is this? For example, because you do not know enough about it or because you do not believe it is useful. Please explain your answer.

Q8 What changes need to be made to 'Fair Work' to make it more useful for your work as union representatives? Please give examples.

Knowledge and understanding of Fair Work

Almost all (90%) of the representatives in the public sector interviewed had heard of Fair Work, but most had a limited understanding of its principles of measures. Knowledge was strongest in central government and NHS Scotland, with most able to articulate at least some of the principles and actions taken. This was weaker the further away from the centre they worked, with most Non-Departmental Public Bodies (NDPBs) recognising Fair Work but with less knowledge of its principles and measures. Local government representatives had even less understanding of Fair Work, with some doubting its application. A few indicated this was because other Scottish Government employment policies, such as no compulsory redundancy, did not apply to the sector. Education representatives had a high level of recognition, although a limited understanding of the detail. Voluntary sector representatives generally understood the concept but again had limited knowledge of the details. Almost all private sector representatives interviewed (admittedly small numbers) had never heard of Fair Work.

“I have never heard of Fair Work. Does it even apply to the private sector?”

Unsurprisingly, the amount of time a representative had been aware of Fair Work depended on when they became a representative. Long-serving representatives became aware when the initiative was launched or when key events happened, such as the creation of the Fair Work Convention. Others picked up the details as part of their induction or introductory training, with relatively few knowing about Fair Work previously. This survey did not include workers generally, but this finding does point to limited knowledge among the wider workforce. However, we did test the name recognition at a couple of general activist events, where recognition was relatively high.

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. This was higher in sectors where the FWC has focused, particularly in the social care sector.

How is Fair Work used

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. In the voluntary sector, the potential impact on procurement was used effectively by several representatives and, in a few cases, led to a Fair Work review and awareness training. While it certainly didn't replace traditional negotiating leverage, such as industrial action, Fair Work is viewed as a helpful leverage in negotiations by a significant number of representatives.

“Our employer wanted to fire and rehire staff on new contracts. As they are funded by government contracts, we reminded them of Fair Work principles. They withdrew the proposal and returned to negotiations.”

While this list looks positive, it should be emphasised that deploying Fair Work arguments was not always successful. In some cases, managers claimed they had never heard of Fair Work or argued that it was not relevant to them. Several representatives, most often in the colleges' sector, complained that management was quick to talk about the principle of Fair Work but less keen to apply it. One college representative undertook a survey in which only 13% of members responding felt the college was committed to the principles of Fair Work. Another described college management as being 'disdainful' of Fair Work. Even in central government and NDPBs, representatives describe having to explain the Fair Work principles to managers.

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.

What changes are required

Most representatives responded to this question with a call for greater publicity and awareness. This needed to come from the Scottish Government to have weight with employers and should be followed up by better training for line managers. While representatives understood that government leverage might be limited outwith the public sector, Fair Work principles should also be applied more rigorously in the public sector and through procurement. The phrase 'it needs more teeth' was frequently used in responses to this question, along with claims that it is too abstract and high-level. A few representatives argued for Fair Work projects that publicised success stories.

“If the Scottish Government really wants

Fair Work to make a difference, it has to give it teeth”

A significant number of respondents went further, calling for legislation and enforceable provisions. In the next chapter, we will address this as employment law is a reserved power to Westminster. However, several representatives criticised the voluntary approach, arguing that Fair Work needs compliance measures to seriously challenge their employer's prevailing employment culture.

A typical response was the need for clarity on the scope of Fair Work. There was a clear understanding that it applied to the Real Living Wage and employee voice, including collective bargaining. The other principles were considered too abstract, and how they would be used was unclear. Health and safety was highlighted in particular.

Representatives also felt their trade union could do more to make Fair Work effective. They suggested guidance on how to use it in negotiations, including examples of how it can be used in practice. A guide or other resources would be welcomed, and it should be included in induction training for new representatives and courses for more experienced representatives.

Conclusion

The findings show 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 is limited. Strong in central government but weaker the further an organisation is from the centre. It is also viewed as a high-level concept that has yet to feed down to management culture at the local level.

Fair Work has improved working lives over a range of bargaining issues and has been used effectively by representatives in negotiations. It has been most influential in raising minimum wage levels and has had some impact in strengthening collective bargaining. It has also stopped proposals that would clearly have breached Fair Work principles. However, less progress has been made in delivering on the other principles, and there remains significant managerial resistance to change.

Representatives are not opposed to Fair Work and recognise that it can improve working lives. They believe it requires more information, better guidance, and robust enforcement to progress further. Trade unions can also do more to support representatives.

4. Making Fair Work more effective

Introduction

As stated above, there is a broad consensus that Fair Work is a positive initiative welcomed by trade unions and their representatives. The challenge is to move beyond aspiration to implementation that delivers fundamental change to employment culture in Scotland.

A key focus for making Fair Work more effective has to be a structural change in the labour market through higher trade union membership and greater collective bargaining. As Helen Martin, Head of the Fair Work Convention Secretariat, puts it, *'There is an urgent need to expand collective bargaining in sectors such as childcare, social care, hospitality and tourism with a focus on improving pay, job security and the valuing of the work of young people, women and black and ethnic minority workers.'*

She calls for employers, trade unions and government to work together to establish fair work structures in every sector of the economy, and for government support to business to come with robust fair-work conditionality.⁶⁶

In his section, we look at various proposals to strengthen Fair Work in Scotland, examine the limits of voluntarism, and make recommendations for change.

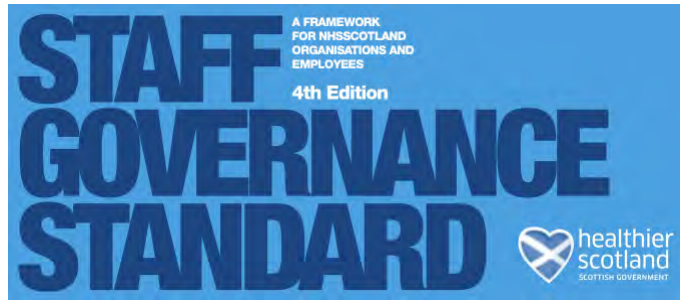
Fair Work Proposals

The Scottish Government published a consultation paper, *Becoming a Fair Work Nation*, in October 2021. It sought views on what action needs to be taken to achieve the Scottish Government's shared vision and who needs to lead and support that action, considering the opportunities and challenges in respondents' sectors and workplaces. The summary of consultation responses⁶⁷ indicated continued support for Fair Work principles, with more work needed to maximise the opportunities. These included taking sector-specific approaches, longer-term public sector funding for early learning and childcare, social care, local government and the third sector, among others. Investment in training, skills development and apprenticeships was also seen as beneficial. The challenges included engaging smaller organisations, funding, organisational awareness, and managerial capacity.

⁶⁶ Martin, H, in, *Poverty in Scotland 2021 – towards a 2030 without poverty?* (CPAG, May 2021)

⁶⁷ Scottish Government, *Becoming a Fair Work Nation: consultation analysis*, (May 2022)
<https://www.gov.scot/publications/consultation-scotland-becoming-fair-work-nation-analysis-consultation-responses/pages/0/>

UNISON Scotland points to NHS Scotland’s PIN policies as a model approach. These go beyond collective agreements and offer practical guidance on a wide range of employment issues⁶⁸. The need for clearer guidance was something highlighted by representatives in our survey. It might also help smaller organisations meet Fair Work criteria in procurement and now grant applications by producing models they can take off the shelf. For the wider public sector, it may also help develop some consistency, avoid reinventing the wheel and move towards the one-public service employer model recommended by the Christie Commission.



The Learning and Work Institute report, *Good Jobs in Scotland*, recommended several areas where the Scottish Government should prioritise action and investment to support the creation of more ‘good jobs’ and help people to access them⁶⁹. This report identified that the Scottish Government should:

1. Continue to use purchasing power and leadership to promote fair work and seek to understand its impact. This could include adopting a sector-specific approach to the Fair Work action plan and measures to create good jobs.
2. Consider expanding its existing commitment to collective bargaining, set out in the Fair Work Plan, to sectors characterised by low pay and poor job quality.
3. Invest in rapid testing and evaluation of initiatives and policies aimed at promoting the creation of good jobs, including robust monitoring and rapid testing and evaluation of the Fair Work First policy and its impact
4. Establish a cross-government approach to supporting the creation of good jobs, including by embedding fair work principles further across all policy areas, such as City Region and Growth Deal Plans. (This may need Treasury approval given their role in funding).
5. Work with partners and use a wide range of channels to actively engage with employers to ensure flexible work arrangements are embedded into current work practices and to encourage the creation of new fair flexible jobs.

⁶⁸ NHS Scotland Staff Governance: Pin Policies, <https://www.staffgovernance.scot.nhs.uk/partnership/partnership-information-network/pin-policies-nhsscotland-workforce-policies/>

⁶⁹ Learning & Work Institute, *Good Jobs in Scotland*, (2022), <https://learningandwork.org.uk/resources/research-and-reports/good-jobs-in-scotland/>

6. Support groups at risk of poverty to access good jobs through infrastructure development and welfare support by expanding its investment in free childcare, promoting greater transport integration and investing in direct welfare support, such as the Scottish Child Payment.

7. Work with employers to promote employee engagement, empowerment, and skills development to improve job quality, including by deploying and testing innovative approaches to pilot skills development initiatives.

As the Institute for Employment Rights said in its Charter of Workers' Rights for Scotland, the nation is not immune to precarious work conditions, with insecure hours and wages, meaning an uncertain lifestyle. It's not immune from low pay. It's not a country where every workplace has a recognised trade union and recognised trade union procedures. *'So, while the Scottish government may not have legislative competence, it has obligations under international treaties. It is an employer. It can create government structures that promote workers interests. A Scottish government has administrative powers in the form of contracts and licences.'*

The Charter sets out four main recommendations;

- A Cabinet minister responsible for industrial relations
- Robust system for reporting and compliance
- Ethical public procurement
- Sectoral collective bargaining

The Carnegie Trust report, *What Next for Fair Work in Scotland*, highlights the key challenges facing the next stage in delivering Fair Work in Scotland⁷⁰. They also highlight the impact of the pandemic on work in Scotland, including access to employment, inequalities, skills, health and safety, precarious work and pay pressures. They set out some challenge questions, including how we assess and adapt the Fair Work Action Plan post-pandemic and focus on implementation—mainly on expanding buy-in among key labour market actors. To achieve this, they set out a series of recommendations consistent with other proposals but also address other issues often ignored in the fair work discussion. These include adopting the Living Hours Campaign⁷¹, flexible working, skills and training, social security, and a renewed focus on health safety.



⁷⁰ Carnegie Trust, *What Next for Fair Work in Scotland*,

https://d1ssu070pg2v9i.cloudfront.net/pex/carnegie_uk_trust/2021/03/17122113/What-next-for-Fair-Work-in-Scotland.pdf

⁷¹ Living Hours, <https://www.livingwage.org.uk/living-hours>

You cannot have Fair Work unless that work is healthy and safe. Scotland has the second highest fatal injury rate in the UK (HSE regions) at 17, with a further 43,000 non-fatal injuries, and 136,000 workers suffer from work-related ill health each year. Health and safety gets limited attention in the Fair Work initiative, even though any work that endangers workers' health, safety, well-being and financial security cannot be fulfilling. Scottish



Hazards have made several proposals for using health and safety to influence Fair Work. In *Health, Safe and Fair Work for All*, they highlighted the importance of effective voice in keeping workers safe⁷². Trade union safety representatives make a tangible difference in how employers look after their workforce's health, safety and welfare. Where trade union representatives are present, workers are 24% less likely to suffer a workplace injury, saving the economy between £476m and £1,250m. They recommended that Fair Work should include the following;

- Research into the positive impact an effective collective trade union employee voice in Scotland has on the economy,
- Developing a long-term strategy for occupational health services delivered by the NHS.
- Implement the stress management standards through public procurement to deliver work on managing stress.
- Develop in-work support services that support individuals to remain in or return to work after a period of absence or unemployment.

They followed this work up with specific papers on procurement Fair Work⁷³. These papers highlight the absence of a specific Fair Work First "ask" by the Scottish Government on occupational health and safety or in the Scottish Business Pledge.

Linked to effective voice (or rather the lack of) and unsafe work is the failure of non-unionised employers to consult with staff on health and safety matters despite their obligations to do so under the Health and Safety (Consultation with Employees) Regulations 1996 or when carrying out risk assessments under the Management of Health and Safety at Work Regulations 1999. This was very apparent during COVID. If employers ignore their health and safety obligations, they should not be evaluated as Fair Work employers in procurement.

⁷² Scottish Hazards, *Health, Safe and Fair Work for All*, (2018), <https://hazards.scot/wp-content/uploads/2018/05/Fair-Work-Final.pdf>

⁷³ Scottish Hazards, *Delivering Healthy, Safe and Fair Work*, (Nov. 2021), <https://hazards.scot/wp-content/uploads/2022/02/Procurement-Paper-One.pdf>

Mental health costs Scotland around £11bn a year. Around half of all working days lost due to ill health relate to work-related stress, costing Scottish employers £2bn per year. The Mental Health Foundation identified various actions in their *Fair Work Consultation Scotland* report⁷⁴. They highlighted stigma, discrimination, job security, and income as critical barriers to delivering Fair Work in Scotland.

Sadly, for too many employers, the solution to ill health at work is increasingly punitive absence management systems. This author and others have long argued that the best approach to tackling absence is to create great workplaces to work in - not rigid management systems and targets⁷⁵. There is a predictable annual outpouring of invective from the right-wing media over sickness absence rates in the public and private sectors. The main response to the headline data is that the two sectors are not comparable workforces. The public sector is an older workforce with more women and significant occupational differences. Public sector staff also tend to work in larger organisations with sick pay agreements and better recording systems. One consequence is that public sector staff have more long-term sickness absences but fewer short-term absences than in the private sector. Overall, public v private is irrelevant to the debate; you must look at other factors and focus on positive absence management. These include measures that promote positive health and independent occupational health services.

Another approach that has improved Fair Work is the growth in flexible working, including the compressed working week. Some 60 companies recently agreed to participate in a large-scale UK four-day week pilot. 92% of employers said they would continue with a shorter workweek following the programme – with 30% making the change permanent. The Scottish Government is committed to piloting the benefits of a four-day working week, although campaigners have criticised slow progress. The Jimmy Reid Foundation used an FoI request to ascertain the progress public service employers in Scotland had made with a compressed working week⁷⁶. Overall, the survey indicates that almost all of the Scottish public sector has adopted the concept of a compressed working week in principle. However, it is difficult to say if the take-up is significant, and the available data would indicate a low take-up. Most employers can't provide the data, so they cannot monitor the policy. Decentralising the decision-making function may be acceptable in principle, but it shouldn't stop data collection. We know from other studies that middle managers often resist adopting flexible working.

⁷⁴ Mental Health Foundation, *Fair Work Consultation Scotland*, (2022),), <https://www.mentalhealth.org.uk/our-work/policy-and-advocacy/fair-work-consultation-scotland>

⁷⁵ Dave Watson, *Great workplaces tackle absence better than systems*, (2014), <http://unisondave.blogspot.com/2014/03/great-workplaces-tackle-absence-better.html>

⁷⁶ Reid Foundation Briefing, *Compressed Working Week*, (May 2023), <https://reidfoundation.scot/2023/05/compressed-working-week/>

In the Jimmy Reid Foundation paper, *Public Service Reform*, this author outlined some of the particular challenges facing the public sector workforce in Scotland⁷⁷. These included a reduced workforce, privatisation, demoralisation, low pay and an ageing workforce. The paper recognised that the Fair Work Convention was a step in the right direction. It sets the tone for good employment practice in Scotland and uses several public sector examples, such as the NHS Scotland partnership structures, to illustrate best practices. However, it also argued that in the public sector, the Scottish Government could go further and recommended a public sector workforce framework. This included;

- A public service staff governance charter would provide common standards across all public services and establish a shared public service ethos.
- Develop standard procedural agreements as part of the staff governance framework. This would obviate the problems created when staff from different employers operate under different procedures (discipline, grievance etc) in joint teams.
- A legislative framework for staff transfers to ensure consistency and to avoid the need for staff transfer orders in every public sector reorganisation.
- A similar provision to deal with pension transfers.
- A secondment framework that would allow temporary transfers between services.
- Review and merge procurement guidance, including shared services, s52, PPP protocol etc., into one standard provision for all public services.
- A common framework on the application of equality duties.
- A coordinated approach to workforce development, including a common competency framework and inter-disciplinary training programmes.

9 PRINCIPLES FOR PUBLIC SERVICE REFORM IN SCOTLAND

- 1. DEMOCRATIC ACCOUNTABILITY**
Democracy is what defines public services in contrast to private sector delivery. Democracy is about more than elections. It includes a wider engagement where citizens have a meaningful say over public services.
- 2. SUBSIDIARITY**
Ensuring that decisions are taken at the lowest practical level. National standards and guidance, should not be used to stifle local innovation or differences. Services should be designed with and for people in communities.
- 3. TRANSPARENCY**
Participation in democratic processes requires access to information to hold decision makers accountable. All organisations who deliver public services must be covered by Freedom of Information laws.
- 4. EQUALITY**
Public services focused on reducing inequalities. With preventative spending to reduce demand, and funding through progressive taxation. The less powerful have an equal voice in service design and equal access to services.
- 5. EFFECTIVENESS**
All public services should make the best use of resources. This includes spending, the skills of staff and appropriate equipment and facilities. It also means avoiding wasteful spending on schemes like PPPs.
- 6. PUBLIC SERVICE ETHOS**
A common ethos for all public services and those who deliver them; based on enabling, empowering and improving the lives of people and communities as well as the traditional values of integrity and openness.
- 7. FAIR WORK**
People deliver public services so we should recruit and retain the best people, reflecting the diversity of our communities. This requires fair pay and conditions, job security, and real engagement in decision making.
- 8. INTEGRATION**
Public service delivery has become fragmented with too many providers. There should be a common set of duties and the single public service worker concept to help break down organisational and professional silos.
- 9. OUTCOMES**
Public services should be focused on achieving outcomes, while recognising that services need resources and process matters. They should take a long-term view that should not be disrupted by the short-termism of the political cycle.

These principles are detailed in the Jimmy Reid Foundation paper *'Public Sector Reform in Scotland'* written by Dave Watson.

The full paper can be downloaded at: <http://reidfoundation.org/2017/01/public-service-reform-policy-paper-launched/>

The Jimmy Reid Foundation <http://reidfoundation.org>

⁷⁷ Dave Watson, *Public Service Reform*, (Reid Foundation, 2016), p.12. <https://reidfoundation.scot/2017/01/public-service-reform-policy-paper-launched/public-service-reform-by-davewatson/>

This may also be an incremental step towards the single public service worker concept, as suggested by the Christie Commission.

Few sectors suffer from precarious work as much as the culture sector. The varied scope of employment includes tiny organisations, casual workers, and a high proportion of freelancers and entrepreneurs, where freelancers are often contracting freelancers. These issues are addressed in the *Review of Fair Work in the Creative and Cultural Sectors in Scotland*, commissioned by Creative Scotland⁷⁸. The review highlights various challenges in implementing Fair Work, mainly related to the sector's structure. They recommended further examination of the issues through a Fair Work Task Force, with immediate actions including better communications, clear public funding requirements, incentives and a sector skills, training and career pathways plan.

This sector review also raises the question of how Fair Work applies to the self-employed. Research commissioned by the Scottish Government indicates that many self-employed business owners operate in poverty, with 24% of self-employed couples with dependent children in relative poverty. This would suggest that self-employment in Scotland is often not providing an environment for inclusive economic growth, a sustainable livelihood, and a context of Fair Work. Dr Isla Kapasi at the University of Leeds argues, *'As poverty entrepreneurship is likely to affect many of the one in five people who live in poverty in Scotland, addressing business support and advice specifically for business start-ups to integrate Fair Work principles will provide an initial step towards potentially relieving the strain of this on both individual and state.'*⁷⁹

Financial security is the focus of IPPR Scotland's paper, *Delivering a Fair Work Recovery in Scotland*⁸⁰. They argue that Fair Work is crucial to delivering financial security in Scotland. Without decent pay, secure work, reliable hours, and opportunities to progress in work, financial security will be difficult, if not impossible, for many. They particularly highlight that young people in Scotland's labour market were particularly exposed coming into the pandemic and are likely to now face heightened barriers to getting into or getting on in good work. They make eight recommendations, including:

- Driving up job quality: hours, pay, well-being, and progression, focusing on low-paid sectors through renewal deals and fair work agreements. These should be incentivised by the government and mainstreamed in economic strategy.

⁷⁸ J.Scott, *Review of Fair Work in the creative and cultural sectors in Scotland*, (Culture Radar, 2022), https://www.creativescotland.com/_data/assets/pdf_file/0005/92777/Review-of-Fair-Work-FINAL-Aug-2022.pdf

⁷⁹ I.Kapasi, *Scottish 'Fair Work Vision' Must Consider Self-Employed & Start-ups*, (University of Leeds, Sept. 2021), <https://cees.leeds.ac.uk/news/scottish-fair-work-vision-must-consider-self-employed-start-ups/>

⁸⁰ R.Statham, H.Parkes, R.Gunson, *Delivering a Fair Work Recovery in Scotland*, (IPPR Scotland, Aug. 2021), <https://www.ippr.org/files/2021-08/delivering-a-fair-work-recovery-in-scotland-august21.pdf>

- Improving social infrastructure and reducing barriers to getting into and getting on at work. This includes affordable and accessible childcare, extending the Education Maintenance Allowance into apprenticeships and support for disabled people.
- Transforming Scotland's labour market to deliver good jobs and routes into them for people across Scotland. This requires new labour market institutions and a genuinely flexible lifelong in-work learning offer.

Business support for Fair Work has been patchy in some sectors, although not without its supporters. *Business in the Community* held a series of consultations with businesses that highlighted some of the challenges these businesses faced in achieving Fair Work⁸¹. These included clarity around what exactly Fair Work was compared to other initiatives and a lack of benchmarking to measure progress. They set out a series of actions businesses can take to help make Scotland a world leader in Fair Work. They also called on the government to embed Fair Work in all their policies, provide funding and incentives, and lead by example in the public sector. A strong theme in all the sections of their consultation highlighted the need for a clear, consistent, tangible communication strategy to promote Fair Work as part of Scotland's broader inclusive growth agenda.

The TUC has not always supported the devolution of employment issues, including an ill-judged intervention opposing the devolution of employment law to the Smith Commission in 2015. They recently commissioned a report, *Devolution and Employment Standards*, which looked at how devolution in England, Wales and Scotland has affected the realisation of improved employment standards⁸². The report recognises that devolution has legitimated the role of trade unions and revived tripartite relationships between governments, employers and unions and raised pay levels for the lowest paid. However, they also identify limited regulatory powers which '*has directed them towards 'soft' measures, such as charters or commissions.*' Overall, it is lukewarm about the gains made by devolution, although this partially reflects the report's inclusion of the much more limited devolution in England. It makes a series of recommendations that include the importance of collective bargaining as the route to better employment standards and more focus on equality and health at work. It notably avoids the issue of devolving employment law!

Finally, little attention has been given in Fair Work to job design. The 50-year-old dictum of psychologist Frederick Herzberg, '*if you want people to do a good job, give them a good job to do*', still seems appropriate today in the context of Fair Work. The CIPD Good Work Index 2023 identified job quality as a significant concern, '*These responses, alongside work affecting our mental health in more middling and negative ways, point to a slow slide into mediocrity, away from enriched jobs and*

⁸¹ Business in the Community, *Making Scotland a World Leader in Fair Work*, (2019). <https://www.bitc.org.uk/wp-content/uploads/2019/10/bitc-scotland-report-makingscotlandworldleaderfairwork-feb2019.pdf>

⁸² S.McKay & S.Moore, *Devolution and Employment Standards*, (University of Greenwich, May 2023), <https://gala.gre.ac.uk/id/eprint/42496/7/42496-MOORE-Devolution-and-employment-standards.pdf>

ultimately towards demotivation, lack of commitment and poorer productivity.’⁸³ Job design is referenced by the FWC in their ‘Fulfilment’ principle, recognising that indicators of fulfilling work are associated with higher productivity and innovativeness in more successful comparator EU counties.

Employment Law and the Limits of Voluntarism

Our survey of union workplace representatives highlighted their concern that Fair Work needs to be more than voluntary encouragement. The Scottish Government argues they have limited policy levers as employment law is reserved. Even so, that does not explain their emphasis on voluntarism and the slow pace of implementation. For example, extending Fair Work to public sector grant applications has taken nearly eight years. As we highlighted above, the Scottish Government is unwilling to call out bad practices in the workplace. This is strange as even the UK Government names and shames employers who are prosecuted for breaching minimum wage provisions.

The Government in Wales has dipped its toes into a legislative approach with the *Social Partnership and Public Procurement (Wales) Act 2023*⁸⁴. This places a statutory duty on public bodies and Welsh Ministers to engage with trade unions and embeds ‘Decent Work’ (this replaces Fair Work) into economic strategy and procurement. In practice, it remains to be seen if it goes much further than the actions taken by the Scottish Government, but putting the provisions on a statutory basis may well ensure that gaps in the voluntary approach we have seen in Scotland are less likely to occur. The Wales TUC has welcomed the policy, describing it as ‘*a new chapter in the relationship between unions, government and employers.*’⁸⁵ The Bevan Foundation has set out a detailed programme of action to show how the Welsh Government can make a difference without powers over employment⁸⁶.

Other devolved administrations in the UK have also adopted voluntary codes. For example, the *Greater Manchester Good Employment Charter*⁸⁷ was launched in January 2020 and has engaged over 200 employers and covers more than 200,000



⁸³ CIPD, *Good Work Index 2023*, <https://www.cipd.org/globalassets/media/knowledge/knowledge-hub/reports/2023-pdfs/2023-good-work-index-summary-report-8407.pdf>

⁸⁴ Welsh Government, *Social Partnership and Public Procurement (Wales) Act 2023*, <https://www.gov.wales/social-partnership-and-public-procurement-wales-act#112447>

⁸⁵ Wales TUC, *A stronger social partnership*, (June 2022), <https://www.tuc.org.uk/blogs/stronger-social-partnership>

⁸⁶ Bevan Foundation, *Fair work in the foundational economy: what should be done*, (June, 2021), <https://www.bevanfoundation.org/resources/fair-work-what-should-be-done/>

⁸⁷ Greater Manchester Good Employment Charter, <https://www.gmgoodemploymentcharter.co.uk>

employees. Their evaluation report⁸⁸ highlights many of the challenges facing the voluntary approach in other administrations, including Scotland, including, *'In particular, there is something of a contrast between the views of those respondents from Trade Union and Employer organisations. The former emphasized the purpose of the Charter as setting out a robust set of memberships standards, consistently applied across all organisations, and with the Charter used proactively to drive up standards, for example through links to public procurement. The latter was more inclined to emphasise the communication and marketing aspects of the Charter, seeing it as a vehicle to develop the concept of good employment, promote it, and engage employers with it.'*

The Carnegie Trust report, *What Next for Fair Work in Scotland*, suggests that action from the UK Government on some key issues would help to advance Fair Work in Scotland. And asks how all Fair Work actors in Scotland (including business, civil society and opposition politicians) can leverage their influence on UK Government to take decisions that align with the Fair Work agenda. It also makes some modest recommendations for action⁸⁹. The present UK Government, with its anti-trade union legislation, post-Brexit watering down of EU legislation and even the slow pace of the modest reforms they committed to, does not give much succour to this approach.

However, a UK General Election is on the horizon, and on current polling, is likely to result in a change of government. The question is will the new government be amenable to making the changes needed to unlock greater progress on Fair Work in Scotland? Labour's *New Deal for Working People*, described as an *Employment Rights Green Paper*, indicates the policy direction⁹⁰. The paper outlines a range of measures that would give a statutory basis to Fair Work in Scotland, including a real living wage, using public procurement, Fair Pay Agreements, strengthening basic employment rights, raising Statutory Sick Pay, banning zero-hours contracts and outlawing fire and rehire. It also introduces the concept of *Safe Work*, which includes the right to switch off, repealing anti-trade union legislation and putting mental health on a par with physical health in the workplace. However, not all unions were convinced at Labour's July 2023 National Policy Forum that these commitments go far enough.

Another approach would be to devolve employment law to Scotland. This policy is supported by the STUC and most trade unions in Scotland. Scottish Labour's 2021 manifesto included a commitment to devolve employment rights, with a UK floor that would encourage a race to the top on workers' terms and conditions. However, Gordon Brown's *Commission on the UK's Future* report was less clear on this issue, recommending that *'Strengthening workers' rights in Scotland is an area of shared responsibility*

⁸⁸ Manchester Metropolitan University, *The Greater Manchester Good Employment Charter Evaluation* (May 2021), <https://www.mmu.ac.uk/media/mmuacuk/content/documents/business-school/decent-work-and-productivity/GM-Charter-Evaluation-Interim-Report-June-2021.pdf>

⁸⁹ Carnegie Trust, *What Next for Fair Work in Scotland*, (2022), p.15.

⁹⁰ Labour Party, *New Deal for Working People*, (2022) <https://labour.org.uk/wp-content/uploads/2022/10/New-Deal-for-Working-People-Green-Paper.pdf>

*between governments and this should be explicitly and built into the new arrangement for intergovernmental working.*⁹¹This looks like a watering down of the current commitment.

The challenge for those supporting the devolution of employment law is defining precisely what they want to devolve. There are some differences in employment law across the UK, together with devolution in Northern Ireland, partly in statutory areas and partly in common law differences. Tribunals are scheduled for devolution, and Scotland also has additional equality provisions, including the ‘socio-economic equality duty’ and powers over training and employment support services. The Institute of Employment Rights started a project on this, but it got no further than a draft charter. The Red Paper also outlined the issues in one of their papers⁹². Employment law is a broadly used phrase but doesn’t have a specific legal definition. The Employment Rights Act 1996 (ERA) is the primary consolidating legislation but doesn’t cover everything. For example, should it include occupational pensions, discrimination law (that extends to consumer rights), business transfers (links to company law) and health and safety? In short, more work must be done to produce a credible proposal.

The SNP and Scottish Greens support the devolution of employment law as a precursor to independence. The Scottish Government paper, *Building a New Scotland: A stronger economy with Independence*, sets out specific measures that they claim would go much further to strengthen the Fair Work agenda in an independent Scotland, ‘developing a legal framework that more effectively addresses the workplace challenges of the 21st century. It would give us an opportunity to redesign the system to better meet the needs of Scotland’s workers and employers.’⁹³

Conclusion

While Fair Work has broad support in principle, the main complaint of almost all those interviewed in this study has been the slow pace of change and effective implementation. This concern is also reflected in the reports highlighted above and the continued prevalence of poor-quality work. If Scotland is to claim to be a Fair Work Nation in 2025, much more needs to be done to turn the ambition into reality. All the social partners need to work with the government to build an economic strategy for Scotland with Fair Work at its heart.

Based on the work of this study and the ideas highlighted above, we would propose focusing on the following actions:

⁹¹ Commission on the UK’s Future, (2022), p.108, <https://labour.org.uk/wp-content/uploads/2022/12/Commission-on-the-UKs-Future.pdf>

⁹² M.MacNeil, *Employment law*, in *Independence: there is a Third Option*, (Red Paper, Dec. 2021), https://redpapercollective.net/?page_id=162

⁹³ Scottish Government, *A New Approach to Work*, (Oct. 2022), <https://www.gov.scot/news/a-new-approach-to-work/>

1. There is a need to specify what Fair Work looks like more clearly. NHS Scotland's PIN policies are a model that could be adopted more widely in this regard. Supported by more investment in supporting skills development which enables Fair Work.
2. The Fair Work principles and messaging needs to be refreshed well before 2025 and backed up with action. This could include more on the business case and testimonials focusing on hard-to-reach sectors similar to the approach adopted by the Scottish Living Wage Campaign. There should be a focus on young workers, where even basic employment rights are poorly understood.
3. Government should identify poor employment practices. That means naming, shaming and speaking out against poor employment practices such as zero/notional hour contracts and fire and rehire practices. Good employers are generally engaged with the Fair Work agenda, but encouragement only goes so far, with bad employers undermining the initiative and the economy. As Unite Scotland said in their *Becoming a Fair Work Nation* response, '*There exist no concrete action measures to penalise, incentivise and censure companies that break Fair Work principles.*'
4. Fragmented approaches to employer coordination constrain the legitimacy and effectiveness of the collective employer voice in Scotland. Strengthening the institutions supporting fair work, including sectoral collective bargaining, will provide strong incentives for employers to coordinate more effectively.
5. While progress has been made on some elements of Fair Work, particularly the Real Living Wage, more focus is needed on other principles, including collective bargaining. While there are differences in relation to powers, a broader version of the New Zealand Fair Pay Agreements model is worth considering in areas where the Scottish Government has procurement leverage⁹⁴. Other devolved governments use a pre-assessment certificate to weed out poor employers from procurement. The Victoria Government in Australia uses a Fair Job Code to achieve this, including a complaints procedure⁹⁵. There should be a relentless focus on low-paid sectors, which often have poor employment practices.
6. There is a strong relationship between collective bargaining coverage and low-wage work. The Scottish Government should promote sectoral collective bargaining in areas with the most leverage, including social care and childcare. The slow pace of implementing the widely supported FWC recommendations on the social care sector illustrates this. The National Care Service also needs to regulate the kind of market and austerity-based price competition all too often pursued by local authorities. Despite significant new public sector investment, nothing appears to have been done to address this issue in early learning and childcare.
7. Procurement is the crucial leverage to support Fair Work under devolved powers. There has been some progress in tightening the process, and we understand there will be new guidance

⁹⁴ Employment New Zealand, *Second package of Fair Pay Agreements Regulations*, (June 2023), <https://www.employment.govt.nz/about/news-and-updates/second-package-of-fair-pay-agreements-regulations/>

⁹⁵ Victoria Government, *Fair Jobs Code*, <https://www.buyingfor.vic.gov.au/fair-jobs-code-suppliers-and-businesses>

shortly. However, Fair Work First is still drawn too narrowly, and there is some evidence that it is not given sufficient weighting in bid evaluation. The Real Living Wage has been a success story partly because it is a simple yes/no criterion. This approach needs to be applied to other Fair Work criteria. When procurement contracts have been awarded based on Fair Work assurances, these need to be monitored regularly.

8. Procurement reform is particularly important in the voluntary sector. While there is more the sector could do to strengthen Fair Work in its employment practice, government needs to play its part through longer-term core funding.
9. It is welcome that Fair Work is a significant element of the National Performance Framework (NPF) and that employee voice is now measured as those covered by collective bargaining. However, the data indicates that the proportion of employees who have reported that they are part of a collective agreement which affects their pay and conditions has fallen by 6.3 percentage points (38.1% to 33.7%) between 2007 and 2020. In 2020 it stood at 33.7%. Having such an indicator, even if the data is dated, is a start, but action to address this needs to be more actively pursued in economic strategies. Other indicators in the NPR, such as work-related ill health, skills and workplace learning, should be included in the Fair Work evaluation.
10. The separation of workplace skills in the NPF indicates that more needs to be done to incorporate education and skills in the Fair Work initiative. There is significant government investment in skills training, and this should come with Fair Work requirements. For example, an external review by Education Scotland of training in Hospitality Modern Apprenticeships did not refer to Fair Work, and it is not an evaluation criterion⁹⁶. A study for the Equality and Human Rights Commission concluded, *'little evidence being found to support a contention that procurement was used as a mechanism for advancing equality in employment.'*⁹⁷ The Young Persons Guarantee has lots of practical guidance for employers. Still, there is only a gentle encouragement towards paying the Real Living Wage, and other Fair Work criteria are not spelt out⁹⁸. A revitalised lifelong learning provision will prepare workers for the challenges facing workers in the new economy.
11. As with skills, Fair Work should be applied to every area of government investment and interaction with the labour market. This includes the enterprise agencies, City Region and Growth Deal Plans, and the Scottish Investment Bank. Fair Work principles should be applied across all policy areas. Cross government working is often difficult to deliver, and the existing civil service units are small and modestly funded. A new labour market agency should be considered to monitor fair work compliance and drive the implementation of Fair Work

⁹⁶ Education Scotland, A report on the external review by Education Scotland of training in Hospitality Modern Apprenticeships, (March 2019), <https://education.gov.scot/media/ungdqf1e/modernapprenticehospitalityreport.pdf>

⁹⁷ EHRC, Modern apprenticeships Part 3, (July, 2013), <https://www.equalityhumanrights.com/en/our-work-scotland/our-work-scotland/research-scotland/modern-apprenticeships>

⁹⁸ Young Persons Guarantee, Financial Wellbeing Toolkit, https://www.dyw.scot/uploads/1/0/5/5/105538585/financial_wellbeing_toolkit_2_.pdf

12. Fair Work conditionality should be extended to tax allowances and bonuses for businesses (e.g. business rates) along with positive incentives, such as discounts, for companies that adopt Fair Work practices.
13. Limited labour market data in Scotland constrain progress in Fair Work. There is also a need for a structured evaluation tool for Fair Work that credibly measures progress across all the principles.
14. A National Workforce Framework could prevent wasted effort reinventing the wheel on issues like staff transfer, pensions, secondment and standard procedures. This could include a staff governance framework incorporating Fair Work, similar to that adopted by NHS Scotland, and a common approach to training and development.
15. Incorporate health and safety more explicitly in Fair Work principles and in Fair Work First, focusing on mental health risks. The government could do more to highlight the positive impact of an effective collective trade union employee voice in Scotland on health, safety, and the economy. Engage Public Health Scotland and press for an NHS-led national occupational health scheme as advocated by Scottish Hazards.
16. Flexible working by default should be part of the Fair Work criteria. The Scottish public sector should lead by example on flexible working, including the compressed working week. The business benefits should also be promoted as part of Fair Work.
17. Self-employment in Scotland (one-sixth of the workforce) is often not providing an environment for inclusive economic growth, a sustainable livelihood, and a context of Fair Work. Business support and advice are required specifically for business start-ups to integrate Fair Work principles. However, most self-employment comes from those who used to be in the employed workforce, and they should be fully included in Fair Work.
18. It was clear from our interviews that trade unions also need to do more to promote and develop Fair Work in all aspects of their work, with practical guidance for workplace representatives. An education pack would help unions incorporate Fair Work in induction and introductory training.
19. There is a strong case in principle for devolving employment law to Scotland. However, that case needs to be developed and then promoted. The trade union movement in Scotland should lead that work in consultation with others.

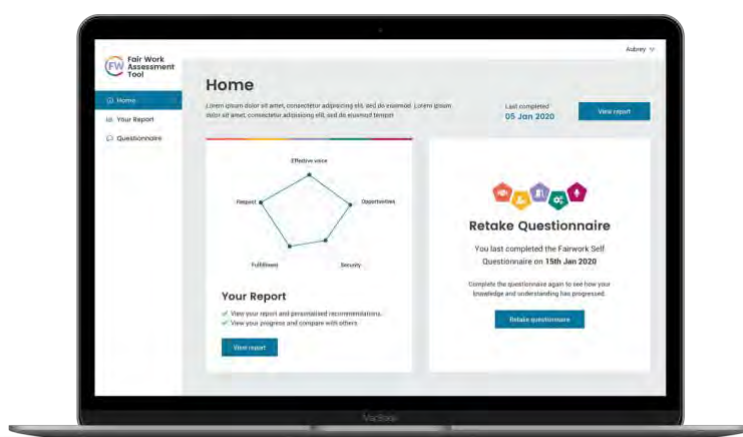
5. Using Fair Work – a guide for trade unions

Introduction

It was clear from the interviews in this study that most union representatives would like to know more about how they can use Fair Work in their role. They believe it requires more information, better guidance, and more robust enforcement to make further progress. In this chapter, we look at some tools available to workplace representatives and suggest improvements.

Current Resources

There is a Fair Work Employer Support Tool promoted by the Fair Work Convention, the Scottish Government and its agencies⁹⁹. 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. From our interviews, it appears that some organisations have undertaken their own Fair Work reviews in a similar manner. The Scottish Police Authority has published its Fair Work Assessment, which was conducted in collaboration with the recognised trade unions¹⁰⁰.



The Fair Work Convention has its own online self-assessment tool, designed to help anyone assess their experience of fair work and suggest actions to improve it¹⁰¹. 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.

⁹⁹ Fair Work Employer Support Tool, <https://fairworktool.scot>

¹⁰⁰ Scottish Police Authority, *Fair Work Annual Assessment 2023*, <https://www.spa.police.uk/spa-media/gnsfwu2w/item-4-3-fair-work-annual-assessment.pdf>

¹⁰¹ Fair Work Convention, *How fair is your work?* <https://quiz.fairworkconvention.scot>

The Chartered Institute of Personnel and Development (CIPD) has a comprehensive resource area for Fair Work in Scotland¹⁰². 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. These resources address Fair Work from an employer perspective and are relatively general. For example, they recognise two distinct forms of employee voice:

- individual voice involving direct dialogue between the organisation and employees whereby individuals can voice opinions and make suggestions
- collective voice via trade unions and their representatives, as well as non-union employee representatives, for example, a staff forum.

While this covers all options, CIPD guidance and research does identify the benefits of collective representation and working constructively with trade unions. Trade unions can use the resources to evidence positive Fair Work practices in some of the Fair Work principles. In other policy areas, their view is less helpful, generally promoting a voluntary approach that fails to recognise the power imbalance in the workplace. For example, they argue, *'the CIPD believes that the current level of UK regulation creates a labour market that generally strikes the right balance between providing employers with flexibility, and job opportunities and security for individuals.'* This includes zero-hour contracts, which do not sit well with Fair Work principles. Overall, these resources have to be used with caution by union representatives.

There are a range of trade union guides to aspects of Fair Work that workplace representatives can use to review Fair Work. For example, Unite the Union has a guide to workplace equality impact assessments¹⁰³. This explains such an assessment and a 9-step approach to workplace assessment, together with a template. The TUC also has an Equality Duty Toolkit aimed at trade union negotiators to help them understand the new public sector equality duty and how they can use it¹⁰⁴. UNISON and UCU have similar guides which explain the process and include examples of good practice¹⁰⁵.



¹⁰² CIPD Scotland, Fair Work resource area, <https://www.cipd.org/uk/about/public-policy/supporting-local-good-work-standards/scotland-fair-work-convention/>

¹⁰³ Unite, Making Sure Your Workplace is Fair for All, (2020), <https://www.unitetheunion.org/what-we-do/equalities/covid-19-unite-guide-to-workplace-equality-impact-assessments/>

¹⁰⁴ TUC, Equality Duty Toolkit, https://www.tuc.org.uk/sites/default/files/extras/equality_toolkit.pdf

¹⁰⁵ UNISON, Securing Equality, <https://www.unison.org.uk/content/uploads/2017/09/24577.pdf> and UCU, Equality Toolkit, https://www.ucu.org.uk/media/8474/Equality-Toolkit/pdf/Equality_Toolkit_A4_booklet_Nov16.pdf

The Oxford Internet Institute focuses on Fair Work on digital platforms and evaluates working conditions. It explores how gig platforms in different countries measure against their Fairwork Principles¹⁰⁶. This gives a simple to visualise rating, which points to another approach to addressing poor employers. They use a combination of desk research, manager interviews and worker surveys to reach an assessment rating. The rating order for the UK, with Uber Eats scoring nil, will probably come as no surprise!

The Labour Relations Agency in Northern Ireland and ACAS in Great Britain tend to focus on employment law. However, they include broader guidance on good employment practice, although nothing specific on Fair Work.

Actions for Workplace Representatives

There are a number of actions workplace representatives could take to use Fair Work in their role, including:

- 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.
- Publicise Fair Work in local union publications, social media platforms and workplace meetings.
- Undertake a short survey of members to seek their views on how well the employer abides by Fair Work principles.
- Propose a joint evaluation using the Fair Work Employer Support Tool with the employer.
- 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.
- 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.
- 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.
- 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:

- 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?

¹⁰⁶ Oxford Internet institute, *Fairwork*, <https://fair.work/en/fw/about/>

- ◆ 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?
- Identify workforce data that may be relevant to evidence Fair Work action. For example, turnover, diversity, tribunal applications, health and safety reports, sickness absence, grievance and disciplinary actions.
 - 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?
 - 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.

We will publish a short guide for workplace representatives that takes the relevant resources highlighted in this report and links them to the actions outlined above in a format easier for representatives to use.

6. Conclusion

This paper describes the Fair Work initiative in Scotland and the journey to get here since devolution. It is 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.

We analyse the current condition of working lives in Scotland. The pandemic highlighted many conditions that sadly existed before COVID-19 exacerbated them. While Fair Work has impacted working lives, the fundamentals of low pay, poor working conditions and the absence of effective voice in many workplaces remain a feature of the Scottish labour market. This is reflected in trade union and other responses to Fair Work. While support for the initiative remains strong, there are frequent calls from unions and civil society organisations for the rhetoric of Fair Work to match the reality. In particular, in critical sectors like child care, social care, hospitality and construction.

To move beyond aspiration to implementation that delivers fundamental change to employment culture, we looked at various proposals to make Fair Work more effective. We make recommendations that are within the powers of the Scottish Government, employers and trade unions to implement. We don't avoid the issue of devolving employment law, which would undoubtedly strengthen Fair Work. However, the focus is on what can be done now.

This study examines Fair Work and its impact on the workplace, using the experiences of workplace representatives. The findings show 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 is limited. Fair Work has improved working lives over a range of bargaining issues and has been used effectively by representatives in negotiations. It has been most effective in raising minimum wage levels with less progress in delivering on the other principles. Representatives recognise that Fair Work can contribute towards improving working lives. They believe it requires more information, better guidance, and more robust enforcement to make further progress. Trade unions can also do more to support representatives.

From this evidence, we set out recommendations for further action and a toolkit of steps that workplace union representatives can adopt, either jointly with employers but also unilaterally if needed. We will follow this up with a short practical guide.

The largely voluntary approach taken to Scotland's Fair Work initiative has made a limited but positive contribution to improving 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.

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The author is grateful to the trade union representatives and others who gave up their time to be interviewed for this study and the initial survey work undertaken by Professor Gregor Gall. In particular, the Jimmy Reid Foundation is grateful for the support and funding provided by the Alex Ferry Foundation, without which this study would not have been possible.

Publication information

When citing this document, please use the following citation: Watson, D. *Assessing Fair Work in Scotland* (Glasgow, Jimmy Reid Foundation, 2023)

This report is published by the Jimmy Reid Foundation, 14 West Campbell Street, Glasgow G2 6RX, with support from the Alex Ferry Foundation.

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