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**Working Paper**

## Making Britain the best place in the world to work: how to protect and enhance workers' rights after Brexit ... and coronavirus

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## **Making Britain the best place in the world to work: how to protect and enhance workers' rights after Brexit ... and coronavirus**

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## **Abstract**

The UK government's promise in the Queen's Speech of 19 December 2019 to protect and enhance worker's rights after Brexit has taken on new urgency in the light of the coronavirus pandemic, the inadequacy of the present framework being exposed for all to see. Issues highlighted include the social safety net, anytime/anywhere working, employment status and, above all, the low pay and insecurity of many of the 'key' workers society depends on for everyday services. A Ministry for Employment and Social Affairs and a specialist social partnership body like the Low Pay Commission are needed to ensure that worker's rights are regularly reviewed and updated to reflect changing circumstances. Effective enforcement mechanisms are a must, which means a well-funded enforcement agency and requiring businesses to take responsibility for what happens in their supply chains, with provisions for social licensing as well as mandatory due diligence. The government also needs to improve the evidence base for decision making about workers' rights including a regular survey of management policies and practices based on the internationally renowned Workplace Employment Relations Survey. Overall, the task will make sense to more people if the government uses the language of 'fairness'.

## **Acknowledgements**

I'm extremely grateful to my former IRRU colleagues George Bain, Deborah Dean, Linda Dickens, Paul Edwards and Paul Marginson for their encouragement and comments.

Had he had the opportunity, I'm sure I would have been saying the same of Willy Brown - especially as he was one of the architects of the Workplace Employment Relations Survey and, together with George Bain, had such a big influence on the early development of the Low Pay Commission. Sadly, however, Willy passed away last summer and his experience, knowledge and wisdom are no longer available to us.

# **Making Britain the best place in the world to work: how to protect and enhance workers' rights after Brexit ... and coronavirus**

## **Introduction: coronavirus magnifies the significance of workers' rights**

There were two major announcements on 19 December 2019 dealing with workers' rights. One was that the revised *European Union (Withdrawal Agreement) Bill 2019-20* would not contain clauses on the protection of those rights derived from the EU<sup>1</sup>. The other, in the Queen's Speech, was that there would be an Employment Bill to 'Protect and enhance workers' rights as the UK leaves the EU, making Britain the best place in the world to work'<sup>2</sup>.

Coronavirus reminds us how urgently workers' rights in the UK need attention. Tackling them is unlikely to be at the top of many people's agenda. Doing so will nevertheless make a considerable contribution to speeding up recovery.

Three particular issues stand out in the light of recent events:

*The 'social safety net'*. In 2016, in the wake of the Brexit referendum, *The Economist*, not renowned for advocating government intervention, offered a damning indictment of Britain's economic model. Britain, it argued, 'has benefited enormously from its embrace of free trade. But its failure to share the proceeds means that in too many places ... the effect has been underwhelming'. It went on to talk about strengthening the social safety net and opening up opportunities for those whose jobs are destroyed. It highlighted that the UK has few 'active' labour market policies, and spending on them is about one fifth of Germany's. The UK's 'rapid response service' dealing with threatened closures was described as 'feeble'<sup>3</sup>.

Coronavirus has confirmed this indictment with a vengeance. Levels of sick pay and universal credit have already had to receive stop gap attention and, in the absence of

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<sup>1</sup> House of Commons Library. 2019. *Removal of workers' rights in the new EU (Withdrawal Agreement) Bill* December 20. Available at <https://commonslibrary.parliament.uk/brexit/legislation/workers-rights-and-the-new-eu-withdrawal-agreement-bill/>.

<sup>2</sup> The Queen's speech 2019 (19th December). Available at <https://www.gov.uk/government/speeches/queens-speech-december-2019>.

<sup>3</sup> For further details, see *The Economist*, 30 July 2016. 'The Need to do more to help the losers of globalisation'.

permanent provision for short-time working, a temporary job retention scheme has had to be introduced<sup>4</sup>.

This is only to scratch the surface of ‘active’ labour market policies, however. Along with joined-up social security arrangements linking pay with in-work benefits, taxation, much cheaper housing and childcare, rights to vocational training/ retraining might also be expected to feature. The same goes for job guarantee arrangements<sup>5</sup> and some form of ‘participation income’ or ‘citizen’s income’ or ‘universal basic income’<sup>6</sup>.

*Anytime/anywhere working.* Coronavirus is giving a considerable boost to automation and digitalisation. In particular, teleworking could well become the new norm for many of the millions who have been working remotely from home during the lockdown, raising major implications for workers’ rights. Specifically, for example, as well as the employment status of ‘platform working’, there are issues associated with ‘digital Taylorism’, i.e. the digital management (policing) of workers’ time and the blurring of the boundary between private life and working life. As recent Acas advice spells out, there is also a raft of basic issues to be dealt with like working hours, health & safety, equipment, overhead expenses and so on<sup>7</sup>.

*Employment status.* The difficulties encountered in devising a package of support measures for the self-employed confirm the findings of the Taylor review of 2017: there is an urgent need to update current definitions of ‘employed’ and ‘self-employed’. Employment law needs to be brought into line with HMRC arrangements, with a statutory binary divide between ‘employed’ and ‘self-employed’, with tax and benefits equalised as much as possible. The current distinction between ‘employee’ and ‘worker’ also makes little sense: everyone who is ‘employed’ should be regarded as an ‘employee’

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<sup>4</sup> Ironically, at the height of the financial and economic crisis in 2008-9, it was employers’ representatives who complained about the lack of these in the UK. In the light of a 75 per cent reduction in orders, Matthew Taylor, chief executive of JCB, was quoted as saying: ‘We are making some very good employees redundant and that hurts’. He went on to contrast the position in the UK with that in Germany, where it was possible under *kurzarbeit* to put JCB’s employees on a two-day week, with the Government making up some of the wages to avoid layoffs (*The Sentinel*, 2009).

<sup>5</sup> See, for example, the TUC’s recent proposals for a job guarantee scheme at <https://www.tuc.org.uk/research-analysis/reports/new-plan-jobs-why-we-need-new-jobs-guarantee>

<sup>6</sup> There is a heated and ongoing debate about the pros and cons of a regular universal basic income, which space does not allow to summarise here. Arguably, the ideas of Tony Atkinson for a participation income and a job guarantee scheme deserve particular attention. His participation income would help to deal with the ‘money for nothing’ moral hazard: people would have to participate in formal or unpaid work, volunteering, or education to receive it. And, yes, the guarantee of a job in public services would pose a management headache, but probably not worse than having to monitor a multitude of service level agreements with contractors. For further details of Atkinson’s proposals, see <https://www.tony-atkinson.com/the-15-proposals-from-tony-atkinsons-inequality-what-can-be-done/> See also Anthony Atkinson. 2015. *Inequality What Can Be Done?* Harvard: Harvard University Press.

<sup>7</sup> For further details, go to <https://www.acas.org.uk/working-from-home>

(or ‘worker’) and entitled to an employment contract be it permanent, fixed term, agency, casual (zero hours) or remote (home based).

*Low pay.* As well as raising specific workers’ rights issues, coronavirus has also revealed what many see as a fundamental anomaly at the heart of employment relations in the UK. Along with doctors, nurses and their NHS colleagues, it is workers in sectors such as care, retail, distribution and warehousing, passenger transport, postal services and refuse collection who have emerged as indispensable in keeping things going during the lockdown. And yet, despite being responsible for delivering essential services in what is the ‘foundational economy’<sup>8</sup>, many of these workers are low paid and have little or no security - they are, in the BBC’s words<sup>9</sup>, the ‘minimum wage heroes’.

*Externalisation of the employment relationship.* Related to the above, the main reason why many ‘key workers’ are poorly paid and their jobs insecure is that they are not directly employed by the organisation responsible for the service provision - they work for sub contractors or agencies. Bluntly put, they are the victims of a tug of war between the ‘internalisation’ and ‘externalisation’ of the employment relationship<sup>10</sup>. Throughout most of the last century, the trend was from ‘externalisation’, involving gang masters and casual or seasonal working, to ‘internalisation’ in the form of regular or permanent employment - partly because of the pressure from trade unions, but also because businesses came to appreciate the benefits regular employment brings in terms of control and commitment. In recent years, however, the trend has been in reverse, reflecting policies such as compulsory competitive tendering introduced in the 1980s, promotion of the ‘flexible firm’ and its ‘core-periphery’ employment model<sup>11</sup>, and increasing pressure to reduce costs and/or risks as ‘financialisation’ thinking and

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<sup>8</sup> This term has come to be associated with Manchester University’s Centre for Research on Socio-Cultural Change. Essentially, far from being homogenous, it sees an economy comprising different groups of which the foundational accounts for about 40 % of employment. Unlike, say, the aerospace, automotive and pharmaceutical sectors, which are competitive and tradeable internationally, the foundational economy is largely immobile and shielded from international competition. It provides two types of essential or everyday services: the *material*, covering the utilities, banking, food etc; and the *providential*, embracing activities like care, education and health.

For further details follow this link, <https://foundationaleconomycom.files.wordpress.com/2019/01/fe-intro-2.pdf>. See also Julie Froud and Karel Williams. <https://fabians.org.uk/wp-content/uploads/2019/09/FABJ7429-Socialism-Pamphlet-0819-WEB-002.pdf>

For a more detailed exposition, see the Foundational Economy Collective. 2020. *Foundational Economy: The infrastructure of everyday life*. Manchester University Press: Manchester.

<sup>9</sup> <https://www.bbc.co.uk/news/av/uk-52111389/coronavirus-minimum-wage-heroes>

<sup>10</sup> For further details, see K. Sisson, Chapter 3 ‘Coming to terms with the employment relationship’ in *Employment Relations Matters*. Available at <https://warwick.ac.uk/fac/soc/wbs/research/irru/erm/>

<sup>11</sup> For further details of the origins and development of the ‘flexible firm and ‘core-periphery’ models, see Anna Pollert. 1988. ‘The ‘Flexible Firm: Fixation or fact? *Work, Employment & Society*. Vol. 2, No. 3, pp. 281-316.

practice have become dominant. In short, many businesses have reverted to ‘externalising’ the employment relationship, albeit using modern terms such as ‘outsourcing’, ‘agency working’, ‘umbrella companies’, ‘personal service companies’, ‘self-employment’, ‘zero hours contracts’ and so on.

The result is that, in 2018 according to the TUC, upwards of six million in the UK worked in supply chains, which is around 20 percent of the labour force<sup>12</sup>. The bulk (3.3 million) were involved in outsourcing companies; 2 million in labour market intermediaries such as recruitment agencies, ‘umbrella companies’ and ‘personal service companies’; and a further 615,000 in franchised businesses operating under the brand, systems and business model of the franchisor. Some 900,000 people are also reckoned to be on ‘zero hours’ contracts<sup>13</sup>.

The problem is that few businesses have required guarantees of rights’ protection for the workers they have contracted out. This is even true of the large swathes of public service workers making up the core of the foundational economy. For many, compulsory competitive tendering has amounted to little more than being sold off to the lowest bidder; some, such as care workers, have been allowed to fall into the hands of private equity groups, whose primary purpose is to maximize the rate of investment return depending on debt financing and other money making devices.

This paper considers how the UK government might seek to tackle these matters in the wake of Brexit and the Coronavirus pandemic via the enhancement and protection of workers’ rights. In particular, the intention is to promote discussion and debate about:

- how workers’ rights might be regularly reviewed and enhanced to reflect changing circumstances
- how workers’ rights might be enforced and protected - especially in the light of the growth of outsourcing
- how the evidence base for workers’ rights decision making might be improved.

The paper also makes the case for framing reform in terms of ‘fairness’ rather than ‘good work’ or ‘job quality’.

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<sup>12</sup> For further details, see <https://www.tuc.org.uk/sites/default/files/Shiftingtherisk.pdf>

<sup>13</sup> For further details, go to ONS <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/emp17peopleinemploymentonzerohourscontracts>



## Keeping workers' rights up-to-date

The Employment Bill's commitment to 'protect and enhance workers' rights as the UK leaves the EU' could be time-limited and last only until 31 December 2020. In the light of the issues and challenges that coronavirus has raised, however, this would be a difficult position to maintain: workers' rights need to be monitored and enhanced on a regular basis to reflect changing circumstances.

So let us assume the Bill's commitment has a longer timeline.

### *A Ministry of Social Affairs and Employment*

An immediate issue is who is going to advise the government on which workers' rights are to be enhanced and when - the very small Employment Relations group tucked away in BEIS looks hardly equipped to do the job and the same goes for ad hoc individual 'experts'. So will there be a dedicated Ministry? And, if so, what will be its remit? If there is not going to be a new Ministry, how is liaison between departments to be organised to ensure joined up government? What will be the role of the Industrial Strategy Council, bearing in mind it currently has monitoring job quality as part of its brief under the government's *Good Work Plan*<sup>14</sup>?

There is a very strong case for a dedicated Ministry with policymaking and policy implementation roles. Symbolism and a fresh start are important. If the government introduces a dedicated department, it will tell us that they are serious about the importance of work and the workplace: the Department of Work and Pensions is too heavily identified with workfare, cutting benefits and so on to credibly do what needs to be done. As I lamented in a recent *Warwick Paper in Industrial Relations*<sup>15</sup>, the UK is also exceptional in not having a Minister at the top table fighting the corner for work issues: the lack of a specialist ministry for more than two decades means 'there's been both a lack of strategic direction and fragmentation of operational responsibility'.

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<sup>14</sup> Available at [https://www.cipd.co.uk/Images/understanding-and-measuring-job-quality -3\\_tcm18-33193.pdf](https://www.cipd.co.uk/Images/understanding-and-measuring-job-quality -3_tcm18-33193.pdf), p.12.

<sup>15</sup> Keith Sisson. 2016. 'Shaping the World of Work – time for a UK jobs strategy'. *Warwick Papers in Industrial Relations* No. 105, Industrial Relations Research Unit, University of Warwick.

It goes on to say, 'The Department for Work and Pensions (DWP) is a misnomer. In its own words, it's "responsible for welfare, pensions and child maintenance policy ... it administers the State Pension and a range of working age, disability and ill health benefits ..."' Along with the Treasury, which sets the parameters for public sector pay, it's one of no fewer than six departments involved in work matters: Business, Energy and Industrial Strategy (with responsibilities for employment relations and the Employment Agency Standards Inspectorate); Education (with responsibilities for apprenticeships); the Home Office (with responsibilities for equality and for women); the Department of Environment, Food and Rural Affairs (responsible for the Gangmasters' Licensing Authority), and Her Majesty's Revenue and Customs (HMRC) (involved in the enforcement of the National Living Wage). Acas reports to BEIS, the Health and Safety Executive to the DWP, the Equality and Human Rights Commission to the Home Office, and so on. If someone wanted to design arrangements enabling governments to avoid facing up to the bigger issues, they'd be hard pushed to do better than the present set'.

It is a moot point, though, whether there should be a Ministry for Employment Rights as the Labour Party advocated in its 2019 election manifesto<sup>16</sup>. Arguably, such a focus is too narrow. Mindful of the wider challenge associated with the need for an improved ‘social safety net’, it is better to think in terms of a ‘social affairs’ portfolio for the new Ministry. This is what many other countries have opted for. The Netherlands is a good example. The mission of its Ministry of Social Affairs and Employment is to ‘foster a socially and economically vigorous position ... with work and income security for everyone’<sup>17</sup>. The remit is correspondingly wide-ranging: ‘labour market policy, including migration and the free movement of workers, benefits and re-integration, income policy, work-life balance, and policy on working conditions and inspection’.

The Ministry has two ‘Directorates’, which give an indication of what is involved. The *Directorate General for Participation and Income Security* is responsible for the ‘promotion of employment and income protection’. The *Directorate General for Employment* deals with the ‘terms of employment, labour law, working conditions and industrial relations’. Also relevant in the light of the earlier discussion about enforcement, the Ministry has a single ‘Inspectorate’, which is responsible for ‘fair, healthy and safe working conditions and socio-economic security for everyone’.

### *A key role for social partnership*

As well as introducing a dedicated Ministry, the government should also build on its initiative in bringing the CBI and TUC together to help develop its job retention arrangements and introduce a representative social partnership body<sup>18</sup> - which, for reasons given later, might have the name ‘Fair Work Commission’ (FWC). This will be especially valuable not only in maximising the expertise available to the government, but also the legitimacy of its decisions. As such, the FWC should be given a remit to

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<sup>16</sup> For further details, go to [https://labour.org.uk/wp-content/uploads/2019/12/13238\\_19-Work-manifesto.pdf](https://labour.org.uk/wp-content/uploads/2019/12/13238_19-Work-manifesto.pdf)

<sup>17</sup> For further details, go to <https://www.government.nl/ministries/ministry-of-social-affairs-and-employment/organisational-structure>.

A recognition of the wider concerns is reflected in portfolios in many other countries e.g. ‘Labour and Social Affairs’ in Germany, ‘Social Affairs and Employment’ in France as well as the Netherlands, ‘Labour and Social Policies’ in Italy and ‘Labour and Social Economy’ in Spain.

<sup>18</sup> The Scottish Government set up an independent representative *Fair Work Convention* in 2015 following the *Working Together Review: Progressive Workplace Policies in Scotland*. For further details, go to <https://www.fairworkconvention.scot/about-the-convention/>.

Its Welsh counterpart intends to legislate for a *Social Partnership Council*, following the report of the Fair Work Wales Commission chaired by Linda Dickens. For further details, go to <https://gov.wales/sites/default/files/consultations/2019-11/strengthening-social-partnership-white-paper-consultation-document.pdf>.

monitor the impact of legislation on the world of work and produce an annual report for the Government on changes and amendments it believes should be made.

The Low Pay Commission (LPC) provides an appropriate model for this new body. The LPC was set up in 1998, with George Bain as its chair, and put on a legislative footing the following year. Despite pay being one of the most sensitive and highly politicised issues, there is a widespread consensus that the LPC has done a difficult job extremely well.

As such, like the LPC, the FWC would be relatively small in size - the LPC has just nine members - and would bring together individuals with a 'balance' between representatives from employer, worker and academic backgrounds.

Also similar to the LPC, the FWC might be supported by a secretariat of employment specialists, statisticians and policy professionals. Their role would be to provide Commissioners with the evidence base they need to make their recommendations.

It would obviously be quite a task given the range of possible areas and issues to be covered. Given this, the government might adopt one of the suggestions in the Fair Work Wales Commission's (FWW) report (pp.64-5) to set up a 'virtual' observatory to make available 'additional capacity and expertise'. Consisting of a core of independent standing members, this 'observatory' might perform the following functions:

- monitoring the outcome of employment tribunal and court cases
- marshalling evidence on the impact of legislative changes, including sector by sector analyses
- 'horizon-scanning' to help the Commission keep employment rights up to date so that they reflect changing needs
- keeping abreast of developments in other countries<sup>19</sup>.

As FWW suggests, having an 'observatory' rather than ad hoc engagement with 'experts' offers advantages such as 'speed of commissioning and response; prior familiarity with the agenda; maintaining fruitful relationships; [and] provision of ongoing independent advice where required'.

The FWC's overall evidence base should also be built on the same three main pillars that the LPC has so successfully combined. These are in-house analysis, commissioned research, and stakeholder consultation.

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<sup>19</sup> For example, links should be maintained with the EuroWORK European Observatory which brings together Eurofound's resources on working conditions and industrial relations, supported by correspondents across EU Member States and Norway. Eurofound also runs two regular surveys on working life issues: the European Working Conditions Survey (EWCS) and the European Company Survey (ECS).

The latter of these (stakeholder consultation) should be a key ingredient of the new body. This is regarded to have been of fundamental importance in accounting for the success of the LPC. The consultation the LPC undertakes does not simply involve the normal process of issuing a white paper or equivalent and asking for written responses. It also involves visits to workplaces around the country and discussion with individual employers and workers and their representatives, along with meeting interested parties such as the Bank of England's Monetary Policy Committee. As one of the First Commissioners (Willy Brown) put it in his own inimitable way, it's akin to 'going out and meeting the data'<sup>20</sup>. This helps to explain the widespread credibility the LPC's decision-making and recommendations have come to enjoy – it is accepted that the LPC understands and reflects the views of all sides of the debate.

A further advantage of such consultation is that the LPC Commissioners have not only had to come to terms with the complexities of the issues and reflect them in their recommendations. They have also had to develop a strong deliberative dimension to their decision-making process. The upshot is that they have been able to give much greater consideration to the relevant issues than is normally the case. Further, in the words of the recently published history of the LPC, they have also undergone a 'shared and mutual education as to the issues', with both worker and employer views contributing to the Commission's recommendations.

Also in developing social partnership, sector forums are another FWW recommendation the government might usefully adopt<sup>21</sup>. These would comprise employer, TU and civic society representatives and be regional and/or industry based. As well as providing a sector focus for inter-agency co-operation, the forums might have two tasks: to identify workers' rights issues of particular concern in their sector; and to promote specific initiatives (e.g. skills and training) taking into account developments in the nature of work there. As FWW suggests, the social care sector might be a priority for such a forum.

Arguably, it is such intermediary bodies that are the missing link in the UK's institutional infrastructure. Without them, meaningful communications between national policymakers and individual employers are virtually impossible. As Paul Edwards, Monder Ram and their colleagues have shown in their detailed case study

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<sup>20</sup> Brown, W., 2002. 'The Operation of the Low Pay Commission'. *Cambridge Working Papers in Economics 0223*, Faculty of Economics, University of Cambridge.

<sup>21</sup> Welsh Government. 2019. *Fair Work Wales. Report of the Fair Work Commission*. p.61. Available at [www.gov.wales/fair-work-wales](http://www.gov.wales/fair-work-wales).

work, individual employers, especially SMEs, are left to cope on their own and find it difficult to keep up-to-date with what is expected of them<sup>22</sup>.

## **Enforcing and protecting workers' rights**

The protection of workers' rights requires their effective enforcement. As the CBI explains, this is not just in the interests of workers:

Effective enforcement mechanisms underpin a well functioning labour market by upholding employment rights and protecting compliant businesses from operating on an uneven playing field. The vast majority of employers take their obligations seriously ... Even so, it is imperative that robust routes to enforcement are in place where employers do not meet their obligations to staff<sup>23</sup>.

Enforcement is also important for the wider reasons touched on in the Introduction. The more businesses have 'externalised' the employment relationship, the more they have disrupted the employment and social security systems put in place after WW2. For as well as turning workers into consumers who generate productivity and growth, the regular employment relationship is a major source of the tax revenues that fund public expenditure, including the 'social safety net'.

For example, low pay and/or unlawful pay deductions and reductions in hours to meet increases in the National Living Wage mean the Department of Work and Pensions has to subsidize employers to bring earnings up to a 'living wage' through tax credits. Similarly, pressure on individuals to be ('bogus') self-employed means a sizeable reduction in Treasury income - the IFS estimates that by 2021/22 the costs of self-employment to the Treasury will be approximately £3.5 billion, simply due to the disparity in treatment under the taxation system<sup>24</sup>. In addition, unsafe and unhealthy working arrangements (including the stress and mental illness arising from the insecurity of income or lack of control over work processes) have serious implications for NHS financial resources.

Much of the recent discussion in this area focuses on two issues. The first is a single enforcement agency to replace the currently fragmented arrangements. The second is how to make the most of the 'power of leverage' that businesses have in their supply chains. These issues are considered in turn below.

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<sup>22</sup> For a review of this work, see *Monder Ram and Paul Edwards*. 2010. 'Industrial Relations in Small Firms' in Trevor Colling and Mike Terry (Eds), *Industrial Relations: Theory and Practice*, 3rd Edition. Blackwell: Oxford.

<sup>23</sup> CBI. 2017. 'Response to the Director Labour Market Enforcement's Consultation on tackling exploitation in the Labour Market'. October 2017. p.1

<sup>24</sup> Stuart Adam, Helen Miller and Thomas Pope. 2017. 'Tax, legal form and the gig economy'. Available at [www.ifs.org.uk/publications/8872](http://www.ifs.org.uk/publications/8872)

## *A single enforcement agency*

Following the recommendation of David Metcalf, the then Director of Labour Market Enforcement Strategy, the Queen's Speech proposed the introduction of a single enforcement agency to replace the several agencies currently responsible. The lack of such a body has long been seen to be a problem. Currently, there are no fewer than four separate enforcement bodies offering alternatives to the employment tribunal route: HMRC, which enforces the National Living Wage; the Gangmaster Licensing Authority, which has responsibility for the conduct of licensed gangmasters; the Employment Agency Standards Inspectorate, which deals with the conduct of employment agencies; and the Health & Safety Executive, among whose many duties is enforcing the right not to have to work more than 48-hours.

In its response to the government's consultation, Acas suggests that 'the potential benefits of a single enforcement agency are very much those set out in the Government's consultation document'<sup>25</sup>, namely:

- it would make it more straightforward to signpost both workers and employers and raise their awareness of where to seek help and advice. This is particularly important for reaching high risk sectors and the more vulnerable workers, many of whom are likely to have limited understanding of their employment rights and possibly poor English.
- it would allow for more coordination across the different employment rights covered by the existing bodies and provide users with a more integrated service
- it would provide scope for economies of scale although it would be unfortunate if these gains an increase in government funding were to be lost in any move to a single agency.

Citizens' Advice, which along with Acas bears the brunt of enquiries about workers' rights, has been particularly exercised about enforcement through the years. In reminding the government that it has been calling for a single enforcement agency for over twenty years, it says<sup>26</sup>,

The creation of this agency will mark a genuine step forward for workers' rights in the UK. It will make enforcement far easier for workers to navigate, by

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<sup>25</sup> For further details, go <https://archive.acas.org.uk/media/6334/Acas-response-to-government-consultation-on-establishing-a-single-enforcement-body-for-employment-rights/pdf>

<sup>26</sup> The Citizens Advice Bureau has produced no fewer than three reports recommending a single enforcement agency. The first, *Rooting out the rogues. Why vulnerable workers and good employers need a 'fair employment commission'*, came out in 2007, the second, *Give us a break! The CAB service's case for a Fair Employment Agency*, in 2011 and the third, *Fair Employment. Why Scotland's workers need a Fair Employment Commission*, in 2012. For further details, go to [www.citizensadvice.org.uk](http://www.citizensadvice.org.uk).



providing a single point of contact for all issues, and is an opportunity to extend and strengthen the public enforcement of employment rights.

Citizens Advice also adds that:

Establishing this body is crucial to the success of the wider Good Work Plan. The Plan proposes many important improvements and clarifications to workers' rights, but it will only be successful if changes in the law result in changes in practice. Rights are only as strong as your ability to enforce them<sup>27</sup>.

There are several practical issues to be resolved. As well as resources (more of which below), they include remit, powers, data and intelligence, and governance. Fortunately, the consultation process has elicited a number of helpful responses dealing with these, including one from Matthew Taylor, who has taken over as Director of Labour Market Enforcement<sup>28</sup>.

As Acas hints in its comments above, the issue worrying many commentators is resources. The UK-based charity Focus on Labour Exploitation (FLEX) in particular has consistently drawn attention to the fact that "The UK has one of the least resourced labour inspectorates in Europe"<sup>29</sup>. In 2015, the UK had just 0.9 labour inspectors per 100,000 members of the workforce compared with 4.6 in Ireland, 5.1 in the Netherlands, 12.5 in Belgium and 18.9 in France<sup>30</sup>. Things have only marginally improved with a recent increase in budgets. FLEX points out that the ILO's recommended ratio of inspectors to workers is one to 10,000. The UK is way below that ratio, with approximately 0.4 inspectors per 10,000 workers.

FLEX goes on to give us an idea of what this means.

- in 2017/18, the Gangmasters and Labour Abuse Authority had 101 staff to oversee not only the inspection and licensing of three sectors but also to use police-style powers across the entire labour market in England and Wales to root out modern slavery.
- In the same year, the Employment Agencies Standards Inspectorate (EASI) had to oversee around 18,000 employment agencies and around 1.1 million

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<sup>27</sup> For further details, go to <https://www.citizensadvice.org.uk/about-us/policy/policy-research-topics/work-policy-research-surveys-and-consultation-responses/work-surveys-consultation-responses/good-work-plan-establishing-a-new-single-enforcement-body-for-employment-rights/>

<sup>28</sup> Available at <https://www.thersa.org/globalassets/images/blogs/2019/11/good-work-plan.pdf>

<sup>29</sup> 'Good Work Plan: Establishing a new single enforcement body for employment rights Submission to the Department for Business, Energy and Industrial Strategy by Focus on Labour Exploitation (FLEX)'. p.12. Available at <https://www.labourexploitation.org/publications/flex-response-beis-single-enforcement-body-consultation>

<sup>30</sup> For further details, see Ronson, C. 2015. *Policy Blueprint Combatting Labour exploitation through Labour Inspection*. Available at [www.labourexploitation.org](http://www.labourexploitation.org).

workers, yet had a staff of 13 and a budget of £725,000.

- according to the Director of Labour Market Enforcement, HMRC's minimum/living wage enforcement capacity is so under-resourced that 'the average employer can expect an inspection around once every 500 years'.

### *Making the most of the 'power of leverage': self-policing of supply chains*

A second likely development resulting from the recommendations of the former Director of Labour Market Enforcement Strategy recognises that putting the onus on individuals and/or the enforcement bodies to police workers' rights is not enough. There need to be measures requiring businesses to take responsibility for what happens in their supply chains.

The starting point is the widespread externalisation of the employment relationship referred to in the Introduction, and the motives for it. In manufacturing especially, developing 'core competencies' has been a major consideration. In the widely influential Toyota model, for example, the head of the chain and its suppliers each concentrate on their specialisms; the head of the chain also builds long-term relationships with suppliers involving close monitoring of quality, training, and innovation. In many cases, however, 'externalisation' boils down to cost cutting, raising major concerns not just about workers' rights and the erosion of the tax base, but also consumer protection and public safety. The Grenfell fire of 2018 is a tragic example of how poorly governed many supply chains are in the UK<sup>31</sup>.

The major issue so far has been whether the onus to be put on the key players - either the head and/or a nominated mid-chain business<sup>32</sup> - should be one of 'joint responsibility' or 'joint liability'. For his part, the then Director of Labour Market Enforcement Strategy, favoured a cooperative approach involving 'joint responsibility':

Initially, I would envisage non-compliance identified in the supply chain to be addressed privately between the supplier and the brand name. Failure to do so

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<sup>31</sup> In a post on the Chartered Institute of Purchasing and Supply's website in 2018, Francis Churchill precises Dame Judith Hackitt's *Building a Safer Future* review:

'There was a "systemic problem" in the sector ... The current system is far too complex, it lacks clarity as to who is responsible for what, and there is inadequate regulatory oversight and enforcement. The report highlighted how bad contract requirements can encourage poor behaviour. For example low margins for large contractors may lead them to push technical risks onto their subcontractors, who may be less able to mitigate them appropriately. Payment terms, late payments and retentions – where payment is withheld as a form of guarantee for good work – can also put strain on the supply chain'.

For further details, go to <https://www.cips.org/en/supply-management/news/2018/may/poor-procurement-kick-starts-bad-behaviour-finds-grenfell-report/>

<sup>32</sup> Focusing on the 'top' of the supply chain, says CORE (p.3 in reference 12 below), is 'unnecessarily exclusionary'. Instead, the focus could be on large mid-chain processors within the chain on an agreed basis (for instance, company size), to ensure that would also fall within scope of the requirement.



within a given timeframe would then result in the usual sanctions and naming for the supplier, but the end user would also be named<sup>33</sup>.

He emphasised, however, that people should be left in no doubt that, if the voluntary cooperative approach did not work, it would have to be replaced with a mandatory one.

By contrast, several of the organisations responding to the government's consultation exercise have made powerful arguments for 'joint liability'. CORE, the UK umbrella civil society coalition promoting corporate accountability, said it supported the introduction of joint responsibility as it would be 'one useful measure'<sup>34</sup>. However, it added that it would be 'insufficient on its own'. It recommended that as well as naming the company, 'additional details, such as how the lead company's practices have contributed to the abuses, how it failed to take action to address the breaches or terminated the relationship with the supplier as a last resort, could be published'.

Furthermore, it added that 'joint responsibility is insufficient to combat poor purchasing practices that drive labour rights violations ..... and that the legal accountability framework should reflect the fragmented employment relationships in the labour market'.

Joint liability would allow workers to bring a claim for unpaid wages, holiday pay and sick pay against any contractor in the supply chain above them. This would encourage contractors to be more diligent in choosing their subcontractors and ensure that they take real responsibility for the people that work for them. Currently, poor purchasing practices by companies, such as ever shorter lead times and lower prices for suppliers, lead to work being subcontracted to unsafe and/or unregulated production sites, subsequently leading to forced overtime, avoidance of paying maternity, sick pay and other entitlements and injury.<sup>6</sup> Joint liability would encourage companies at the top of the supply chain to communicate in a timely manner with their suppliers, rather than adopting practices that force suppliers to reduce wages and cut corners in health and safety to satisfy buyers' demands and deliver products quickly.

FLEX is also strongly in favour of introducing joint and several liability, reminding the government that such regimes are currently in place in a variety of forms in many countries<sup>35</sup>. 'Joint liability', it suggests, would be 'markedly more effective than 'joint

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<sup>33</sup> For further details, go to [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/705503/labour-market-enforcement-strategy-2018-2019-full-report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705503/labour-market-enforcement-strategy-2018-2019-full-report.pdf)

<sup>34</sup> For further details, go to [https://corporate-responsibility.org/wp-content/uploads/2019/10/CORE-and-partners-response-to-SEB-consultation\\_FINAL\\_041019.pdf](https://corporate-responsibility.org/wp-content/uploads/2019/10/CORE-and-partners-response-to-SEB-consultation_FINAL_041019.pdf)

<sup>35</sup> For further details, go to <https://www.labourexploitation.org/publications/flex-response-beis-single-enforcement-body-consultation>

FLEX mentions Austria, Belgium, Finland, France, Germany, Italy, the Netherlands and Spain. It adds that the USA, the Philippines and Argentina also have some form of joint liability regime.

responsibility’ in not only encouraging but *obliging* the top of supply chains to take active roles in tackling breaches throughout the chain ... ‘. If it is just a matter of ‘joint responsibility’, it adds, companies may sever business relationships with problematic suppliers, rather than working with them to improve practices. Or they may simply push the resource burden of improved practice on to suppliers without providing assistance, whilst still requiring the same low-cost products or services.<sup>36</sup>

FLEX also suggests limiting the number of tiers in supply chains. In their words, ‘Limiting supply chain tiers is a powerful tool for re-consolidating responsibility, ensuring that companies view workplace practices as their own concern, rather than that of another entity separate to them’. It goes on to instance the case of Norway, which has introduced limits on the number of layers in supply chains in two sectors identified as at high risk, namely cleaning and construction<sup>37</sup>.

If the government is seriously looking for opportunities to make Britain the best place in the world to work, there are two further initiatives dealing with the governance of supply chains to be considered: mandatory due diligence and social licensing.

*Mandatory due diligence.* Organisations such as CORE and FLEX argue that, along with the environment, businesses should be required by law to identify, assess, stop, prevent and mitigate the risks and violations to all human rights, including workers rights, posed by their activities and business relationships. There has been growing momentum for this following the issue of the UN Guiding Principles on Business and Human Rights in 2015<sup>38</sup>. France was the first country to legislate such a requirement under its *Loi de Vigilance* of 2017, albeit its form was diluted<sup>39</sup>; the Netherlands followed with due diligence focused on child labour. There is also a mounting campaign

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<sup>36</sup> FLEX instances the Bangladesh Accord on Fire and Building Safety established in 2013 after the Rana Plaza garment factory collapse tragedy. Signatory companies committed to ensure factories were provided with “financial support, in the form of increased prices, low-cost loans, or direct payments” to make the changes necessary to ensure safety for workers.

<sup>37</sup> The region of Oslo has apparently gone further by limiting supply chains to two layers only and requiring that at least 80% of employees in these sectors’ chains must be hired on permanent or full-time contracts.

<sup>38</sup> Under the UN Guiding Principles on Business and Human Rights companies have a responsibility to undertake human rights due diligence. However, 40% of the biggest companies in the world evaluated by the Corporate Human Rights Benchmark in 2018 failed to show any evidence of identifying or mitigating human rights issues in their supply chains.

<sup>39</sup> For further details, see <https://www.business-humanrights.org/en/towards-mandatory-human-rights-due-diligence-in-the-uk-developments-and-opportunities>

for an EU Directive dealing with mandatory due diligence<sup>40</sup>, the ETUC's Executive Committee adopting a 'position' on the matter in December 2019.

In the UK mandatory due diligence would not only help to protect and enhance workers' rights. It would also clearly demonstrate that the government had learnt perhaps the key lesson of the Grenfell tragedy: society cannot afford to allow businesses to use outsourcing to shirk their responsibilities.

*Social licensing.* Potentially even more fundamental is the role that social licensing might play - especially as it is something that is open to local as well as national government to engage in. The logic of social licencing is set out in the various publications of the Foundational Economy movement touched on in an earlier note<sup>41</sup>. Essentially, it is that the businesses benefiting from national and local government contracts delivering life's everyday necessities should be required to fulfil a number of social obligations in return. It therefore has the potential to make a very significant difference to the terms and conditions of many low paid workers in the foundational economy. Specifically in the case of workers' rights, these obligations might embrace paying the Real Living Wage instead of the National Living Wage, training and development opportunities, treating casual workers the same as regular employees, and regularly informing and consulting with employees. They could also embrace equality issues such as maximum executive pay ratios and equal pay targets, together with the change in business models that the TUC<sup>42</sup> has recently called for. For example, there could be pressure to shift the balance from 'shareholder value' to 'shared value', i.e. *more investment* in people, capital equipment and R&D and *less extraction* by executive pay, dividends and takeover windfalls.

## Monitoring and measuring

If new initiatives, such as those outlined above, are to be introduced to bolster the protection and enforcement of workers' rights, the government will also need to monitor and measure the effectiveness of these initiatives. One foundation for this might be the recent policy emphasis on the need to measure and assess quality of employment. At international level, the ILO has developed indicators of 'decent work'<sup>43</sup> and the OECD a framework dealing with 'job quality'<sup>44</sup>.

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<sup>40</sup> For further details, see <https://www.etuc.org/en/document/etuc-position-european-directive-mandatory-human-rights-due-diligence-and-responsible>

<sup>41</sup> the latest dealing with Covid-19 <https://foundationaleconomycom.files.wordpress.com/2020/03/what-comes-after-the-pandemic-fe-manifesto-005.pdf>

<sup>42</sup> See TUC. 2020. *A better recovery* available at <https://www.tuc.org.uk/ABetterRecovery>

<sup>43</sup> Available at [https://www.ilo.org/integration/themes/mdw/WCMS\\_189392/lang--en/index.htm](https://www.ilo.org/integration/themes/mdw/WCMS_189392/lang--en/index.htm)

<sup>44</sup> Available at <https://www.oecd.org/statistics/job-quality.htm>

In the UK, in its *Good Work Plan* (p.58)<sup>45</sup>, the May government accepted the Taylor report's recommendation that it should 'identify a set of metrics against which it will report success, reporting annually on the quality of work on offer in the UK'. It also said that, having set out five 'foundational principles of quality work' in its Industrial Strategy ('satisfaction; fair pay; participation and progression; wellbeing, safety and security; and voice and autonomy'), it would look to the independent Industrial Strategy Council to inform how it did so (p.12).

There is no shortage of advice available to the Council in making up its mind – there have been several recent reports dealing with the issues to accompany Taylor's:

- the CIPD's *Understanding and measuring job quality (Parts 1<sup>46</sup> & 2<sup>47</sup>)*
- Carnegie Trust-RSA's *Measuring Good Work. The Final Report of the measuring Job Quality Working Group*.<sup>48</sup>
- the Fair Work Commission's *Fair Work Wales* report (FWW)<sup>49</sup>.

It is the 2019 Fair Work Wales report to which the Council should pay particular attention. Not only is it the most recent and so able to build on what has gone before, it is also the most relevant for three reasons.

The first is the emphasis in the Queen's speech on workers' rights as a key element of job quality. Workers' rights hardly feature in the CIPD and Carnegie Trust-RSA reports, but receive considerable attention in FWW.

Second, FWW focuses on 'fair work', which lends itself more easily to characterisation than 'good work'. FWW has developed a working definition of 'fair work' - it is 'where workers are fairly rewarded, heard and represented, secure and able to progress in a healthy, inclusive environment where rights are respected' (p.18). It has also produced a comprehensive list of characteristics to go with it. Especially important for present purposes is that the list (see Appendix 1), takes on board workers' rights as well as advice from agencies such as Acas, EHRC and HSE.

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<sup>45</sup> Available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/766167/good-work-plan-command-paper.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/766167/good-work-plan-command-paper.pdf)

<sup>46</sup> Available at [https://www.cipd.co.uk/Images/understanding-and-measuring-job-quality -3\\_tcm18-33193.pdf](https://www.cipd.co.uk/Images/understanding-and-measuring-job-quality -3_tcm18-33193.pdf)

<sup>47</sup> Available at [https://www.cipd.co.uk/Images/understanding-and-measuring-job-quality -2\\_tcm18-36524.pdf](https://www.cipd.co.uk/Images/understanding-and-measuring-job-quality -2_tcm18-36524.pdf)

<sup>48</sup> Available at [www.carnegieuktrust.org.uk](http://www.carnegieuktrust.org.uk)

<sup>49</sup> Available at [www.gov.wales/fair-work-wales](http://www.gov.wales/fair-work-wales).

As well as being translated into self-diagnostic tools, much like the *Acas Model Workplace*, with ‘good practice’ advice and signposts about what is legally required, the list therefore has the potential to develop a number of meaningful indicators of policy performance dealing with workers’ rights. For example, other things being equal, there could be indicators in each of the main areas in the list, namely ‘fair reward’, ‘employee voice and collective representation’, ‘security and flexibility’, ‘opportunity for access, growth and progression’, and ‘a safe, healthy and inclusive working environment’.

This brings us to the third reason for highlighting the FWW report - its Technical Annex’s excellent discussion of the data sources needed to track the impact of government policy in the area, along with the problems and how they might be resolved (pp. 100-106). FWW begins by pointing out that, as things stand, the only area of those listed in which it is possible to come up with robust indicators of policy performance dealing with workers’ rights is pay. The main sources are the Annual Survey of Hours and Earnings, the Labour Force Survey and the Annual Population Survey.

As for other areas, the Carnegie Trust-RSA report’s detailed proposals to expand the Labour Force Survey (LFS) to gather data for the metrics unfortunately do not help a great deal. This is because the LFS only asks questions of individual workers, which means that the critically important management policies and practices do not receive the attention they deserve.

Another downside is that several of the Carnegie-RSA report’s proposed questions ask about ‘preferences’ or ‘agreement’/‘disagreement’ with statements. Subjective questions like this might be appropriate if the aim is to monitor the quality of working life, as with the CIPD *UK Working Lives* surveys. But if it is to monitor the impact of government policy, the priority should be, in the words of the OECD’s *Guidelines on Measuring the Quality of the Working Environment* (p.14), ‘features of work that are, in principle, observable by a third party rather than being based, in part, on individual preferences and circumstances’<sup>50</sup>.

FWW goes on to remind us that, once upon a time, it was possible to gather information about management policies and practices in the UK. Indeed, the UK was a world leader in the field as result of the development of its Workplace Employment Relations Survey (WERS)<sup>51</sup>. Still described on the gov.uk website as its ‘flagship’ survey, WERS started life in 1980 and was repeated six times before last being carried out in 2011.

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<sup>50</sup> Available at <https://www.oecd.org/social/oecd-guidelines-on-measuring-the-quality-of-the-working-environment-9789264278240-en.htm>

<sup>51</sup> WERS has been replicated in Australia and Canada.

The great advantage of WERS, in FWW's words (p.104), is that:

It collects data from both the employer and a randomly selected sample of employees (as well as from interviews with employee representatives where present). This allows the employee's experiences of work to be set in the context of their employer's policies and practices, and for connections to be drawn between the two.

Specifically, FWW points out (pp.104-5), the 2011 WERS asked employers 'what practices and policies they have to ensure fair treatment at work and ... whether they go beyond meeting statutory requirements for flexible working and the payment of maternity and paternity leave'. 'These types of questions', FWW adds, 'could be extended to action plans on pay inequality, modern slavery and actively promoting trade union membership as well as testing employers' awareness of the legal obligations'.

No one, it seems, disputes that WERS is the ideal instrument for investigating management policies and practices - both the CIPD and Carnegie-RSA reports recognise this to be the case, as does FWW. The problem is that WERS is seen as too expensive, fieldwork alone accounting for £2 million in 2011. It is largely because BEIS reportedly has no plans to repeat it that attention has turned elsewhere.

It may be that BEIS will reverse its decision in the light of recent events. Arguably, the credibility of the government's commitment will be at stake if there is no regular survey of management policies and practices: it would be tantamount to saying that workers' rights are not really that important<sup>52</sup>.

Alternatively, BEIS could seek to adapt the WERS model with a more focused approach and greater regularity. This is effectively what FWW suggests in the case of fair work in Wales. Indeed, so important does FWW consider information on management policies and practices to be that it recommends the Welsh Government should itself commission a survey (p.105). Such a survey, it adds, might be biennial and carried out by telephone at a cost of c£250,000, which would make it relatively quicker and cheaper to deliver than the original WERS model<sup>53</sup>.

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<sup>52</sup> There's a widespread consensus that data on management policies and practices are crucially important in understanding the links with productivity and economic performance. As recently as November 2019, for example, the Industrial Strategy Council identified 'Management practices' as one of the 'Gaps' in the 'People Foundation'. For further details, go to <https://industrialstrategyCouncil.org/sites/default/files/attachments/success-metrics/Measuring%20the%20Success%20of%20the%20Industrial%20Strategy%20-%20Research%20Paper.pdf>.

<sup>53</sup> FWW estimates the cost of c£250,000 based on the 'Management and Well-being Practices Survey' (MWPS) commissioned by BEIS in 2018. MWPS focuses on flexible working, shared parental leave and worker representation and includes references to legal requirements and adherence to government policy in these areas. It's a nationally representative survey involving 30-minute telephone interviews with around 2,500 employers across Great Britain at a scheduled cost of £240,000. Completion was expected in 2019. For details, go to <https://www.niesr.ac.uk/projects/management-and--wellbeing-practices-survey>



Hopefully it will not be necessary for Wales to go it alone. The Industrial Strategy Council is strongly advised to recognise the heavy lifting that FWW has done and recommend a nationwide survey along the lines of the telephone survey it suggests.

### **One more thing: focus on ‘fairness’**

Terms such as ‘good work’ and ‘job quality’ are not only difficult to define and operationalize, but are also likely to elicit a hollow laugh from many people in insecure and low paid jobs - especially the ‘minimum wage heroes’ whose contribution has been so important in recent times. In the circumstances, it would pay the UK Government to go further on the road that it began in the Queen’s Speech in referring in several places to ‘fairness’<sup>54</sup> - it should frame the overall project in terms of ‘fair work’. There would be a ‘Fair Work Bill’ rather than an Employment Bill, in other words, and a ‘Fair Work Agency’ rather than a Workers’ Rights’ Enforcement Agency. Similarly, the social partnership body recommended earlier might be called the ‘Fair Work Commission’.

As well as having the practical advantages already mentioned in the previous section, ‘fair work’ would also help to raise awareness. This is because ‘fair work’ has greater resonance than ‘good work’ or ‘job quality’. In the words of Hyman and Brough, ‘the arguments of those involved in industrial relations are shot through with essentially *moral* terminology ... In particular, appeals to the idea of *fairness* abound’<sup>55</sup>. In their 2017 *Skills and Employment Survey* of (p.2)<sup>56</sup>, Gallie and his colleagues helpfully summarise the two aspects of fairness that research shows are important in accounting for this:

- ‘*procedural fairness*’ - important because it affects ‘the extent to which employees feel protected from arbitrary decision-making and hence insecurity in their jobs’; and

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<sup>54</sup> The Queen’s Speech (2019:43) says two of the purposes of the Employment Bill are to:

- Promote fairness in the workplace, striking the right balance between the flexibility the economy needs and the security that workers deserve.
- Offer great protections for workers by prioritising fairness in the workplace and offering better support for working families

Later in the same section, it talks in terms of ‘Ensuring fairness by protecting the majority of businesses who strive to do the right thing by their workers from being undercut by the small minority who seek to avoid their responsibilities’.

<sup>55</sup> Hyman, R. and I. Brough. 1975. *Social Values and Industrial Relations. A Study of fairness and inequality*. Oxford: Basil Blackwell. p.1.

<sup>56</sup> Available at [https://www.cardiff.ac.uk/\\_data/assets/pdf\\_file/0008/1229849/3\\_Fairness\\_at\\_Work\\_Minireport\\_Final\\_edit.pdf](https://www.cardiff.ac.uk/_data/assets/pdf_file/0008/1229849/3_Fairness_at_Work_Minireport_Final_edit.pdf)

- *'norms of reciprocity'* - important because an 'imbalance between effort and reward at work violates the sense of reciprocity in treatment, leading to sharply negative consequences for workers' physical and psychological health'.

Gallie and his colleagues also emphasise the positive links researchers have established between fairness and both employee well-being and organisational performance:

Employees who feel they are fairly treated are more likely to be committed to their organisations and to trust new management initiatives ... such factors are an important condition both for individual motivation and for organisational citizenship behaviour, which involves the willingness to go beyond narrow role performance and help others with their work. Both higher individual work performance and a stronger disposition to cooperation are likely to have positive effects on overall organisational performance (p.2).

To give the Fair Work Wales report the final words on this point, there are 'convincing business cases to be made for fair work' (p.54).

## **Concluding remarks**

The coronavirus pandemic has confirmed the fundamental importance of work and workers' rights recognised in the Queen's Speech of 19 December 2019. It has also highlighted issues needing urgent attention including the social safety net, anytime/anywhere working, employment status and, above all, the low pay and insecurity of many of the 'key' workers society depends on for everyday services.

But if coronavirus has brought problems, it also brings opportunities. Sooner or later there will be a recovery plan. At the heart of this could and should be a Fair Work Act introducing a Fair Work Commission and Fair Work Agency that will help to make good the government's commitment to protect and enhance workers' rights.

The case for doing so is strong not just because of coronavirus. The 'flexibility' of the UK's labour market may be lauded<sup>57</sup>, but it comes at enormous cost. The UK, it must not be forgotten, has a chronic problem of low pay, low skill and low productivity. In-work poverty continues to grow and income inequality remains high<sup>58</sup>. The UK's poor record

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<sup>57</sup> See, for example, the response of the Institute of Economic Affairs to the TUC's A better recovery at <https://iea.org.uk/media/tucs-plan-for-a-better-recovery-would-almost-guarantee-no-recovery-at-all-says-iea-expert/>

<sup>58</sup> According to the Resolution Foundation, 17.1 percent of employees, or four million individuals, were low paid in Great Britain in 2019, on the basis of the OECD definition of low pay (i.e. two-thirds gross median hourly earnings for full-time employees of £8.85). This is an improvement, but still above the OECD average and not reflected in weekly earnings; there was also little change in those receiving the Real Living Wage of £9.30 per hour suggesting increases in the NLW were being restricted to those on or close to it. For further details, go <https://www.resolutionfoundation.org/publications/low-pay-britain-2019/>



for intermediate level skills also stands out despite numerous market-based initiatives by recent governments to improve matters<sup>59</sup>. Productivity performance is poor as well - the most recent data from the Office for National Statistics (for 2016) suggest output in the UK per hour was 15.1 per cent below the average for the other G7 countries and more than 21.8 percent less than France, Germany and the USA<sup>60</sup>. Protecting and enhancing workers' rights would make a significant contribution to tackling this problem.

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The most accepted measure (the Gini coefficient) suggests the UK has one of the highest levels of inequality of major OECD countries. For further details, go to <https://data.oecd.org/inequality/income-inequality.htm>

<sup>59</sup> In a section on Education, the Queen's Speech (2019:41) proposes a major programme of support for the further education sector including a rebuilding programme, a National Skills Fund and 20 new Institutes of Technology.

According to the Office of National Statistics, in November 2019 there were 800,000 young people aged 16 to 24 who were not in education, employment or training. For further details, go to <https://www.ons.gov.uk/employmentandlabourmarket/peoplenotinwork/unemployment/bulletins/youngpeoplenotineducationemploymentortrainingneet/latest>.

<sup>60</sup> For further details, see *Briefing for debate on 'National Productivity' - Parliament UK* 17 Jan 2020. Available at [www.ons.gov.uk/researchbriefings/files.parliament.uk > documents](http://www.ons.gov.uk/researchbriefings/files.parliament.uk/documents) > CDP-2020-0008.

## Appendix 1<sup>61</sup>

### **FWW's Characteristics of Fair Work**

1. *Fair reward.* Rates of pay and other terms and conditions are appropriate, commensurate with skill etc. Work is evaluated fairly, including revaluing of work generally performed by women. Relevant collective agreements are adhered to. Negotiated rates or industry, sector or occupational standards are followed where applicable. The Welsh Living Wage (equating to the Real Living Wage) provides the minimum wage floor for all working hours. The employer has achieved or is working towards accreditation as a Living Wage Employer. Enhanced contractual rates above statutory minima are paid where possible (e.g. sick pay, maternity pay, paternity pay, holiday pay). There is transparency in pay calculation (including bonus, holiday pay, sick pay etc) and in the method of pay determination. Employer demonstrates non-discriminatory pay systems and that pay and reward are equitable as between different groups (e.g. through transparent gender and ethnicity pay audits) and that there is an action plan to deliver this. There is transparency in pay distribution including reporting ratio of senior pay to the median of their workers' pay, and an action plan to address pay gaps. Access to a good occupational pension. Benefit schemes which take account of the needs of lower paid workers.

2. *Employee voice and collective representation.* Having arrangements in place for employee voice and collective representation is a substantive characteristic of fair work and also provides a process which helps ensure fairness in the other areas. Thus recognition of a TU for collective bargaining is both a route to, and a key indicator of, fair work. Arrangements are in place for employees to be involved in how their work is carried out and have the opportunity to express their views and be heard on matters directly affecting them. Employees know how to raise concerns about their employment and to have these listened to and addressed. Employees are made aware of their legal rights relating to TU membership, activity and TU recognition for collective bargaining on their behalf. Provision is made for TUs to access workers to enable them to make informed decisions as to these rights. Employees are informed of how to contact a TU and notified of their right to be accompanied by a union official (or fellow worker) in grievance and disciplinary hearings whether or not a union is recognised at the workplace. A TU is recognised for collective bargaining or exceptionally, if not possible, other arrangements are in place for effective representation of employees' collective views and participation. Arrangements are in place to ensure under-represented groups, including those with protected characteristics, are heard. Employees are made aware of their right to request an information and consultation body (where the undertaking employs 50 or more) and how to trigger this. Managers meet regularly with TU or other employee reps to engage in meaningful consultation on issues affecting workers. Worker interests are represented on the main company board.

3. *Security and flexibility.* (a) Income, hours and working time security. Adequate notice is provided of work schedules, variation in hours or working time (with compensation for lack of this). No misrepresentation of employment status (e.g. false self-employment); no inappropriate use of umbrella companies or exploitative 'zero hours' contracts. Guaranteed minimum hours per week as default position, with the option for the individual to accept or not. Workers are provided with information and options in terms of contractual status; employer accept an obligation to offer a specified regular hours contract or a minimum/ maximum hours contract to those on non-guaranteed hours after three months. Availability of working hours and patterns to facilitate inclusion (e.g. of disabled workers), and to accommodate the reality of workers' lives. Worker-centred flexibility is not 'traded' against reward or progression. (b) Job/work security. Adoption of best practice policy and procedures for

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<sup>61</sup> *Fair Work Wales. Report of the Fair Work Commission 2019*, p18-22. The Commission's definition and characteristics were reproduced in Keith Sisson. 2019. 'The Fair Work Wales report: a manifesto for all of us'. *Industrial Relations Journal*. Volume 50, Issue 5-6. November. Pages 564-579.

discipline/dismissal, redundancy and redeployment and their effective implementation - since the existence of policies and procedures does not of itself guarantee fair practice. Employees are informed of company plans and developments which may affect them; employer consults regularly and in good time on such matters with trade union and other representatives. Provision of reskilling and training for change (whether technological, organisational or societal, including greater use of Welsh language); access to externally recognised accredited (transferable) skills courses.

4. *Opportunity for access, growth and progression.* Opportunities are open to all to access work; for fulfilment and growth; to develop and progress; to acquire and use skills. Inclusive development opportunities exist which are sensitive to diverse needs. No disadvantage is experienced in terms of opportunities for progression/career paths arising from particular contractual status or personal characteristics. Occupational segregation is addressed. Workers have access to training for current job, for progression and for organisational change; there is re-skilling of older and lower qualified workers. High quality apprenticeships are offered.

5. *Safe, healthy and inclusive working environment.* H&S policy and measures are in place and regularly reviewed; risk assessments are undertaken. H&S reps are present and regularly consulted. Work and job design and working environment are conducive to safety, physical and mental well-being and inclusion (eg adjustment to accommodate disabled workers). Working time and patterns are conducive to well-being (e.g. no excessive hours, adequate rest breaks, minimisation of high intensity work). All individuals are valued and treated with dignity and respect. Welsh language use is respected, encouraged and facilitated. There is a supportive approach to managing physical and mental ill-health. Responsibility is taken for preventing discrimination, bullying, harassment and other forms of ill-treatment. Appropriate policies and procedures (e.g. grievance; dignity at work, 'whistleblowing' etc.) are implemented by suitably trained and supported managers.

6 *Legal rights are respected and given substantive effect.* Not operating in compliance with legal obligations is an indicator of unfair work. At its extreme (e.g. modern slavery; wage theft) it also constitutes a criminal offence. Compliance with legislative labour standards/statutory employment rights (both individual and collective) and employer statutory duties is a baseline required of all employers. Giving substantive effect to rights means an employer does not seek to circumvent legal rights (e.g. avoiding statutory rights and benefits accorded to 'employees' or 'workers' through the use of false 'self-employment'; dismissing workers and then reemploying after a gap to prevent access to those statutory protections requiring a period of qualifying service). The employer attaches importance to legal rights and their application within the workplace, not relying on external enforcement; taking proactive steps to make rights meaningful in practice. Examples/indicators of proactive steps to give substantive effect to legal rights and duties include: developing and implementing action plans to promote equality and diversity (going beyond 'not discriminating'). Transparency in information provision e.g. workforce data suitably disaggregated by gender, ethnicity, disability etc. with attention to how these identities can interact. Involving workers through their representatives in planning, auditing and monitoring implementation and outcomes. Facilitating and offering flexible arrangements in all jobs rather than waiting for an individual to exercise the statutory right to request flexibility. Developing from publishing a 'modern slavery statement' (required of large employers by Modern Slavery Act (MSA) s54) to setting down and taking actions to ensure compliance in supply chains and accepting joint responsibility for tackling infringement. Providing all workers on day one (and annually) with an easy-to-comprehend statement of their contractual status, terms and conditions of appointment and employment rights; information on how to seek advice and redress if necessary, including how to contact a TU. Ensuring the quality and capacity of line management in the consistent application of appropriate good practice policies and procedures to give effect to the intent of employment rights.

NB The promotion of equality and inclusion, FWW (2019:18) emphasises, is integral to all six characteristics. It adds that 'What indicates good practice in relation to fair work will evolve and greater ambition will become possible'.