

SUBMISSION FROM UNITE

Introduction

Unite welcomes the opportunity to contribute to this call for evidence and applauds the Scottish Government's stated commitment to promote fair workplaces and to support sustainable and well paid jobs. Unite is working with the Scottish Government on the Fair Work Convention which has been tasked with promoting fairer workplaces and encouraging employers to engage with a fair work agenda, and we will continue to work with the Convention to promote workplace democracy.

There is no doubt however, that work, wages and wellbeing have all suffered over the last seven years of a UK coalition government and now under a majority Conservative government.

The growth of insecure two-tier work in the labour market since 2008 has been driven by numerous loopholes and inadequacies in our labour law, not least of which is the arbitrary legal distinction between workers and employees that means that many workers are not entitled to legal rights and protections.

Too many jobs created in recent times have been 'bad' jobs; low paid and insecure with short hours contracts, underemployment and a proliferation of jobs employing people on zero hours contracts; We have witnessed employers riding rough-shod over National Agreements and health and safety guidelines being breached.

In our response to the Smith Commission Unite supported the devolution of employment law including control over the minimum wage and while this did not form part of the final settlement within the Scotland Act we believe that the Scottish Government still has an important role in improving job quality and could do more to tackle so-called 'bad' jobs by actively promoting the living wage; by banning zero hours contracts and blacklisting companies under procurement rules; encouraging collective bargaining in inward investment and supporting companies that engage fully with trade unions. This would show a proactive approach to promoting fair workplaces and encourage 'good' jobs.

Work

There has been a relentless attack on workers' rights and organised labour by consecutive Conservative Government's for almost four decades which has undermined workers' legal protections and introduced a series of anti-trade union laws in the UK. These attacks have sought to weaken collective bargaining and reduce trade union influence which has led to a power imbalance in the workplace creating an environment where insecure low paid jobs have proliferated.

Unite does not however accept the claims made by the Scottish Government, that while employment law is reserved to Westminster their hands are tied on many of the issues affecting workers in their place of work. We believe that there is more work that could and should be done to increase the level and speed of action in implementing initiatives and policies to deliver quality jobs in Scotland.

Umbrella Companies and false self-employment

The proliferation of umbrella companies, set up to deny workers their full wages and to shift the tax burden, should be banned. It is difficult to accurately measure the true extent of the numbers employed on such contracts, however it is estimated that around 200,000 people are employed by umbrella companies in the UK.

According to UCATT, the UK Treasury loses around £3800 in tax revenue for every worker employed on such contracts. Therefore on lower estimates this would put the loss to the UK economy at tens of millions of pounds each year. Umbrella companies are a legal scam that must be stopped.

There has also been a dramatic increase in so-called ‘false self-employment’ with rates increasing steadily over recent years. False self-employment is used by employers to engage workers indirectly, without the costs of holiday or sick pay, pensions or to uphold existing employment rights afforded to workers.

The undernoted graph shows the extent of the growth in self-employment between 2007 and 2014.

Employees, self-employed (000s), Scotland, 2007-2014



Source: STUC (UWC/Oxfam Decent Work Policy Forum)

According to the Resolution Foundation this type of employment scheme appears to have also played a particularly important role in reducing the jobless count during the economic downturn since 2008.

“.... the typical incomes associated with self-employment have been falling, suggesting that many of those moving into this category might also be considered to be part of the bottom tier of Britain’s labour market. (This) shows that the number classified as self-employed increased by around 1

million (or 26 per cent) between 2002 and 2013, with a 10 per cent increase occurring after the onset of economic downturn.”¹

Zero hours contracts

As the workforce has grown, the numbers employed on zero hours contracts has escalated, exploiting working people.

The Office for National Statistics (ONS) estimate 1.4 million (April 2014) people are employed on zero hour contracts in the UK, rising from 134, 000 in 2006. Unite has organised a campaign on this issue – No to Zero – gathering data and urging our members to raise this issue with their MPs.²

Evidence shows that zero hour contracts are impacting upon more vulnerable groups in the labour market. Workers on zero hour contracts are more likely to be young; they are also less likely to have a degree. Zero hour contracts are also used more often in workplaces that employ non-UK nationals particularly in sectors such as food processing, cleaning, hospitality, agriculture, care and construction. This reinforces serious concerns about the social exclusion caused by these contracts.

Zero hour contracts are also impacting on workers wellbeing. A survey conducted by MASS 1 for Unite found that 69% of respondents felt anxious about being on a zero hour contract.

Blacklisting

Blacklisting is another insidious practise and one which has disproportionately affected Scottish workers. Blacklisting is also a clear breach of human rights. Companies which have blacklisted workers on grounds of trade union membership or for raising environmental or health and safety issues, should be refused procurement contracts. They must also be banned from bidding from future contracts until they have made suitable remedial actions, including admitting their part in blacklisting workers, providing adequate compensation and employing workers previously blacklisted.

The Scottish Government has condemned blacklisting companies and issued Guidance which states:

“...any company which engages in or has engaged in the blacklisting of employees or potential employees should be considered to have committed an act of grave misconduct in the course of its business and should be excluded from bidding for a public contract unless it can demonstrate that it has taken appropriate remedial steps;”³

Yet Unite has anecdotal evidence that the blacklisting of workers continues and the Scottish Government continues to issue contracts to known blacklisting companies

¹ <http://www.resolutionfoundation.org/wp-content/uploads/2014/08/Low-Pay-Britain-2013.pdf>

² <http://www.unitetheunion.org/campaigning/saynotozerohourscontracts/>

³ <http://www.gov.scot/resource/0043/00438311.pdf>

despite making a commitment to ban blacklisting and tackle this issue. ⁴ Unite welcomes the work done by the Scottish Affairs Select Committee into blacklisting and has called for a full public inquiry into the practice. We would urge the Scottish Government to work with the Westminster government to ensure this is delivered.

Underemployment

According to the Office for National Statistics, in 2014 just less than 1 in 10, or three million people, employed in the UK wanted to work more hours than they are currently employed to do and are therefore classified as underemployed. ⁵ In Scotland a study conducted by the Scottish Trade Union Congress (STUC) for the Scottish Government highlighted 250,000 workers in Scotland want to work more hours.

On average each underemployed worker would like to work an extra 11.3 hours per week and over 1 in 5 people working in elementary occupations (cleaners, security guards, catering assistants, leisure workers and bar staff for example) were underemployed in 2014.

The rate of underemployment in Scotland in 2013 was 9.6% up from 7% in 2008.⁶

The evidence shows there are people working part-time that want to work full time; and people working full-time that want more hours. This is a massive loss of potential benefits to the economy and to the wealth of the country. There is a lot of work that could be done and there is obviously a capable workforce willing to do it. However it may also be that simply by paying a decent wage for the hours that are worked, providing a decent income, would reduce the demand for more hours.

Facility time

We have also seen an attack on the rights of elected trade union reps to represent members through an attack on trade union facility time. Facility time, which is the time off agreed jointly by the union and the employer to carry out union work, is being withdrawn or reduced, particularly within the public sector.

Yet critics of facility time fail to see the benefits it brings:

- *Overall productivity gains worth between £4bn to 12bn to the UK economy;*
- *Savings of at least £19 million as a result of reducing dismissals;*
- *Savings to employers of between £82m - £143m in recruitment costs as a result of reducing early exits.* ⁷

Industrial ballots

⁴ A recent example is the construction of the Aberdeen Western Peripheral Road. A Scottish Government project being undertaken by Balfour Beatty and Carillion. Both companies were found to have blacklisted Scottish workers and have not taken remedial action or accepted their role in blacklisting workers.

⁵ <http://www.ons.gov.uk/ons/rel/lmac/underemployed-workers-in-the-uk/2014/rpt-underemployment-and-overemployment-2014.html>

⁶ <http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcm%3A77-386785>

⁷ <https://www.tuc.org.uk/sites/default/files/tucfiles/thefactsaboutfacilitytime.pdf>

The Trade Union Bill currently going through Westminster will introduce legislation that will require fifty percent of union members in a workplace to vote for strike action before it is legitimate. This is despite the fact that the Conservative government was elected on just 24% of eligible votes. The Bill also proposes further restrictions on 'key' public services. These thresholds impose highly restrictive parameters for conducting democratic ballots.

Employment Tribunals

The ability to access and obtain a fair hearing is a fundamental right to social justice in the workplace in any developed economy. However the introduction of fees to take a case to Employment Tribunal has removed this right and has impacted on an individuals' social, moral and financial wellbeing.

In 2013, the coalition government introduced fees for taking a case to Employment Tribunal (ET). Under the scheme employees must find fees of £1250 to bring a claim against an employer. This has limited the ability to seek justice for many workers.

Since the fees were introduced cases have dropped by 73%.⁸

The process is a fundamental breach of human rights and the right to access justice. In particular it is denying lower paid workers access to justice. Since the introduction of fees in 2013:

- Unfair dismissal claims are down 74%,
- race discrimination cases are down 61%,
- disability discrimination cases are down 63%
- And sex discrimination cases are down a massive 91%

The most vulnerable groups in society are being disproportionately impacted by this decision. Even some employer organisations have raised concerns. A survey by the CIPD reports that 38% of members surveyed said that the system should not be changed with 36% saying fees should be reduced considerably or abolished altogether.⁹

Mike Emmott CIPD Employee Relations Manager stated that:

*“Fees may not make it impossible for claimants to pursue their case but they’ve certainly made it more difficult, which begs the question: are we putting too high a price on justice?”*¹⁰

Unite believes this is undoubtedly the case and has called for the immediate abolition of tribunal fees.

⁸ <file:///U:/Elizabeth%20Cairns/Personal/Scotland/Statistics/ET%20fees.pdf>

⁹ CIPD Conflict Management: A Shift in Direction? March 2015

¹⁰ <http://www.hrmagazine.co.uk/hro/news/1150314/tribunal-claims-introduction-fees-cipd>

Let us be clear, this is not about promoting industrial democracy. These attacks on trade union rights are about smothering the trade union voice and must therefore be challenged as an attack on fundamental human rights.

Wages

Unite would argue that the decision to maintain low pay is an ideological, not an economic decision.

Low pay subsidised by tax credits, welfare benefits and tax breaks for employers is masking the issue. Statistics released by the Scottish Government in 2014 showed that over half (52 per cent) of working-age adults in poverty were in “in-work” poverty.¹¹

The report also highlighted that six in ten children in poverty in Scotland in 2012-13 were in households where at least one adult was in employment. There were 30,000 more children in in-work poverty households in 2012-13 compared with the previous year. Our young people’s future is being blighted by low pay now.

A report by the Resolution Foundation found that:

“While low paid work exists across all occupational groups, there is a clear bias towards lower skilled occupations. More than half of elementary (cleaners, security guards, catering assistants, leisure workers and bar staff for example) and sales & customer service (retail assistants, cashiers, telephone salespersons and customer services for example) workers were low paid in 2012, as were one-in-three workers in personal services (covering social care and childcare for example), compared with just 5 per cent of managers & senior officials and 1 per cent of those in professional occupations.”

The report goes on to say:

“Part-time workers face a particular low pay risk, with two-in-five (43 per cent) of such employees being low paid in 2012, compared with 12 per cent of those working full-time. In the context of the growth of part-time employment over the last three decades and recent rises in (often involuntary) part-time work and under-employment, the prevalence of low pay among part-time workers is concerning.”

Wage distribution

Since 2008 we have seen a larger share of national income going to the top earners creating a widening income gap and greater income inequality. However this imbalance is not reflected in increasing productivity or greater profits. According research by the High Pay Centre:

¹¹ <http://www.gov.scot/Publications/2015/01/3233>

“...increases in executive pay between 2000 and 2013 were far greater than the increase in company profits or market value.”¹²

The TUC also report that:

“...high pay differentials damage employee morale, are detrimental to firm performance, contribute to inequality across the economy as a whole and have fuelled the public’s lack of trust in business.”¹³

Living Wage

According to the Scottish Government’s own figures, in March 2014 there were an estimated 335,015 private sector enterprises in Scotland.¹⁴

As of March 2014, there were 332,720 Small and Medium-sized Enterprises (SMEs) operating in Scotland, providing an estimated 1.1 million jobs. SMEs accounted for 99.3% of all private sector enterprises and accounted for 54.8% of private sector employment and 37.9% of private sector turnover.

Rosanna Cunningham, Cabinet Secretary for Fair Work, Skills and Training was recently congratulating the work done by the Scottish government having signed up 300 businesses as living wage employers. With a further commitment to having 500 accredited employers by the end of March 2016, it is evident from the numbers that the pace to drive a living wage is far too slow to make a dent in the number of small businesses registered in Scotland that are not presently paying the living wage.

The Chancellor stated in the summer budget that the government will introduce a living wage of £7.20 in 2016 for workers over 25, which will rise to £9.00 by 2020. This amount is below £7.85 per hour which has been identified by the Scottish Living Wage Campaign as the amount required to provide a decent standard of living and to keep workers out of poverty and will do nothing for the two million under 25’s UK wide who will continue to live on the present National Minimum Wage level.

Unite believes that if the Scottish Government is prepared to challenge the European Union (EU) on alcohol minimum unit pricing,¹⁵ then it should also be prepared to consider challenging the EU on applying the living wage in procurement in public sector contracts. It is not enough to accept the claim that the Scottish Government’s hands are tied by EU procurement rules or that they have no control over employment law. They should adopt a living wage of £7.85 for all public sector workers, not only those covered by Scottish Government pay policy, and further should stipulate paying the living wage is compulsory in all procurement contracts.

¹² [High Pay Centre: Performance Related Pay, What does business think? \(2015\)](#)

¹³ <https://www.tuc.org.uk/sites/default/files/ExecutiveExcess.pdf>

¹⁴ <http://www.gov.scot/Topics/Statistics/Browse/Business/Corporate/KeyFacts>

¹⁵ <http://news.scotland.gov.uk/News/Minimum-unit-pricing-18a4.aspx>

The Scottish Government taking a lead must also go further by applying the rules to the supply chain; where sub-contractors and third party suppliers must also pay the living wage.

It is not acceptable to award a procurement contract to one company and abdicate responsibility for who that company then sub-contract the work to. The chain of responsibility must be an important determinant when awarding procurement contracts.

Equal pay

Article 3 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights says all states must:

“ensure equal rights of men and women to the ‘enjoyment’ of all civil, political, economic, cultural and social rights.”

Yet, women are still being discriminated against in the workplace; in civil society and in business.

Forty years after the introduction of the Equal Pay Act there remains a stubborn pay gap in many sectors of the economy. According to Close the Gap the gender pay gap in Scotland is 11.5%.¹⁶

However in some sectors and some occupations it is considerably higher. According to the Equality and Human Rights Commission, women and men make up equal proportions of the finance workforce, yet women earn 55% less on average than their male colleagues.¹⁷ In the legal profession in Scotland the gap is 42%.¹⁸

Yet should we be surprised that the pay gap has not been tackled when the decision makers are mostly male. At Westminster following the general election, women make up just 191 of the 650 MPs equivalent to 29.4%. The Scottish Parliament fares slightly better with women making up 34.9% of MSPs. And in business women represent 23.5% of executives in the FTSE 100 and just 18% in the FTSE 250.

The recent announcement by the UK government to legislate for every private sector company with 250 employees or more to publish the gap between its average male and female earnings is a weak attempt at addressing this problem. Publishing a pay audit is the first step in the process; the real challenge will come in trying to ensure that the findings are implemented. It is this which will create an impasse within the business community, as employers realise the costs involved in addressing the findings in some cases, may be costly.

Wellbeing

Sickness absence

¹⁶ <http://www.closesthegap.org.uk/news/blog/scotlands-gender-pay-gap-remains-high-at-115/>

¹⁷ http://www.equalityhumanrights.com/sites/default/files/documents/financial_services_inquiry_report.pdf

¹⁸ <http://www.lawscot.org.uk/news/2015/07/tackling-the-gender-pay-gap-42-difference-between-male-and-female-solicitors/>

There is no doubt that the 2008 recession and the austerity measures implemented by the UK government have affected workers wellbeing in a number of ways including emotional, moral, social and financial wellbeing.

Recent figures suggest that presenteeism — the phenomenon of ill and disabled people coming into work when they would otherwise be off sick — has increased, as have rates of stress and mental health problems.

A Labour Research report carried out in 2015 noted:

“The most common reason that people came into work sick was they didn’t think it was “serious enough to take time off” (76%). But other responses are more worrying: “My workload is too great for me to have time off, even if I’m unwell” (31%); “I worry about the financial implications of taking time off” (20%); “other colleagues make me feel guilty for taking sick leave” (19%); and “I feel too threatened by the risk of redundancy to take time off when ill” (13%).”¹⁹

As well as this a report by the TUC noted that:

“...workers have been experiencing a significant increase in stress, which in some cases has led to mental ill health, as a result of the impact of austerity on their work and home lives.”²⁰

The report goes on to say:

“Many employers do not deal with mental health issues and this may lead to many people losing their job, and even worse, failing to find new work as a result of the stigma associated with mental health issues.”

So we have a situation where around one third of sick people are going in to work due to stress over workload and a further thirteen percent, for fear of being made redundant. When they do attend work they are unfortunately subjected to extreme stress levels leading some workers to suffer bouts of mental ill health. This is wholly unacceptable and is not conducive to high productivity or good work.

Trade unions

To combat the prevalence of bad jobs and to halt detrimental employment practices Unite sees a role for the Scottish Government in promoting trade unions and collective bargaining. There is a compelling link between strong trade unions and more equal societies. Not only that, trade unions defend the pay and conditions of their members and help protect existing employment terms for all workers.

However in recent year’s trade union membership has declined from a peak of thirteen million in 1979 to around 6.4 million today. This is in no small part due to the attacks on existing trade union rights by politicians and criticisms of trade unions in the right wing media.

¹⁹ LRD: Sickness absence and sick pay - a guide for trade union reps (June 2015)

²⁰ https://www.tuc.org.uk/sites/default/files/GoodPracticeMentalHealth_0.pdf

Trade unions nevertheless remain relevant. Despite a decline from its peak in 1979 trade unions in the UK still represent a significant proportion of working people and despite the recession, the figure has stabilised over the last few years; in fact there have been periods of growth. In 2012 trade union membership rose by 59,000. According to the most recent figures from Department for Business Innovation and Skills (BIS) there are 687,000 people who are members of trade unions in Scotland.²¹

In Scotland trade union density is 30.4%, with 48.4% of workplaces having a trade union presence. 32.9% of employees pay is affected by a collective agreement.²²

There is also clear evidence that trade unions bring higher pay. This is known as the trade union premium. According to BIS the trade union wage gap, defined as the percentage difference in average gross hourly earnings of union members compared with non-members, is 21.6% in the public sector and 8.1% in the private sector.²³ Trade union members are also more likely to have a degree with 53% of union members having a degree or other higher education qualification, compared with 41% of workforce as a whole.

Trade unions help to reduce income inequality, reduce discrimination, reduce health and safety risks, increase productivity, increase skills and improve morale in the workplace; all features of good work.

Unite would therefore argue that the most effective way to tackle the level of 'bad' jobs in the economy is to encourage the collective bargaining of workers' pay and conditions.

According to the Institute of Employment Rights (IER):

“Extensive research has found that collective bargaining reduces economic inequality and is therefore beneficial for low and middle-income earners.”

The report also states that studies from Canada, the US and the UK all indicate that wage inequality increases as union influence declines and further that the gender pay gap is significantly narrowed in workplaces where unions are active and there are centralised forms of collective bargaining.²⁴

With Scotland attracting more foreign investment than any other area of the UK outside London, as well as benefitting from lower operating costs of around 30%,²⁵ the Scottish Government should encourage these international organisations to engage with trade unions to improve productivity, reduce inequality and increase workplace democracy.

It will be trade unions that will ensure pay rates are fair and transparent; that will protect the terms and conditions for those working within the public and private

²¹ Business Innovation and Skills - trade union membership statistical bulletin 2015

²² Ibid.

²³

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/431564/Trade_Union_Membership_Statistics_2014.pdf

²⁴ IER: Trade unions and economic inequality (Aug 2014)

²⁵ <http://www.sdi.co.uk/invest>

sectors, ensuring workers are directly employed on decent contracts and addressing issues of in-work poverty, inequality and fairness.

Scottish Government Priorities

- **Defend human rights and International Labour Organisation (ILO) rights including freedom of association and the right to collective bargaining;**
- **Abolish indirect employment such as umbrella companies and false self-employment in procurement contracts including sub-contractors and the supply chain;**
- **Ban zero hours contracts from public sector contracts including the procurement process;**
- **Pay the Scottish living wage to all workers engaged on public sector contracts and apply this rule to the supply chain;**
- **Ban blacklisting companies from bidding for procurement contracts until suitable remedial action has been made;**
- **Encourage trade union engagement and collective bargaining in all inward investment projects.**

Pat Rafferty

Unite Scottish Secretary

August 2015