

Ed Faulkner
Committee Specialist
Scottish Affairs Committee
House of Commons
London
SW1A 0AA
By email: scotaffcom@parliament.uk

24 January 2017

Dear Ed

SCOTTISH AFFAIRS COMMITTEE INQUIRY INTO SUSTAINABLE EMPLOYMENT IN SCOTLAND

We would like to thank the Scottish Affairs Committee for the opportunity to contribute to its inquiry into Sustainable Employment in Scotland. We enclose the Fair Work Convention's response which addresses each of the questions. However, we would also like to take the opportunity to set out some overarching observations about the Convention's approach to sustainable employment, which we hope will provide some context for our response.

The Convention was established by the Scottish Government in April 2015, following a recommendation of the Working Together Review¹. Our remit is to drive Fair Work in Scotland and our agenda is aspirational – it is about Fair Work becoming a hallmark of Scotland's workplaces and economy. We are an independent body which brings together employers, trade unions and academic expertise, in partnership, to provide advice to Ministers, policy makers and businesses on all issues relating to Fair Work.

In March this year we published our Fair Work Framework². This evidence-based Framework sets out our vision, that by 2025, people in Scotland will have a world-leading working life where Fair Work drives success, wellbeing and prosperity for individuals, businesses, organisations and society.

The Framework defines Fair Work as work which offers: effective voice, opportunity, security, fulfilment and respect; that balances the rights and responsibilities of employers and workers; and that can generate benefits for individuals, organisations and society. It sets out what we mean by Fair Work, why it is important, the roles that employers and different partners can play in making Scotland a world leading nation in Fair Work, and how this might be achieved. The Framework identified the challenges and barriers to improving working practices and how the economy and the labour market can undermine Fair Work. It also identified some levers for creating the conditions for Fair Work practices to be embedded in workplaces, including through public sector

¹ <http://www.gov.scot/Resource/0045/00457659.pdf>

² www.fairworkconvention.scot/framework/FairWorkConventionFrameworkFull.pdf

contracting and incentivising good practice and by identifying role models and ambassadors to lead by example.

We have made one overarching recommendation in the Framework: that organisations deliver Fair Work in the dimensions outlined. We have invited all those involved in the workplace to assess whether current practice supports our ambition.

The five dimensions are outlined below:

- **Effective voice** – this is much more than just having a channel of communication within workplaces. It requires a safe environment where dialogue and challenge are dealt with constructively and where workers voices are sought out, listened to and can make a difference;
- **Opportunity** - this allows people to access and progress in work and employment and is a crucial dimension of Fair Work;
- **Security** – security of employment, work and income are important foundations of a successful life. While no one has complete security and stability of employment, income and work, security remains an important aspect of Fair Work;
- **Fulfilment** – workers who are fulfilled in their jobs are more likely to be engaged, committed and healthy. Fulfilling work contributes to confidence and self-belief; and
- **Respect** – respect at work is a two-way process between employers and workers. It involves recognising others as dignified human beings and recognising their standing and personal worth.

Whilst we have deliberately not ranked the dimensions, we are clear that effective voice is core to understanding and addressing the other dimensions and that, without it, it is much more difficult to deliver on the other dimensions.

A growing body of international evidence illustrates that countries with more equal societies typically enjoy a stronger economy – delivering fair work is good business. We believe that tackling inequality and promoting growth go hand in hand, that the promotion of Fair Work is at the heart of any successful approach to the economy and absolutely central to unleashing the untapped potential of individuals latent in Scotland's workplaces, driving productivity and delivering growth and prosperity for all.

Tackling wider inequality by investment in creating secure, rewarding jobs that reward people with a decent wage, and ensuring that everyone has a financial stake in the country's wealth, is the only sustainable way forward for the economy.

Our responses to the questions posed in the inquiry are set out in that context and with this perspective.

We would be happy to provide further oral evidence to the Committee on these issues.

Yours sincerely,



Anne Douglas



Linda Urquhart

Co-Chairs, Fair Work Convention

SCOTTISH AFFAIRS COMMITTEE INQUIRY INTO SUSTAINABLE EMPLOYMENT IN SCOTLAND – FAIR WORK CONVENTION’S RESPONSE

1. *How does employment in Scotland differ to employment in other parts of the UK?*

The headline indicators show that Scotland’s labour market is performing relatively well in an economic environment that continues to be challenging. Scotland’s workforce is employed in a diverse range of sectors including oil and gas, food and drink, financial services, life sciences, energy, tourism and creative industries. Scotland also has a global reputation for manufacturing excellence and is experiencing growth in new innovative technology sectors. However, it is worth acknowledging how dramatically Scotland’s economy and employment has changed in the last three decades. In 1973, manufacturing accounted for 36 per cent of economic activity in Scotland, in 2013 manufacturing fell to 11 per cent. Whilst business, service and finance sectors accounted for 12 per cent of activity in 1973, in 2013 this was up to 29 per cent of the economy. Scotland’s reliance on agriculture, forest and fishing has fallen from five to one per cent of overall economic activity during the same period.

Latest statistics published by the Office of National Statistics for September to November 2016 show that Scotland’s labour market performance remains resilient. There are now 40,000 more people in employment in Scotland compared to the pre-recession peak (March-May 2008). Furthermore, using the most recent internationally comparable data, Scotland’s [Q3 2016] unemployment rate (4.7 per cent) was lower than the G7 average (5.5 per cent), the OECD average (6.3 per cent) and the EU average (8.5 per cent). On top of this, Scotland’s youth unemployment rate (9.4 per cent) is the lowest youth unemployment rate since the series began, and is the 2nd lowest youth unemployment rate in the EU.

Despite this Scotland’s labour market is facing significant economic headwinds. The employment rate at 73.4 per cent is below that of the UK (74.5 per cent), and the unemployment is slightly above that of the UK (5.1 per cent compared to 4.8 per cent). However, despite there being a slight rise in the unemployment rate over the most recent quarter, it has fallen over the past year.

Deeper analysis also indicates that there are a number of issues which sit behind the headline statistics that need more detailed attention, such as rising levels of economic inactivity, disparity in access to jobs and the rise of more flexible, but less secure forms of work. From our direct engagement with many workers and employers, it is clear that there is still much to be done to ensure our vision of Fair Work becomes the hallmark of employment in Scotland

Official Statistics show that:

- 467,000 workers in Scotland, a fifth of all employees (of which around two thirds are women), were paid less than the voluntary living wage as defined by the Living Wage Foundation in 2016; (Annual Survey of Hours and Earnings 2016). Scotland remains the best performing of all of the four countries in terms of paying the Living Wage, or more, at around 80 per cent of people in employment.
- 119,000 workers in Scotland, 5.2 per cent of all employees, are on temporary contracts, of whom 42,000 (1.8 per cent of all employees) are seeking permanent employment; across the UK, 6.1 per cent of all employees are on temporary contracts, with 1.9 per cent of all employees seeking a permanent contract. (Sep-Nov 2016)
- In 2016, 78,000 people in Scotland were on a zero-hours contract, (April-June 2016, Labour Force Survey). The use of zero hour’s contracts in Scotland’s labour market is similar to that of the UK as a whole (Scotland 3.0 per cent, UK 2.9 per cent).

Data and research suggests that for a significant minority of people, the labour market is not delivering the decent wages or stability they need and that there are a number of structural factors which negatively impact peoples' actual experience of work, such as power imbalances in the work place and lack of representation and voice, lack of investment in training and general job insecurity.

For example:

- 12.6 per cent of workers across the UK reported they might lose their job in the next six months;³
- 118,000 workers in Scotland, 5 per cent of all employees, did not receive the statutory minimum paid holidays they were entitled to in 2014⁴; and
- 324,000 employees in Scotland did not feel they had a supportive line manager in 2013.⁵

As in common with the rest of the UK, disparities in employment exist and equality of opportunity remains disturbingly low, and has been a persistent feature of the labour market for some considerable time. According to the Equality and Human Rights Commission's report *Is Scotland Fairer* women are less likely to be in employment than men, are less likely to be in senior positions and are more likely to be in part time work. We also know that unemployment rates are significantly higher for people from some ethnic minority groups compared with White people; and while the average hourly pay has declined in Scotland since 2008; the steepest declines have been for younger workers.⁶

The Fair Work Framework acknowledges the importance of equal opportunity as a characteristic of fair work and that work, and particularly good quality work, is not spread fairly. Evidence suggests sometimes even with the relevant skills and qualifications women, young people, minority ethnic workers and disabled workers find themselves excluded from work altogether or overly represented in low paid work⁷ and vulnerable to poor work practice; they are also less likely to be in positions of authority and to be represented in the workplace.

While this inequality in peoples' personal experience of employment has been a persistent feature of the economy, explained by complex structural factors and discriminatory attitudes which are to be found in wider society; the evidence suggests that this inequality has been compounded since the economic downturn as employers respond by shifting the financial risks onto workers using new zero hours models, with low skilled, low paid workers and equality groups particularly vulnerable.

a. What are the reasons for these differences?

Weak real incomes growth and growing inequality have been observed across Europe. All the regions of the UK share the same challenges that blight people's experience of employment. Scotland shares the same overall economic context as the rest of the UK and Europe and has many of the same policy frameworks, for instance on immigration and employment regulation. The

³ European Working Conditions Survey (2015) : <http://www.eurofound.europa.eu/surveys/data-visualisation/sisth-european-working-conditions-survey-2015>

⁴ Based on TUC estimates using Labour Market Survey data (July 2015): <https://www.tuc.org.uk/workplace-issues/employment-rights/working-time-holidays/17-million-people-missing-out-their-paid>

⁵ Scottish Health Survey (2013) 'Part 14 – stress at work': <http://www.gov.scot/Topics/Statistics/Browse/Health/scottish-health-survey/Publications/Supplementary2013>

⁶ EHRC, *Is Scotland Fairer : The state of equality and human rights in 2015*

⁷ Fair Work Convention, Fair Work Framework (2016)

Scottish Government does not have legal competence to legislate for the minimum or living wage or to change employment law.

However, despite these similarities in legislation we are seeing distinct policy approaches to meeting the challenges. Some of these differences are structural and due to Scotland's demographics and different patterns of industry and commerce; for instance, Scotland's reliance on its finance and oil sector, which has been impacted by low oil prices in recent months with employment being impacted. However some of the difference is down to different policy approaches across the UK.

The policy context and legislative landscape in Scotland has changed in recent years. The Scottish Government has recently published an overarching economic policy focused on inclusive growth, a new fairness action plan⁸ which includes a new socio-economic duty, a disability delivery plan with a focus on employment, and a new labour market strategy. This policy appears to be influencing spending priorities including a focus on improving the attainment of children experiencing poverty, investment in childcare as economic infrastructure, and other initiatives such as work the Scottish Government's voluntary Living Wage Scheme which has risen recently in Scotland to £8.45 an hour above the legally binding national living wage is £7.20.

To illustrate the differences, the gender pay gap in Scotland is both decreasing but also stubbornly persistent, falling from 7.7 per cent 2015 to 6.2 per cent in 2016 compared with a decrease in the UK from 9.6 per cent to 9.4 per cent. The UK position is being driven, in part, by the falling gender pay gap in Scotland (down 1.5 percentage points over the year). While there are many barriers that impact women's unequal access to well-paid employment, and while progress is being made, there remains a real and persistent pay gap between men and women which must be tackled. Like elsewhere in the UK, disabled people in Scotland are half as likely to be in employment as non-disabled people. The employment rate for people with a disability for July-September 2016 in Scotland was 41.8 per cent (down 1.8 percentage points over the year) compared to an employment rate of 81.9 per cent (up 0.7 percentage points over the year).

2. *How might employment in Scotland change over the next 10 to 20 years?*

The labour market in Scotland has already undergone considerable change in recent years due to changes in the economy; changing demographics such as an ageing population; globalisation, advances in technology, reduced global trade, reductions in government budgets and weaker wage growth; which all have an important impact on labour market participation, employment and Scotland's economy as a whole.

We are also expecting to see differences in how the Scottish Government exercises its new powers; for instance around Employment Tribunals where Scottish Ministers have promised to abolish fees when they get the powers to do so. If this impetus continues we may see further divergence in policy in ways that are distinct from the rest of the UK.

We have also seen important structural changes in the public sector landscape in Scotland which are relevant, including health and social care integration, which forms an important part of the delivery landscape supporting people into work. Likewise a policy focus on childcare and social care will create more jobs in these areas as Scotland makes provision for its older population; and to support parents and other carers with the services they need to allow them to participate in the workplace. We anticipate changes too as a result of Scottish Government's Enterprise and Skills Review.

⁸ Fairer Scotland Action Plan 2016 <http://www.gov.scot/Publications/2016/10/9964>

In terms of the structure of Scotland's workforce; Scotland's population is proportionately older and less diverse than England's. Scotland's ethnic minority population is just 4 per cent (8 per cent when including non-British white population); mainly focused in those parts of the country where employment is located. Like elsewhere in the UK, Scotland's minority ethnic population is proportionately younger than the population as a whole. We are also likely to see older people stay in employment for longer, driven by individual need for financial security and less generous welfare and by labour market drivers.

It will become increasingly important for government to create the context for economic growth and investment. Government will need to tailor its approach to education, skills development and 'welfare to work support', to take account, not only in the changing nature of work, but also to better target it's support to the workforce of the future – older workers, younger ethnic minorities and woman workers. This will have implications for how we invest in skills and force changes in workplace culture and practice, with key roles for the third sector and for unions as they work together with employers and workers to position the workplace for this future.

Immigration will need to be a feature of Scotland's employment landscape if Scotland is to remain competitive. Immigration is much more important to Scotland than to England which has already benefitted from earlier immigration waves and is reaping the rewards in terms of growth and a younger workforce.

Official forecasts indicate that there will be limited growth in 2017 with most economic experts predicting that unemployment will rise and uncertainty will continue, as a feature of the UK's economy in the face of the UK's decision to leave the Europe Union.

In this context implementing elements of fair work like the living wage will be challenging for some employers. This is particularly true in sectors where wages tend to be lower and in sectors which rely on strong public finances and government support like Social Care.

However we also believe that this context also creates important opportunities for the adoption of fair work. The choices employers and governments make have far reaching consequences for fair work. Most employers do see the importance of delivering high quality jobs and fair workplaces – and this is terrain that is still very much up for grabs. During the next few years it will be vital that politicians, employers, unions and third sector stakeholders across the UK as a whole, continue to reinforce their commitment to drive forward the fair work agenda and it will be equally important that governments invest in skills and the infrastructure businesses need which will support them to deliver high quality, well-paid work.

We think much can be achieved through working in partnership. Delivering fair work requires joined-up action at many levels, from governments across the UK, to employers, unions and communities. The Fair Work Convention is an example of a diverse partnership bringing the views of unions, employers, academics and policy makers together. It will be important to engage both the unions and civil society in discussions about improving work as we move forward.

Civil society plays a major role in arguing for and delivering the Fair Work agenda. There are countless third sector organisations and community groups engaged in issues around in-work poverty, improving employment rights and addressing the negative impact of poor work on health and well-being; and social enterprises modelling fair work principles. These organisations need to be engaged and would have strong, compelling stories about the preventative benefits of investing in infrastructure that delivers quality work; and how this can be aligned more closely to the needs of society. It is also important that the wider policy community continues to be engaged in this

debate, not only at national and devolved Government level, but also local authorities and public agencies.

3. *To what extent is sustainable employment in Scotland threatened by unfair employment practices?*

As well as positively encouraging Fair Work we should be ensuring workers are able to realise their internationally recognised human rights relating to employment in practice; it will be important that the UK's employment rights framework keeps pace with international standards, but also with changing models of work. For this reason we very much welcome the Independent Review commissioned by the Prime Minister, led by Matthew Taylor, looking at the changing nature of employment and issues around rights and uncertainty of employment status. This thinking is well developed in Scotland and the Fair Work Convention looks forward to talking to the Inquiry in the spring. Unfair employment practices pose a significant risk to sustainable employment. The wider social implications of poor work and its negative impact on physical and mental health and wellbeing are well documented and this was a strong focus of our evidence gathering.

(a) Low pay

While employment remains the best route out of poverty, it is no longer a protection against poverty. Half of people living in poverty in Scotland are from working households. We welcome the Scottish Government's focus on inclusive growth and our Fair Work Framework makes it clear that we see that unfair employment practices and insecure employment undermines productivity and acts as a drag on the economy. It is vital that fair work is accessible to all, not just the few. Doing everything we can to ensure that people are employed in Fair Work is important both for the individual but it is also good for the economy.

Through our own engagement with workers and employers, we were told about the challenges facing employers in some sectors in addressing fair pay when resources are scarce and where markets or commissioning arrangements are beyond employer influence or control. Yet we also heard examples of the benefits for employers as well as workers of eliminating low pay and we heard positive stories from employers who had found ways to manage flexibility requirements in a way which offered workers more security.

(b) Work and employment insecurity

A recent Oxfam report shows how, at the lower end of the labour market, a decent hourly rate and job security are ranked as the most important factors of decent work⁹. Uncertainty around employment and insufficient hours of work, and the resulting unpredictable income, is widely viewed as inconsistent with fairness - not just by workers but by many employers we engaged with. Many workers reported that work insecurity led to personal and life insecurity, making it more difficult to take longer term decisions such as taking out a mortgage. Older women reported that insecure and low paid work had significant negative consequences on their incomes and wellbeing.

We see that good, sustainable work is threatened by work practices like zero hours contracts and want to see more being done to protect and review employment legislation to ensure that everything is being done to uphold employment rights at a Government level. Employers need to be sufficiently challenged to offer decent hourly rates and sufficient hours, as we know that ensuring people's job security is ranked as one the most important factors of Fair Work.

⁹ Oxfam, Decent Work For Scotland's Low-Paid Workers: A Job to be Done (2016)

We are concerned that zero hours contracts are becoming more prevalent in the labour market. Security and stability of employment play an important role in behaviours and attitudes of people in work, and this has a major influence on how individuals are able to better plan their lives. Our work highlighted that there are many examples of how businesses can deliver flexibility without relying on exploitative zero hour's contracts.

(c) Continuing inequality

We would echo the concerns and recommendations outlined by the United Nation's International Covenant on Economic, Social and Cultural Rights concluding observations published in July 2016, in relation to work¹⁰. These included urgent calls for the UK Government to take action to address the persistent gender pay gap and the vertical and horizontal gender-based segregation in the labour market (which results in women occupying lower paid positions and facing obstacles to their career opportunities), action which addresses the root causes of unemployment which are persistently a problem for certain groups such as young people, persons with disabilities and people from minority communities, and action on working conditions and precarious employment. The UN recommendations also picked up concerns around the Trade Union Act 2016 which we also share.

(d) Voice and representation

Good employee/employer relations are crucial too. Having strong dispute mechanisms in place to deal with problems when things go wrong in workplaces are important for sustainable employment. There is much that can be done by employers to encourage good engagement with staff. We agree with the UN recommendations around fair representation and trade union rights. The Fair Work Framework explicitly states that Trade unions are, on the evidence, the most effective vehicle for worker voice. It is therefore of concern that union membership has declined in recent times, falling to around 18 per cent of people in work compared to 27 per cent two decades ago. We would not wish to see the decline in union membership continue and would suggest that the situation is actively monitored and that the Trade Union Act is reviewed to ensure that it is not unduly impacting workers' rights or the role that Trade unions play in the workplace.

(e) Remedy

Employment tribunals should be accessible to employees with legitimate grievances against their employers and people should be able to access justice and redress through this route. We agree with the Scottish Government's and UN's position on the abolition of Employment Tribunal fees.

a. How can unfair employment practices be combated?

Unfair employment practice can be combated by promotion of the Fair Work Framework and by organisations/businesses and unions adopting it in practice to deliver Fair Work. There needs to be a clear approach to holding to account organisations that do not comply with their legal requirements and we support calls for greater efforts to stop practices like blacklisting of trade union members by employers and the exploitative use of zero hours contracts. We would also want to ensure that everything is done by government to fully guarantee employment rights across the UK, in law, but also in practice. At the same time, there must be a wider discussion about the benefits of raising standards across the board; and the impact that a more progressive working environment can have on productivity and on improving people's lives.

Access to appropriate advice on employment rights, and access to appropriate remedies when things go wrong, is relevant to combatting unfair employment practices. We heard from ACAS

¹⁰http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGBR%2fCO%2f6&Lang=en

about the work which they do, promoting advice to employers and employees on employment law. Other advice services, such as Citizens Advice Bureaux need sustainable funding.

4. *Does UK employment legislation meet the needs of Scotland, where those needs differ to those of other parts of the UK?*

UK employment legislation does not always meet the needs of workers in Scotland – or the rest of the UK. Evidence suggests that the current legislative framework is not offering adequate protections for many workers and it is not always delivering Fair Work with effective voice, opportunity, security, fulfilment and respect. This is particularly true for those already facing disadvantage, including those with disabilities and young workers. Significant barriers also remain for women and people from ethnic minorities in the workplace.

5. *What ambitions should the UK Government have for the future of employment in Scotland?*

UK Government ambitions for the future of employment in Scotland should be that: we not only see the reduction of temporary and precarious self-employment but we see proactive investment to generate decent work and job security; and activity which ensures adequate protection of labour rights. We would like more progressive, constructive models of employment and employer-employee relations which are modelled on other countries with strong traditions of social partnership.

a. *What measures should the UK Government take to support sustainable employment in Scotland?*

The UK Government and Scottish Government should work together to grow a strong economy which benefits workers across the UK and that takes account of Scotland's distinct features; and which delivers an economy which is inclusive and delivers sustainable employment for all. We would like to see both the Scottish and UK Government encourage employers in Scotland to adopt the Fair Work Framework and sign up to our vision in a way which will help drive success, wellbeing and prosperity for individuals, businesses, organisations and society.

Promoting Fair Work principles with employers and models of employment practice that do not exploit or discriminate, is a vital component of delivering an inclusive economy. The UK Government retains the responsibility for the framework of protections by way of employment and discrimination legislation which function to protect workers. These need to be relevant, and current, and need to keep up to date with changes in patterns of work and reflect the different circumstances across the UK. These protections should not roll back at this important time and should be safeguarded as the UK leaves the European Union.

The Scottish Government has encouraged the adoption of the Living Wage and amended procurement regulations to support a focus on fair work. The Convention will continue to work with Scottish Ministers; and we will actively be encouraging them to do more in this area. However, the UK and Scottish Governments must work more closely together on the wider protections agenda and on providing consistent messaging to business.

Both governments should continue to be supportive of, and promote critical issues such as the Living Wage, the positive role of Trade Unions and a partnership approach to industrial relations as part of its wider approach to Fair Work.

6. How should the Scottish and UK governments work together to manage both the transfer of powers and funding relating to employment support programmes, and the on-going overlap of responsibilities relating to employment in Scotland?

From April next year we will see new services providing employment support to disabled people and those with long term health conditions. We would fully expect the Scottish Parliament to use newly devolved powers to support employment in a coherent and efficient way. There are opportunities to link the new employment powers and newly acquired social security powers in ways that are about delivering high levels of employment and wages. The devolution of these services presents an important opportunity to join up with other local services for instance health and social care, education and advice, to develop integrated solutions which better support employees and employers.

The Convention has welcomed the engagement with people with lived experience on the design of the newly devolved employment services in order to ensure that dignity and respect are built in from the start. We would wish to see this type of user engagement continue so that employment support is designed with people in mind. We have also welcomed the Scottish Government's wider strategic vision to make Scotland fairer for disabled people - outlined in their recent disability delivery plan¹¹. These are the types of intervention which sit at the heart of an inclusive growth agenda. As such, the UK and Scottish Government should work together to ensure that the transition of powers goes smoothly; but also to agree what both governments can do to reach the target of halving Scotland's disability pay gap by 2020; and to share learning which could be applied to employment support programmes UK wide.

¹¹ <http://www.gov.scot/Resource/0051/00511017.pdf>