



OFFICIAL REPORT  
AITHISG OIFIGEIL

DRAFT

# Economy and Fair Work Committee

Wednesday 2 October 2024

Session 6



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Pàrlamaid na h-Alba

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**Wednesday 2 October 2024**

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**ECONOMY AND FAIR WORK COMMITTEE**

**25<sup>th</sup> Meeting 2024, Session 6**

**CONVENER**

\*Claire Baker (Mid Scotland and Fife) (Lab)

**DEPUTY CONVENER**

\*Michelle Thomson (Falkirk East) (SNP)

**COMMITTEE MEMBERS**

\*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)

\*Murdo Fraser (Mid Scotland and Fife) (Con)

\*Gordon MacDonald (Edinburgh Pentlands) (SNP)

\*Lorna Slater (Lothian) (Green)

\*Colin Smyth (South Scotland) (Lab)

\*Kevin Stewart (Aberdeen Central) (SNP)

\*Brian Whittle (South Scotland) (Con)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Professor Patricia Findlay (Fair Work Convention)

Helen Martin (Fair Work Convention)

**CLERK TO THE COMMITTEE**

Anne Peat

**LOCATION**

The James Clerk Maxwell Room (CR4)



## Scottish Parliament

### Economy and Fair Work Committee

*Wednesday 2 October 2024*

*[The Convener opened the meeting at 09:30]*

### Decision on Taking Business in Private

**The Convener (Claire Baker):** Good morning, and welcome to the 25th meeting in 2024 of the Economy and Fair Work Committee. Our first item of business is a decision on whether to take item 3 in private. Do members agree to take item 3 in private?

**Members indicated agreement.**

## Fair Work Convention

09:30

**The Convener:** Our next item is an evidence session with members of the Fair Work Convention. Last year, the convention published a research report that benchmarked Scotland's progress, based on a series of fair work indicators, against that of similar countries. The purpose of this session is to provide the committee with an opportunity to discuss the report and its implications.

First, I will make a declaration of interests. I am a member of Unite, the union.

**Kevin Stewart (Aberdeen Central) (SNP):** I am a member of Unison. That information appears in my entry in the register of members' interests.

**Lorna Slater (Lothian) (Green):** I am also a member of Unite the union.

**Colin Smyth (South Scotland) (Lab):** I declare an interest as a member of Unite and the GMB.

**The Convener:** I welcome Professor Patricia Findlay, who is co-chair of the Fair Work Convention, and Helen Martin, who is head of the convention's secretariat. Thank you for joining us.

Last year, the convention published a benchmarking report that compares the work in Scotland with that in comparable countries. Will you summarise the report's key findings and reflect on the progress that has been made in Scotland? Other questions will provide opportunities to discuss the report in more depth, but will you summarise the report's headlines and what it has told us about progress in Scotland?

**Professor Patricia Findlay (Fair Work Convention):** I will start by giving a brief introduction about the convention. I will ask Helen Martin to pick up on some of the report's findings, and I am happy to respond to questions.

The committee will be aware that the Scottish Government established the convention in 2015 following a key recommendation in the "Working Together Review: Progressive Workplace Policies in Scotland". The convention is independent of Government. We have 10 members who are drawn from industry and trade unions, and we have an academic adviser. I am co-chair of the convention alongside Mary Alexander, who is the deputy regional secretary of Unite the union. Convention members provide all their expertise, insight and time pro bono, so nobody in the convention is remunerated. The convention comprises a group of people who are committed to fair work in Scotland and to delivering measurable

progress against the fair work indicators that we have outlined.

We commissioned some research to find out where we were. In 2020, the convention published our “Fair Work in Scotland” report, which was our first measurement framework, to get a sense of our benchmarks following the publication of the “Fair Work Framework 2016”. Recently, we updated that report by commissioning research from Alma Economics, which is an independent research consultancy, and we made our own submissions and recommendations to the Scottish Government based on those findings.

It would make sense for Helen Martin to talk through some of the findings, and we can then pick up on issues that are of interest to committee members.

**Helen Martin (Fair Work Convention):** The fair work measurement framework was refreshed through the research, which found that, of the 45 indicators, 19 had improved, 10 had worsened and 14 had fluctuated or remained broadly stable. Some areas were quite positive. The report noted that there had been a significant decrease in the proportion of employees earning less than the real living wage—the proportion sat at 9 per cent in 2022. The gender pay gap had almost halved from 6.4 per cent in 2016 to 3.7 per cent in 2022. Involuntary self-employment had fallen from 3.7 per cent in 2016 to 2 per cent in 2022. The ethnicity employment gap had fallen from 16.3 percentage points in 2016 to 11.7 percentage points in 2021, while the ethnicity pay gap had reduced slightly from 7.5 per cent in 2016 to 5.9 per cent in 2021.

We were therefore able to identify some positive findings in the report, but quite a lot of things had moved in the wrong direction. Between 2016 and 2021, the number of people self-reporting stress, depression or anxiety that was caused or made worse by work more than doubled. The percentage of employers that provided training to their employees fell from 73 per cent in 2017 to 70 per cent in 2021. Access to flexible working had improved slightly, but about three quarters of workers still had no access to flexible working. The disability pay gap increased from 13.7 per cent in 2016 to 18.5 per cent in 2021. The use of zero-hours contracts increased from 2.2 per cent in 2016 to 3.4 per cent in 2022, which we found quite disappointing, because addressing that issue had been a key focus for the Scottish Government and was part of the fair work first approach.

The movement in relation to the real living wage was very positive, as the Government had put a lot of focus and emphasis on that area, but progress had not necessarily fed through in every element that it had put emphasis on, so we were concerned about some of the findings.

In the same report, we developed the international fair work nation framework. The idea was that that would help us to answer the question of what it means to be a leading fair work nation. We tried to benchmark Scotland’s performance against that of a range of countries that were already doing well across a range of indicators. We picked countries that had a good story to tell in that regard. We took indicators from the fair work measurement framework and compared them at an international level. The indicators were chosen primarily on the basis of data compatibility, so lots of indicators in our domestic framework were not able to be compared internationally because the quality of data was not available.

The framework benchmarked Scotland’s performance against that of Denmark, Belgium, Austria, Finland, Iceland, Ireland, the Netherlands and England. The comparator countries were chosen because they offered a stretching but realistic benchmark for Scotland and they incorporated a range of similar-sized countries with a similar gross domestic product, with comparable data being available.

The framework includes 14 indicators, of which 13 are drawn from the fair work measurement framework and one—low pay—is unique to the international fair work nation framework. It is quite difficult to compare wages directly, but we felt that it was important to have a measure of pay, because that indicator is often used to compare international performance.

We found that no country led on all indicators, but a range of countries are doing better than Scotland across a range of indicators. We felt that fair work could not be measured using a single indicator; a country needed to be doing well across a range of indicators.

In some areas, Scotland’s performance was comparatively positive. For example, on permanent employment rates, Scotland was placed first out of nine in the framework; on youth unemployment, it was second out of nine, with the gap between the leading fair work nation being 0.9 percentage points; and on work-related ill health and disease, it was second out of nine, with the gap being 1.8 percentage points.

Scotland was mid-table on a range of indicators. On the gender economic inactivity gap, Scotland was fourth out of nine; on the gender pay gap, it was fourth out of nine; on workplace non-fatal injuries, it was fifth out of nine; on low pay, it was fifth out of eight, based on data availability; on trade union membership, it was fifth out of nine; on underemployment, it was sixth out of nine; and on involuntary part-time work, it was sixth out of nine.

Scotland’s performance was comparatively poor across a range of indicators. On the disability

employment gap, Scotland was sixth out of eight, with the gap between it and the leading fair work nation being 23.2 percentage points; on involuntary non-permanent work, it was seventh out of nine, with the gap being 25 percentage points; on collective bargaining, it was seventh out of nine, with the gap being 59.9 percentage points; and on skills underutilisation, it was eighth out of eight, with the gap being 20.6 percentage points.

We noted that, although we were doing well against indicators such as permanent employment, we were doing very poorly against indicators such as involuntary insecure work. That told a story about the labour market in Scotland. A lot of people were in permanent work, which was good, but quite a lot of people were in insecure work that they did not want to be in, and the penalty for that seemed to be quite high.

We also found—

**The Convener:** Committee members will pick up on particular areas. You have given a really helpful overview of some of the key indicators.

Do you want to say a bit more about the disability employment gap? The committee has undertaken an inquiry into that, and we are near to publishing our report, so we are interested in that area. As you pointed out, Scotland was sixth out of eight on that indicator.

You said that Scotland had made good progress on payment of the living wage and that part of that was down to the Government's focus on that issue, with targeted improvements. Have the countries that are doing better in relation to the disability employment gap achieved progress because of Government direction? Do we need to see more activity from the Scottish Government? I know that we are making some progress, but there are concerns that there is still quite a lot to do to close the gap. Do you have a view on what the Government needs to do and on why we are sitting at sixth out of eight?

**Professor Findlay:** One of the advantages of the real living wage indicator of fair work is that it is a single measure, and it is more straightforward, relatively, to focus on how a single measure might be supported and implemented in a variety of contexts. The disability employment gap is more complex, in the sense that a more complex interplay of factors determine whether people who have a disability are in employment.

Through the international framework, we see a difference in countries where there is strong support for active labour market policies that support people into work through training. The leading example is Denmark, which has the smallest disability employment gap. As, I am sure, the committee will be aware, Denmark has a more social market economy, rather than a liberal

market economy. There is more co-ordination between employers, employees and the Government in how they work together to deliver outcomes. The institutional structures and the investment in active labour market policies are among the reasons why Denmark's disability employment gap is so small.

It is also worth pointing out the significant role of employers. If we look at the disability employment gap across the United Kingdom, we realise that it changes rather a lot based on the context of local labour market conditions. In the south-east of England, where the labour market has been tighter traditionally, employers appear to be more willing to make adjustments to either keep people with a disability in employment or to bring people with disabilities into employment, so the gap is smaller in some parts of the UK.

The difference is, in part, due to different institutional structures in other countries and, in part, due to employer behaviour in response to the relative tightness or otherwise of the labour market.

**Colin Smyth:** Good morning to the panel. We are about to see probably the single biggest step forward in workers' rights in a generation through the UK Government's employment rights bill: a ban on zero-hours contracts, which Helen Martin mentioned, action on fire and rehire, and day 1 rights to parental leave, sick pay and so on. Crucially, that will apply across the UK, so we will not see a race to the bottom on one side of the border. I am interested in what you think our focus should be for devolved competences to add value to the changes that are coming. What should our focus be in relation to what is, in effect, Scottish Government policy?

**Professor Findlay:** The member is talking about the proposals that are outlined in Labour's new deal for working people. Those proposals are out there, but we do not have much detail about how they will be implemented. It is undoubtedly the convention's position that they provide a useful statutory basis for underpinning fair work in Scotland and across the UK, and the convention supports many of the proposals in the new deal for working people.

09:45

The proposals are very consistent with the things that the fair work framework has focused on for the past eight or nine years and point to it having been the correct decision to focus on some of those areas in a devolved context when there was no statutory underpinning. That will be very important and it will mean that some things—the ones that you have mentioned, such as the banning of zero-hours contracts and the

prohibition of fire and rehire—can maybe be removed from the things that we are interested in and which are included in the fair work first conditionality framework.

There is still some detail needed about what the proposals look like. There is a huge issue in enforcement. We know that, although people may have statutory rights, they may not be particularly well enforced. There is some discussion in the new deal proposals of a single enforcement agency, but a big challenge will be where areas of enforcement cross with devolved powers. There may be a need for a very constructive conversation between Scottish and UK policy makers about not just the detail of those proposals—I think that Scotland has a very important role to play in discussing how they can be designed, delivered and implemented in the best way, based on the experience that we have had of fair work—but what they mean for areas where there are devolved powers that may have relevance to issues of enforcement. I think that that is quite important.

A very good thing that statutory implementation does is provide a very effective floor of rights: it provides important minima. Some of the areas that have been proposed—for example, rights to trade union access and support for sectoral agreements—are crucially important to improving social dialogue in Scotland and the rest of the UK. That underpinning of rights is incredibly important, but there are also some areas where we need to build relationships and capacity that allow the rights and dialogue to be effectively delivered. There is still a role for policy makers in Scotland, notwithstanding there being an improved statutory framework, to be creating the conditions, relationships, information and advice that encourage employers, unions and other employee organisations to have constructive conversations about the very many challenges that they face.

The convention very much welcomes what we have seen so far with that plan. It will remove some of the emphases in fair work that we have focused on in previous years, but I think that there is a lot of learning to be done both ways on how we embed the approach and dialogue that allows effective delivery of statutory rights.

**Colin Smyth:** That is very helpful indeed. You mentioned sectoral agreements, and encouraging those agreements has been an important priority for the Fair Work Convention. Given that we may see that area strengthened on a statutory basis, what evidence do we have that sectoral agreements have been successful in their implementation? Presumably, that is challenging at the moment because they are also voluntary, but is there evidence that that is a direction of travel that we should be encouraging from a

devolved point of view but, ultimately, also across the UK, with statutory backing?

**Professor Findlay:** We see from international evidence a relatively strong association—not a complete one but a relatively strong association—between the presence of collective bargaining and the delivery of a variety of types of practices that we have defined as being important for fair work in Scotland. With collective bargaining, we tend to see lower rates of inequality and better rates of pay. The presence of collective bargaining is associated internationally with some pretty good outcomes. We know from the work that we have done—our second sector inquiry was into construction, which we reported on a couple of years ago—that sector-based arrangements can work very well, because they prohibit a race to the bottom. The national agreement for the engineering construction industry, which Scotland's Electrical Trade Association for the electrical contracting industry—SELECT—operates, encourages independent electrical contractors to sign up to a set of membership terms and conditions that means that they compete on things other than a race that takes labour rights and rewards to the bottom. Those agreements work very well. They are supported by employers and unions and they deliver good outcomes for workers. We have evidence that sectoral bargaining works well in a number of different ways.

In our social care inquiry, it was very clear not only that workers did not feel that they had much of a voice in the sector across the range of providers, although specifically in the private and third sectors, but that employers, too, did not think that they had a place where they could have a collective voice. Our support for a sectoral agreement in social care was to provide that voice and—harking back to the previous question—a place for social dialogue to emerge.

Some of the challenges in social care, construction or other sectors can be addressed by the people who know most about them. They are not policy makers, politicians or the Fair Work Convention; they are people on the ground. The advantage of sectoral bargaining is that it provides a place for that dialogue. That is where we see real benefits in how people learn to engage in effective social dialogue.

**Colin Smyth:** That is helpful. You touched on a lot of points that I was going to come back on, but my final question is about low pay. We are already seeing changes from the UK Government that aim to make the minimum wage a genuine living wage. Earlier, Helen Martin mentioned that we had already seen progress in Scotland, with an increase in the number of employers paying the real living wage: I think that we have the highest



proportion in the UK. How do you respond to those who say that the change from the UK Government is not necessary, that we are already making progress, and that working with employers is the way ahead, rather than increasing the wage on a statutory basis? How do you respond to those suggestions?

**Professor Findlay:** From the discussions of the Low Pay Commission, it looks like—and this is not a finalised figure—the figure for the national living wage, taking into account the cost of living, which it is now being encouraged by the Government to do, will be around £12.10, so it will be 10p more than the current real living wage, although the real living wage will adapt. I think that there will still be a role for the real living wage, depending on how earnings growth impacts on the national minimum wage, although the gap between those things may reduce over time.

The Labour Government proposals are to apply the national living wage to people who are 18 and above—there is currently an age bar—but they would not change the rate for people under 18 and they would not change the rate for apprentices. You will know that we advocated in Scotland for apprentices to be paid the real living wage for a host of different reasons.

There will still be areas in which the difference between the real living wage and the national living wage is significant, so the proposals will address different areas of concern in the labour market. Arguing for an improved real living wage on a statutory basis extends coverage of that far more significantly than relying on a voluntary real living wage. We saw that from the implementation of the national minimum wage decades ago. There were huge concerns that that legislation would cause problems for employers and would destroy jobs but, in fact, all the evidence is that it has done neither of those things. In fact, not only has it increased earnings, it has reduced the gender pay gap significantly, because women were in the groups that were most likely to be low paid.

As an academic and as chair of the convention, I do not feel terribly concerned that there will be negative outcomes from there being a better statutory underpinning for minimum wages in the UK.

**Helen Martin:** Can I add one point to that? We speak to a lot of employers and we have recently done a hospitality inquiry in which we spoke to a lot of employers in that sector, which often pays below the real living wage. From speaking to them, the sense that I got was that putting in a higher statutory underpinning would be very helpful, because it will mean that the playing field is quite level between employers. It makes it less of a risk for an employer that is trying to raise the wages and do the right thing for their employees if

everyone is having to do that. There are benefits in taking a statutory approach, as Patricia Findlay outlined.

**Professor Findlay:** That comes across from lots of employers. One of the challenges for employers who have signed up to real living wage accreditation, particularly in low-value-added sectors such as retail, hospitality, catering and facilities management, is that they feel disadvantaged, and they report that they would prefer that everybody has to pay the same wage as they do. They are committed in a value sense to the real living wage for their employees, but they would like not to be competitively disadvantaged by that.

**Lorna Slater:** Colin Smyth has highlighted very well one of the examples of powers that are reserved and not part of the devolved settlement. I will pick into another one. Helen Martin made the point, and I am worried about it as well, that the use of zero-hours contracts is significantly up from 2016. I would like to hear why that is. Why are zero-hours contracts a problem and what can be done? It would be useful to know what can be done in a devolved sense, because we are here to hold the Scottish Government to account, but it is often sometimes useful to know what is reserved.

**Helen Martin:** We can see that the use of zero-hours contracts has risen. The research does not tell us why, but we have recently done the hospitality sector inquiry, and that sector is a big user of zero-hours contracts. A third of all zero-hours contracts in Scotland are in the hospitality sector. Certainly, one of the trends that we observed while doing that inquiry was that there had been competition for staff. There had been a real pressure to attract staff into the industry, which had made wages rise under market forces in that industry. A trade-off for that seemed to be the greater use of zero-hours contracts; using zero-hours contracts was a way of making the rise in wages more affordable for the employer and reducing the risk of bringing someone on. That seemed to be a trend in that sector and may account for some of the rise, but there are probably other reasons.

**Professor Findlay:** I think that that is correct. There are different reasons for the rise in other sectors. It is a rise from a relatively small base, but the experience of those contracts is often very negative for workers. They can provide forms of flexibility for employers, although there may be some hidden drawbacks in them, but they are problematic for workers. We do not need to think very much about evidence for that, although there is quite a lot of it. We need to think about what it would be like not to know what our income is week to week or month to month. It does not make for effective planning or allow for a stable family life,

and it certainly does not allow someone to plan for the future.

Zero-hours contracts can be extremely problematic. It is important to note that lots of organisations that previously used zero-hours contracts—my own sector, the higher education sector, used to be quite a big user of zero-hours contracts—have very successfully moved away from them. Employers can deliver forms of contractual flexibility that offer some security, which is a key dimension of fair work, without resorting to a zero-hours contract. It is not the only way in which flexibility can be delivered.

As Helen Martin said, in the hospitality inquiry we saw some employers who thought that it was entirely required by the business model to use zero-hours contracts because of fluctuating demand; things happen, people cancel orders at the last minute, and you do not know what your demand will be in any particular weekend in a hospitality venue. We also saw employers who were very committed to not using zero-hours contracts, because they did not feel that it was an appropriate way to engage with their staff. For staff themselves, there were some who said, “It may help if I am a student and, therefore, I can have access to shifts when I want them and not when I do not want them,” but those contracts were really difficult for other people who were in the sector more long term.

**Lorna Slater:** I should probably disclose that my husband was on a zero-hours contract for several years, so I am aware of the sharp end of that. Thank you very much for that.

My next question relates, slightly, to the barrier between reserved and devolved powers. How did the UK and Scotland compare with the other countries on the list with regard to childcare provision, and how much do you think that that affects the data?

10:00

**Professor Findlay:** If you look at the ranking of childcare provision, you will find that countries such as the Nordics and Iceland tend to be at the top end. We know that that is inextricably connected not just to whether women are economically active but to the nature of their participation and the prevalence of, say, occupational segregation. There seems to be a relationship in that respect.

We have become very interested in what we can learn from other childcare systems. One of the outcomes of the measurement report—and part of our recommendation to the Scottish Government—was to ask for more investigation into precisely that relationship between the availability and type of childcare and what it meant

for women’s labour market participation, in particular. In Scotland, we have tended to see investment in the early years, quite rightly in many ways, as an educational attainment issue, but it has a very strong connection to the labour market, too.

Coming back to your previous question, I think that this issue is also important when it comes to the very flexible forms of work that exist, given that childcare provision is probably not quite as flexible as they are. Therefore, one of the things in which we are interested and on which we are working with the Scottish Government is that relationship and the idea of childcare as a form of labour market support as opposed to a form of support for attainment.

**Lorna Slater:** Just to make sure that I have understood, can you confirm whether the UK, of all the countries on the list, had the lowest provision of childcare?

**Professor Findlay:** No, I do not think so.

**Lorna Slater:** Okay. I just noticed that, when we averaged it out, England was at the bottom of the table. It is an interesting comparison and shows how the Scottish Government is trying to balance things in an upwards direction.

For my last question, I want to change the topic slightly and look at workers in rural areas. It is an issue on which we have done some work, but I am interested in your work on it, too. I note that the hospitality inquiry report highlighted the challenges facing hospitality workers, particularly when housing is provided as part of their job. I am aware from my previous role that that is also a challenge in the agriculture sector, where workers, gamekeepers and so on are often housed as part of their job. When we looked at putting in place conditionality with regard to Scottish Government grant funding and attaching it to the real living wage, we found that the agriculture sector was struggling in that respect. I am therefore interested in hearing about the issues for rural workers, particularly with regard to being paid the living wage and other aspects of fair work. What are the conditions like now for rural workers and what can we do to improve them?

**Helen Martin:** We took quite a lot of evidence on this issue in our hospitality inquiry, because hospitality is obviously a big sector in rural Scotland. We found that the wages were not as low for hospitality workers in rural areas; indeed, employers often needed to raise wages to attract workers to work in their venues.

However, the difficulty was a real shortage of housing. Employers often felt that they had to create housing for the worker, but that sort of tied housing was creating quite a lot of fair work issues. After all, it makes you more vulnerable; if

you lose your job, you lose your housing, too. Employers also set the rate that workers have to pay for that housing. Although it was often subsidised, it also made things difficult for the worker, because they did not have much choice.

We took quite a lot of evidence from workers with families who were not able to bring their families into their houses. As a result, they were taking jobs that meant having to leave their children and spouses in other parts of the country, which meant, in turn, that they could not stay with that employer for any significant period. Therefore, the situation was having real detrimental impacts on employers and workers, with neither party being particularly happy with it. The employer was investing a lot of money in the provision of housing, but it was not necessarily of very good quality, from the worker's perspective, and it limited quite a lot of what they could do.

The provision of affordable rural housing for low-paid workers is an important issue for the sector. It would certainly make it easier for employers to attract workers, because the housing issue really does put a brake on the number of people whom they can attract.

**Professor Findlay:** I just want to add a point that I think that Helen Martin had begun to make. Part of the challenge for employers was that investing in tied housing meant that they could not invest in their businesses. There are huge challenges facing some hospitality businesses that require investment, but that investment was being diverted into the provision of tied housing instead of its making the business a more resilient and competitive phenomenon.

The housing issue also interacted with the real challenges of the availability of childcare and transport in rural Scotland. Those three issues together—housing, transport and childcare—made it really difficult for employers and employees to ensure that the hospitality industry had the labour to match its needs. Those are obviously big infrastructure issues that individual employers cannot do a great deal about, but some have had significant consequences, particularly for island communities.

**Murdo Fraser (Mid Scotland and Fife) (Con):** Good morning. I want to ask about skills, because I was very interested to see that, in your comparison, Scotland came last out of eight comparator countries in skills underutilisation. I take it that you are talking about people being overqualified for the job that they are doing. You would expect in such a tight labour market to see a maximisation of skills, but we are not seeing that. Can you explain a little bit why that situation is arising?

**Professor Findlay:** There is no single academically accepted definition of skills underutilisation. Sometimes we talk about skills underutilisation in terms of, say, graduates doing non-graduate work. In other words, you have a supply of graduates, but you do not have a matching supply of graduate work and as a result, people end up in jobs that are not commensurate with their qualifications.

Under the general measure of skills utilisation, employers and employees are asked to measure whether, in the conduct of their work, they use all of their skills. That is a broader measure than just looking at, for example, the matching of qualifications with work.

There is a challenge that we have been seeing over the years—and, in fairness to Scotland, I should point out we have been having discussions about skills underutilisation since perhaps the late 1990s, if my memory serves me correctly. In fact, I was involved very early on in some of them. Part of the issue does relate to the worker's experience, although it is not just that. When we talk about fulfilment at work, we understand that being able to deploy one's skills and talents is part of what makes work fulfilling and meaningful. Having a job that does not use their skills is problematic for workers, but it is problematic for employers, too, because they have a resource that they are paying for but which is not being well used. More broadly, we as a society are investing very heavily in education and qualifications, but we do not appear to be getting the rewards from that through, say, productivity.

There are complex reasons for that, but it is in part to do with the design of jobs and the way in which people are managed in more traditionally managed organisations. Jobs can be relatively narrow; people do not have the opportunity to expand them; and they do not engage in problem solving to the extent that we see in some other European nations when we look at the data. The evidence suggests that that has consequences for productivity and innovation.

Part of the challenge that skills underutilisation presents is how people's skills are identified and acknowledged, how employers understand that people have skills and how they might be able to put them to good use. As I have said, that is partly to do with the design of jobs, but it is also to do with the dialogue that takes place in organisations. Again, it comes back to the issue of dialogue. I am pretty sure that if I went to my employer and said, "I think that I could do this much bigger job or something more demanding", they would bite my hand off. Some organisations are very much like that, but in other forms of organisations, that is not the case and people feel that they have skills and talents that are not being used. It is a real

challenge from a human capital investment point of view.

**Murdo Fraser:** Is there any reason why Scotland performs worse than other countries?

**Professor Findlay:** That is not clear. The UK itself performs worse than other countries, comparatively speaking. It might be, in part, to do with the composition of Scottish jobs relative to UK jobs. I do not know the figure off the top of my head, but we might have a smaller number of knowledge-based jobs, so the composition of our economy might mean that we have more routine jobs.

The Scottish economy has a very high number of good, productive and challenging highly qualified jobs, but we also have a very high number of relatively low-skill, low-paid jobs. If we look at it by pay, we see that we have a high number of low-paid jobs, a high number of high-paid jobs and a much smaller middle. It might be that that proportion of lower-paid, lower-quality jobs is part of what is driving our higher rate of skills underutilisation. I think, though, that it has a lot to do with the day-to-day realities of workplaces, how people are managed and how they are encouraged to be effective in their jobs.

**Murdo Fraser:** Thank you. I will change tack a little bit and ask you about a different subject. You have both referenced your hospitality inquiry, many of the recommendations in which involve voluntary action by employers. We have seen some regulation changes, and a law that has been introduced by the previous UK Government on passing on tips came into effect yesterday. There is precedent for Government bringing in legislation in this area. Much of what you are saying is about voluntary action by employers. How confident are you that employers will take up those recommendations, as opposed relying on further regulation?

**Professor Findlay:** It is important to note that we conduct all our inquiries in the context that we are in. The convention does not have a constitutional position. We conduct our inquiries on the basis of the devolved competencies that are currently in play. That is not to say that we do not, in some circumstances, encourage the Scottish Government to engage constructively with the UK Government on a variety of different things.

Employers' voluntary engagement with some of these things is, of course, what it says on the tin—it is voluntary; they are not compelled to do them. We would always argue, and we have done so from the inception of the convention, that fair work makes excellent business sense. One of the reasons why the hospitality inquiry took place at an opportune time was that the sector was

struggling with recruitment. It was having to look at its labour practices because it was struggling to get staff. Attraction and retention, getting the best-quality staff and encouraging staff to give of their best are all supported by fair work.

It is a source of occasional irritation to me that when we talk about fair work, we are often talking about amelioration of the worst parts of the labour market. That is important: we should be trying to ameliorate the situation for the people who are having the worst experience. However, quite a lot of what drives my passion and inspiration for fair work is that it allows you to build brilliant businesses, to be creative, resilient, agile and innovative, and to get the best out of your people. I think that a lot of employers get that. Every day, I work with brilliant employers in Scotland in my day job as an academic. We have great employers who do great things. Statutory underpinning helps with some of those things, but it will not deliver the day-to-day relationships that allow you to build a great business. I think that that is where the discussion about more constructive social dialogue, within workplaces and beyond, is really helpful.

I will ask Helen Martin to come in since she was part of that inquiry. Some of the employers in hospitality are very keen to take up some of the recommendations. It was very clear from the work that we did, some of which my own research team did, that they wanted the solutions to be things that were agreed with them, not imposed on them. The industry was very keen to get support and to change where it could, but it did not want solutions imposed on it; it wanted to be very involved in their design. A hospitality charter, for example, might be the first manifestation of that and Helen Martin is likely to be involved in its construction.

**Helen Martin:** One of the things that we observe at the convention, and the reason why we do our work sectorally, is that sectoral norms grow up within a sector. All—or a lot of—employers in retail look quite similar, but retail looks quite different from hospitality, which looks quite different from construction. There are sectoral norms that grow up even though employment law is consistent across all sectors.

We wanted to help employers to think about why their business model looks the way that it does, why they make the choices that they make and why employers in hospitality make similar choices to the employer down the road. Some of that is about the culture that exists in a sector and the discussions that business leaders have among themselves about what works and why it works.

We were trying to give space for discussions about good fair work practice and to profile the good practice that employers are already undertaking in the hospitality sector. We wanted to

show that although it can be challenging to pay the real living wage or to not use zero-hours contracts, there are employers that are already doing that successfully, running strong businesses and having very good outcomes as a result.

10:15

That is the conversation that we wanted to help businesses to have with one another. Some of it was about helping businesses to see that some of the decisions that they were making on business models came with penalties for how their businesses were running and to join the dots on some of that, and then also to say that it was possible to run their businesses differently and have good outcomes as a result.

**Murdo Fraser:** Thank you.

**The Convener:** Brian Whittle has a supplementary question, and then I will bring in Michelle Thomson.

**Brian Whittle (South Scotland) (Con):** Good morning. I will spin back to the discussion about the level of the disability unemployment gap. We heard that the figure is difficult to quantify because we recognise disability in different ways. Some of the figures are skewed because we recognise disability among more people who are already in employment than we recognised previously. Professor Findlay, you said that the benchmark, if you like, is Denmark, where they have a drive and training opportunities to develop the disability community. However they are recognised, are disabilities uniform across all countries?

**Professor Findlay:** We can do proper comparability only by using measures and national statistics. We take whatever measure is used—usually the European labour force survey, which gives comparability across countries. Whether or not that measure is wholly accurate, at least the same measure is applied across all those countries. That is the only way to get data comparability. That is not problematic.

What is problematic is that people have to report disabilities in one way or another and we might not pick up on the different experiences of people who are in work and become disabled versus the experiences of people who are disabled before they access work. That is quite tricky. I have done some research on people with epilepsy, who have poor labour market opportunities. However, people with epilepsy who are already in work when they develop epilepsy do much better than people who have epilepsy before they access work. Your question talks to important variations there.

**Helen Martin:** On Denmark, we asked a research institution to do that piece of work and it did a good job for us. It used a figure that was

available for the reference year in question. It so happened that there was a problem with that figure for Denmark for that year, as it seemed to be outside the country's normal trend. When we looked further into the figure, we found that the normal trend for Denmark is more around 18.1 percentage points, which is still significantly better than Scotland's position but not as low the figure that we looked at, which seemed to be a bit of an anomaly for Denmark's disability unemployment rate.

When we look at this area, we have to take into account that an odd figure reported in one year might be an anomaly in the data rather than a sign of progress. It is about understanding the trends over time as well.

**Brian Whittle:** I will quickly ask about the underutilisation of skills. I wonder whether that is more about retraining. We have a shifting economy in Scotland. For example, we have some highly skilled people in the north-east and we are transitioning to a different economy. Is the issue of support in that area contributing to the underutilisation of skills?

I have an associated point. Professor Findlay, you talked about a living wage for apprentices. We have fewer apprentices than we require at the moment, which has a cost implication. From everything that I have seen, a lot of companies would like to take on more apprentices but cannot afford to do so. Where does the Government come in in ensuring that there are enough apprenticeship places at the right wage structure?

**Professor Findlay:** I will pick up on the apprentices point first. The question that I answered was about pay rates for apprentices and whether they get the national living wage and the real living wage, as 18-year-olds will if that becomes the new norm.

Our challenge is that apprenticeships take lots of shapes and forms, and in some circumstances it is absolutely right to pay apprentices the real living wage. That is often supported by Government policy, including fair work first conditionality. There is the opportunity for exemptions, and significant numbers of exemptions in fair work first conditionality are given for apprenticeships. There are also lots of good examples of collective agreements where apprenticeship pay is related to whether the apprentice is training or performing.

The challenge, and our worry, around apprenticeship pay is that it is clearly not fair if someone is paid at a lower rate—sometimes as low as £4 or £5—but is delivering the same performance as everybody else. I return to the example of construction. In construction, everybody gains when the agreement between the

employer and the union differentiates between productive time and training time, and everyone agrees with that. There are some quite good apprenticeship arrangements that deal with the issue of what the pay should be.

I have no major competence in the bigger question about the number of apprentices and how the Government funds apprenticeships, but we should certainly make it possible for employers to take on apprentices where they deliver fair work for those apprentices. We have to be careful when we publicly fund or support apprenticeships where fair work is not delivered, because that is not consistent with the policy objective that we have signed up to.

**Helen Martin:** Patricia Findlay might want to come in on this, but I understand that Scotland has quite a long-standing issue with skills underutilisation. That is therefore unlikely to be simply a reflection of a moment of change in the economy.

**Professor Findlay:** That is correct. We should also see skills underutilisation as an opportunity, not a threat. If lots of people out there in the economy think that they could be doing more, we have to find ways in which they can have more rewarding work, which is also better for their employers. To me, skills underutilisation feels like a free opportunity. How do we have the conversations in workplaces that encourage people to do their best?

**Michelle Thomson (Falkirk East) (SNP):** Good morning. Thank you for attending. Underpinning a lot of the discussion thus far is the data and what it means.

The Scottish Government has stated that the research that you commissioned helped to inform its “Fair Work Action Plan: the Scottish Government’s Evidence Plan on Fair Work”. To what extent does that evidence plan provide an effective framework for measuring whether Scotland is on track to be a fair work nation? If it does that, how does it do so in terms of data items and measures? If it does not, where are the gaps?

**Professor Findlay:** We have worked closely with the Scottish Government on the fair work evidence framework. It is in all our interests to be able to understand where we are, where it is possible for us to be and—coming back to our measurement report—how we might learn things that take us there.

In a sense, we are prisoners of data. In some areas, we have good data. We tend to have good data around security issues, labour market hours, participation, contracts and pay. That data tends to be collected well. In other areas, we have much poorer data. It is much harder to collect data on things such as fulfilment and intrinsic job quality.

We tend not to have good national statistics. We have good national statistics around trade union presence and collective bargaining, for example, but we no longer have good data sets that allow us to see the impact of that. What is the outcome on the ground of having good social dialogue at workplace level? We used to have that through the previous workplace employment relations survey series, which was representative across the UK and was helpful, but that was discontinued in 2012 or 2014. We tend not to have that kind of data.

Alongside the Scottish Government—Helen Martin might want to come in on this—we try to do the best that we can with the data that is there while having constructive conversations with bodies such as the Office for National Statistics around how we could improve measures in national data sets.

**Michelle Thomson:** I know that Helen might want to come in, but I will follow up on the discontinued survey that you mentioned. How much appetite for that data do you anticipate from other agencies—including the UK Government—that are responsible for undertaking services and collecting data? I am talking about some of the data that you highlight is necessary for us to measure whether we are on target to be a fair work nation and exploring the appetite for that data from the UK Government and other agencies, such as the ONS, which you mentioned.

**Professor Findlay:** Over the past couple of years, there have been some discussions about the areas in which there are gaps in the labour market data and some willingness from both the Scottish Government and the UK Government for those discussions to highlight the issue and expand the data. For example, the labour force survey has been expanded. We have been collectively involved in having some new questions added to the survey, so there is openness there.

An inevitable constraint is cost. The fiscal context is not great for a massive data collection exercise, but over the coming years it will become important to be able to understand, for example, the impact of some of the new measures for the new deal for working people. It would be difficult to do that without data.

Organisations such as the Chartered Institute of Personnel and Development provide supplementary data. The CIPD has its “UK Working Lives” report and “Working Lives Scotland” reports. We pick up some information from those reports and from the academic community, which engages in specific surveys in certain sectors or occupations.

The gold standard for comparative data has to be national statistics or nationally representative surveys, which the old workplace employment

relations survey was. In the absence of that data, there are some questions that we can answer some questions but some that we cannot.

My next point is important, although it is a bit of a statement against interest. I am an academic—I like collecting data, and surveys are my thing. We know what quite a lot of the real challenges in fair work are. We might be able to get better and more granular data, which might help in some regards, but we know the big-ticket questions that are there. In our inquiries, we try to bring people in to do more than just agree an evidence base, although that is important. It was important in hospitality to get everybody to accept that although their business might not have things such as low pay, the data told us that hospitality has the lowest median pay of any sector in the UK. Part of what we want to do is to get the data right and understand the evidence well.

Our inquiries are focused on action. What can we change? What do we know are challenges that we can try to do differently? Even if we do not get the nitty-gritty of the data absolutely correct, if we understand the phenomena and the trend, let us get people together in dialogue so that we can deliver on that.

**Michelle Thomson:** Thank you for your final point—I hear you strongly.

I have a final wee question, and I will let Helen Martin come in as well. To what extent is all the data that is collected routinely disaggregated by sex? Although I fully accept your final comment, do you and all the agencies see that data? Perhaps you could answer that and then Helen Martin can add any final considerations.

**Professor Findlay:** National data is disaggregated by all protected characteristics.

**Helen Martin:** I have nothing to add.

**Michelle Thomson:** Thank you.

**Gordon MacDonald (Edinburgh Pentlands) (SNP):** Good morning. I want to ask a couple of questions, first about the heat map that you produced.

Helen Martin mentioned that, of the fair work 45 indicators, 19 had improved and 10 had worsened. In the eight comparable countries, was there similar movement in the number of improvements and worsening positions, or were their indicators pretty stable? Were there any underlying common reasons for any movement?

10:30

**Professor Findlay:** We do not know the answer to that. We have two reports. One is the Scotland measurement framework. We pick up the trends over time, and when we talk about the position

improving or worsening, we are talking about the Scottish context. For the other data for the international framework, we look at a time point, so we have not looked at—

**Gordon MacDonald:** You do not have the trends for the comparable countries.

**Professor Findlay:** We do not have the trends.

**Helen Martin:** We will refresh the report. In the new year, we will provide an updated version, which will tell you how the position has moved since the version that you are looking at.

**Gordon MacDonald:** Okay. That is interesting, though, and might make my second question a bit awkward.

On the heat map you indicate Scotland's positive performance in three areas. It is in second place for lower youth employment rate, second place for respect for workers in work ill-health, and first place for higher levels of permanent employment. Why is Scotland doing so well in those areas but not in others?

**Professor Findlay:** That is a good and rather big question. The permanent employment performance is interesting because, although we have seen a rise in zero-hours contracts, we also have a lot of people in permanent employment, which tends to be a positive labour market indicator. I do not have a single answer to the question. Part of the challenge of measuring fair work is that it is multidimensional. We measure many different things and they might not always be moving in the same direction, for a host of reasons that can be separate reasons, or some of them might be connected.

I will give you an example that might be helpful. If action is taken, for example, on gendered occupational segregation, you might well—there are examples of this in Scotland—promote proportionally more women into higher-level occupations, but you might at the same time increase the gender pay gap because women are being promoted into higher-level occupations but probably at the lowest pay for that level, so other people's pay—men's—would be disproportionate at that level.

Indicators that are connected might move in different directions. We need to see the indicators in the round. Perhaps some measures are clearly worsening and there are concerns, but they will fluctuate naturally over time. Sometimes indicators will be connected and sometimes they will be disconnected. They will be driven by a host of different determinants.

**Gordon MacDonald:** You suggested a number of action points for the Scottish Government, including on having clear targets for 2025, on drawing lessons from other countries that are

doing well, on effectiveness of fair work first, on childcare policy support and all the rest of it. What was the response from the Scottish Government and what progress has been made over the past year?

**Professor Findlay:** The response from the Scottish Government has been positive and some of the actions have already been started. There is already some work being done to look at active labour market policy in Denmark, and work has emerged in relation to childcare. The Scottish Government received the measurement report constructively and has continued to work with us on some of the areas that we identified as being important. Helen Martin might want to pick up with some detail around that.

**Helen Martin:** We have begun an evaluation of the fair work first policy with the Scottish Government. The convention is working quite closely with the Government to define that and to look at how it will be taken forward. That will be quite a large piece of work, because with some of the changes that are coming from the UK Government around the legislative baseline, it is likely that considering how fair work first functions will be done in quite a lot of detail with the Scottish Government.

We are also in discussion about the view going forward and what can be delivered by 2025. We are nearly there now, so that question has maybe moved on to what progress we would like to make on the indicators over time. We are currently having that discussion with the Scottish Government.

**Gordon MacDonald:** Other indicators that you wanted action on include investment in active labour market policies, more conditionality in relation to zero-hours contracts, the gender pay gap, collective bargaining and so on. How much are the Scottish Government's hands tied by the fact that employment law is reserved?

**Professor Findlay:** The Scottish Government's hands are tied in important ways and we have seen some discussions recently around how procurement guidance has to take into account the powers over employment law being reserved. They are real challenges and the Scottish Government has to comply with the law. I have lost the thread of the question.

**Gordon MacDonald:** I am trying to understand the scope for the Scottish Government to improve zero-hours contracts, the gender pay gap, labour market policies and collective bargaining, when employment law is reserved.

**Professor Findlay:** Clearly, an effective employee voice is a mandatory part of fair work first. Employers have to pay the real living wage and they have to provide opportunities for there to

be an effective employee voice. The Scottish Government has opportunities to use its significant purchasing power and the public sector's significant purchasing power to support the arrangements for and the outcomes that we want from fair work. We have encouraged and pressured the Scottish Government to use the levers that it has to the fullest extent of its powers. Sometimes that involves conditionality that says that those who apply for Government grants or contract with the public sector need to do those things. That is important. We should remember that conditionality is applied across lots of Government spending and is applied significantly when it comes to things like welfare spending.

On aspects of active labour market policy, the Scottish Government is responsible for providing employability support. Employability is an important area for supporting back into employment people who are far from the labour market or who are particularly vulnerable in the labour market. Those employability powers exist at Scottish Government level and come within the powers of the Scottish Parliament. We have seen an attempt to build, for example, greater security of employment into employability support so that, when people stay in work longer, the employability provider gets a better payment. We have not, however, seen that impacting on pay rates or opportunities for progression in jobs that have come through employability support.

Again, we urge the Scottish Government to use the powers creatively. It is responsible for employability support. We know that active labour market policy works; there is lots of good evidence for that. How can employers, providers and the Government work together to make sure that that leverage is used to produce a good fair work outcome? That has been well received, so far.

**Gordon MacDonald:** You are right. This is an area in which the Scottish Government can act to an extent, but it would be an awful lot easier if it had the powers to legislate on employment law to address the issues.

**Professor Findlay:** Yes—more powers would allow you to have more scope.

**Gordon MacDonald:** Exactly.

**Professor Findlay:** A lot of what happens in that space is about working with providers to support and educate them about why it is important to deliver fair work. A lot can be done legislatively and a lot can be done through funding conditionality.

The Government plays, in the devolved context, an important role in encouraging people. We now have in Scotland a strong narrative on fair work that has been picked up by other parts of the UK and other countries. Our creativity with the powers



that we have is looked upon positively, albeit that those powers are constrained.

The Government is often a convener of important stakeholders in the economy: it is in the room and often has a co-ordinating role in that room. We have seen recent research on the levers for fair work and how we can best leverage it. Employment law is an important part of that and spending is important, but so are the relationships that the Government engages in with business and industry more broadly.

A good example is the industry leadership groups coming together with policymakers and being supported by policymakers—although not necessarily in very obvious ways—to talk about industry challenges. Those groups have not been used—we have said so in a recent report—as effectively as they might be as vehicles for creating dialogue at industry or sector level. Their work in engaging with fair work has been very variable. The retail ILG has had a sub-group on fair work in which progress has been challenging, and the hospitality ILG is now keen to engage further with fair work, but lots of industry leadership groups in Scotland are not discussing fair work at all. I attended the first ILG symposium, which they kindly invited me to last week. A lot of the industry leadership groups talk about the importance of people but do not necessarily engage constructively with an explicit fair work agenda. Another role for Government is to use its convening power and its influence in such spaces to improve the dialogue on fair work and to support people to be able to engage with it better.

**The Convener:** Thank you. Before I bring in Willie Coffey, I note that the witnesses will know that the committee is working on its pre-budget letter to the Scottish Government. We have in recent years seen cuts to the employability budget. We are in difficult financial times, but would you like the Government to consider reversing some of the cuts that have been made there? You talk about active labour market policies, in which employability support seems to be a key feature. If we are to make changes to labour market policies, employability support will be a big part of that.

**Professor Findlay:** Investment in active labour market policy is an investment that accrues benefits in the future. It will be challenging if we start to cut employability support. A big challenge at the moment in the Scottish and UK economies is economic inactivity, and a key way in which we might drive growth is by getting more people participating in the labour market. A short-term response might be to cut those budgets, but they are important, as we have said in the report, in supporting people back into work.

That is not the only place where we have challenges. I am mindful of the real difficulties of the current fiscal position, but without at least some investment it will be difficult to shift the dial on fair work in some areas. An obvious example of that is social care; we have tried to push the recommendations of our social care inquiry from a few years ago. It is difficult to institute new practices and new arrangements entirely cost-neutrally. Therefore, moving towards sectoral bargaining in social care has met lots of challenges and obstacles. One is how to fund the move, for example, towards equalising workers' terms and conditions. Their work is, whoever employs them, almost entirely paid for by the public sector.

We are aware of the real challenges, but the convention's view is that some of these things are important investments for the future, so we need to think seriously about them.

**The Convener:** You mentioned the public sector when Gordon MacDonald asked about permanent employment rates. In Scotland, quite a high percentage of the labour market is employed in the public sector. I do not know whether it is the same in comparator countries. Does having quite a high percentage of people working in the public sector influence—for good or not so good—the indicators?

**Professor Findlay:** I am quite intrigued by that suggestion, partly because at the ILG symposium last week Graeme Roy, who is the chair of the Scottish Fiscal Commission, spoke and was clear that the private sector provides 80 per cent of Scotland's employment. The suggestion—by an MP, I think—during that event that we are a public-sector economy slightly confused me. Yes, we have a slightly bigger public sector than England but not than Wales or Ireland. However, the vast majority of our employment is provided by the private sector; therefore, working with the private sector to deliver fair work is, as we have always argued, crucial.

**Willie Coffey (Kilmarnock and Irvine Valley) (SNP):** Good morning. I would like to ask a few questions about the attitudes of employers and staff to the issues that we are discussing.

Firstly, are you getting a sense, or did the researchers get a sense, that Scottish employers are engaging with the principle of fair work much more these days? Is the engagement accelerating? Is there quite broad participation? Did the researchers ask that?

10:45

**Professor Findlay:** We do not know. We cannot gauge how many employers are exposed to discussions around fair work. A lot of that will be

to do with networks. A lot of our engagement over the years has been to identify key organisations that we might work with—employers' organisations, trade bodies, professional organisations, regulatory organisations—and trying to have those conversations.

Those conversations are now well embedded in Scotland. It does not matter what sector you look at; you will come across not just employers but other stakeholders who know about fair work. However, we do not have a sense of how well it is understood by the general population.

In the work that I do—as I say, I am an academic and I spend a lot of time working with industry—the ideas are not just known but are well received. Helen, do you want to say anything?

**Helen Martin:** Where employers interact with the state—if they receive public funding or are part of procurement contracts—they are more aware of fair work because of the conditionality that goes into it. That has been a big driving force for the agenda.

**Willie Coffey:** Is it the case that they have to follow these principles, or do they want to follow them? What is your sense of employers' participation in fair work? Do they feel as though they are being dragged into it, or are they willingly engaging with it? Do we know?

**Professor Findlay:** As policy makers and as researchers, we tend not to have conversations with employers who would rather not do any of these things. Much more often, there is a willingness to do them, but there is a discussion of the constraints and challenges that employers face and the things that stand as obstacles to them engaging in fair work. Lots of research across different parts of Scotland is about what employers and managers think about fair work, and it tends to be pretty positive. Nobody tends to tell us if they feel otherwise. If people think that, they tend not to have that discussion with us or with the research community. Employers tend to want to do these things, but they feel constrained.

A swathe of employers in Scotland does not connect, as Helen Martin has said, with the Government because they access funds, and they are not members of employers' organisations and do not tend to be active in trade bodies. There is a significant section of employers about whom none of us has a real idea about what they know or think and—this is a conversation we had at the hospitality inquiry launch—neither do the employers' organisations know what those employers think.

Yes, there is a bit of a black hole somewhere, but we do not tend to see outright opposition to the idea of fair work or the practices associated with it.

**Willie Coffey:** My questions were alluding to how we encourage more employers to participate in the principle of fair work, which is great, as, I am sure, colleagues agree.

Could I ask a couple of questions more about the survey itself? Do we know whether the questions that led to the results about Scotland's relative positions were aimed at staff or the employers? How do we know whose perspective we see here in this data?

**Professor Findlay:** They are largely national statistics, which were largely reported by employers.

**Willie Coffey:** Are the staff saying what they are seeing or are the employers saying it about themselves?

**Professor Findlay:** It is mainly employer data. The annual survey of hours and earnings is something that is taken from pay-as-you-earn records.

The report that Alma Economics produced is not a single survey. It is an aggregation of lots of different national statistics, with the addition of some other surveys, such as one by Chartered Institute of Personnel and Development, when we thought that they were robust enough and have been able to use them. Some parts of the data have come from the labour force survey, some parts will be replies by individuals, and some parts of it will have been delivered by employers. The report has a mixture of different types of data.

**Willie Coffey:** One of the key principles is about respect in the workplace. I am looking at the aggregate table from your report, which is in the papers that we have. It seems to break down respect into two categories: workplace non-fatal injuries and work-related ill health and disease. The key principles talk about things such as wellbeing and dignified treatment. I am curious. How do we measure that? I suggest to you that you can measure that only by asking staff what they think and whether they are treated with respect in their jobs. Is that captured in this data?

**Professor Findlay:** If we hark back to the fair work framework, when we talk about respect as a dimension of fair work, we are talking about a basic thing that we talked about eight or nine years ago: you should be safe and well at work. It is about respect for your health and safety and your wellbeing, but we are also interested in respect for your contribution, respect for your work-life balance, interpersonal respect in terms of how people are treated, and respect for your potentially protected characteristics.

It comes back to areas where we have data and areas where we do not, as one of the members mentioned earlier. We do not have very good data

in the UK or in Scotland around things such as bullying and harassment. We tend to have specific surveys of sectors—there is one for hospitality, for example. We do not tend to have national data that would allow us to talk about those things. You are absolutely correct: important elements of respect are not captured in reports such as this, and those parts of respect are really important.

I always take the opportunity to quote my mother at this point: “Respect costs nothing.” When we talk about fair work interventions that do not necessarily come up against the constraint of cost or fiscal restraint, respect is one of those areas. How people are treated at work, whether things are discussed with them, whether they are listened to, whether employers are flexible to the demands of complex family lives—all those things are important parts of fair work. They are really important to employees and massively beneficial to employers, when they can deliver them, but we do not pick them up on surveys and we cannot measure them well.

**Willie Coffey:** You captured the fact that stress-related absence, which is a statutory indicator that has to be reported, has more than doubled. At least you have got that.

I have a final question around widening this out. Might employers be interested in establishing some kind of fair work accreditation scheme, either by self-assessment or otherwise, so that they could show their staff and people who may wish to work for them that they are a fair work employer? Is it worth reaching out to that wider sector of employers that we were talking about a wee minute ago?

**Professor Findlay:** Helen Martin wants to come in on the respect question, then I will answer on the accreditation point.

**Helen Martin:** In the actual fair work framework, there are slightly more respect indicators. We had three on discrimination, harassment and bullying. However, those indicators had to come from the CIPD working lives survey, because there were no national statistics on that. That emphasises what Patricia Findlay was discussing earlier about the gaps in the data and how we had to plug those with information that we can use.

**Willie Coffey:** The principles talk about things such as dignified treatment and wellbeing. If the framework uses those terms, it seems to me that you should try to assess those and ask staff what they think about them, to gather that data. Otherwise, what is the point of having them in the key principles in the first place?

**Professor Findlay:** You could do that only by asking staff. We are saying that there is no national source of that data. There are discrete

studies that look at that in some contexts, but there is no national source of that.

**Willie Coffey:** What about the wider position on a public-facing accreditation framework?

**Professor Findlay:** We think long and hard about what might help drive and embed and maintain fair work in Scotland. We have done some work recently to look at accreditation. One thing that employers tell us is that they feel that they face a lot of demands to deliver on net zero commitments, community benefit and equality and diversity, so I am not sure that there is an appetite for an additional accreditation.

What sways me away from being interested in fair work accreditation is that, if you make accreditation robust—if you verify whether it is delivered—it becomes expensive and is adhered to by a much smaller group of employers. However, if you make it light touch, its effect tends to be less. There is a bit of a choice when it comes to accreditation.

People in the room will be aware of ISO 9000 accreditation, which is the most prominent accreditation on the planet. It cost a lot to set up, and it was underwritten by the European Union and by global Governments. Unless you are going to invest a huge amount of money in making accreditation robust and you do it over time, you are likely to get a poorer midway version.

I will you the closest example that I can. Some decades ago, the new Labour Government invested a lot of money in Investors in People accreditation. Employers took up that accreditation process and many found it to be helpful, but it was a lot of money—upwards of £35 million, which I am not sure anybody is willing to spend at the moment. The evidence suggests that IIP often accredited businesses that were doing it, rather than businesses that were on a journey towards doing it. It is not clear to me that the mechanism of accreditation would do anything other than signify the employers that are already there. How would we test that?

We need not just to learn from the employers that are doing well, but to work with the employers who would like to be there but see obstacles in their way, and we need to think about how we deal with those obstacles.

The accreditation issue is really about your target audience. Is it a reward for the people currently doing well? Fair work first conditionality is, in a sense, that reward. Is it a mechanism to get more employers to engage? We are interested in the levers that we can use to influence the latter. How do we build momentum and make a bigger group of employers have this conversation and engage with us and with policy makers, so

that fair work becomes positively associated with operating in the Scottish economy?

**The Convener:** Brian Whittle has a supplementary question, and then I will bring in Kevin Stewart. I thank Kevin for his patience.

**Brian Whittle:** I will be quick. Every business that I have ever been involved in and just about every business that I have ever spoken to recognises that the greatest resource is the people who work in the business. If we introduce a real living wage, which I think everybody agrees with, there are consequent knock-on effects with salaries above that to maintain that gap. There are businesses that would love to pay the living wage but that have really small margins and the wage bill is their greatest bill, so introducing the real living wage would cause problems.

I am thinking of hospitality, which Murdo Fraser talked about. Many hospitality offerings now have periods of two or three months of the year when they close, which in turn drives zero-hours contracts, for example. I am also thinking about nursing homes, a lot of which closed when the living wage was introduced without compensatory pay from the public sector.

I suppose that it is about Government intervention. It is not just about the desire to pay the living wage. How do we make it affordable to pay the living wage? What Government intervention should we have?

**Professor Findlay:** The answer to that is different across contexts. Issues around things such as funding social care are challenging. Much of that is delivered through the third sector and the private sector. We have done some research on third sector organisations that makes it clear that, if they pay the real living wage, that might impact on their differentials. In some of those contexts, it is difficult to get people to take team-leader opportunities because the difference in pay is quite small for the responsibility that comes with it. That was also clear in hospitality. Managers' fair work experience was not considered to be good and, even though we think that progression is a good part of fair work, people did not want to become managers, because they could see lots of stress and responsibility and an awful lot of unpaid hours.

There are different responses to that question in different contexts. One is about business models. Many businesses say that they struggle to keep up with their pay bills, but there are some businesses whose business model is specifically about keeping fair work down in order to improve profitability. That is a different set of businesses. Interestingly, in hospitality, research globally shows that luxury hotels do not tend to be much

better on fair work than poorer quality hotels. That is a business decision.

11:00

One part of the issue is that we have businesses that make decisions to not deliver fair work, because that is profitable. We need to deter that form of business behaviour, because the costs of that fall on everybody else, through the child poverty and health consequences. Therefore, it is clear that not every business model should be supported, because it will not deliver fair work and will impose significant externalities.

Where the discussion becomes really tricky is when we talk about things that are publicly funded, with social care being the best example of that. That is a challenge not just in Scotland but in the UK and more widely. A political decision is needed to invest the money that is required to deliver social care that does not impose an unfair burden on largely low-qualified middle-aged women workers, because that is what that sector looks like. Taking a decision that it is too costly is saying that we will build a system of social care on the back of those workers. That is really problematic, but it is a political decision and is for people who are elected to make those decisions and not me.

With private sector businesses, we need to support those that want to do better and deter those for whom low pay is a route to improved profitability rather than a means of survival.

**Kevin Stewart:** Good morning. There has been a lot of talk today about pay, and rightly so. The survey looks a lot at pay and associated scenarios such as health and safety and supporting families, including with childcare. However, there is not so much emphasis on conditions and things that are associated with pay. Has any work been done on maternity pay or sick pay—or the lack of those, in some cases—to see how we compare with other countries, including Denmark, which, as you rightly say, works with a social market economy rather than a liberal market economy?

**Professor Findlay:** We have not done that work and it is not part of the report. I completely agree that pay is not the only part of reward from work. Issues around maternity pay, paternity pay and sick pay became important concerns during the pandemic. There are also issues such as what happens with pensions. We know that not accessing pension provision when you are in work has huge consequences when you are no longer in work. We do not have a report that has looked at that. However, we know from other evidence that, in social market economies, particularly in the Nordics but also in the Netherlands and Germany, we see better provision of not all but some benefits.

We know that there tends to be a strong association between what people are paid and their non-pay benefits. If you are well paid, you tend to have good non-pay benefits as a package. If you are less well paid, you tend to have much poorer non-pay benefits. There is not clear causation, but there is a close association. We use pay as a proxy, because we have data on pay that we have collected in the national statistics, but we can assume that, where there is low pay, we will also see poorer terms and conditions.

That tends to be the case outside of, as you rightly point out, the statutory provision. In the international research, there have been attempts to think about what employers provide and what the state provides, but that is quite complex to measure. Where the state provides such benefits, there is less of an issue and that will not come up in these sorts of measures.

**Kevin Stewart:** We would probably agree that fair work is more than just fair pay and that the conditions are extremely important, particularly for women. You said that we have been creative with the powers that we have in Scotland. Do legislation and regulation in these areas need to be toughened up to ensure that women are treated fairly when it comes to maternity pay, that the same applies to men with paternity pay and that folk have equal access to decent sick pay?

**Professor Findlay:** On maternity and paternity pay, the regulatory framework is at least clear, but enforcement is a big challenge. How do we know whether people are accessing their rights? That is a slightly different question. We can ask whether the level of maternity pay or paternity pay is correct—again, that is a political and a resource decision. We can ask whether the statutory underpinning of the level of leave is right. Those levels will be less than in some countries and more than in others. That is one question.

The other really important question is: where people have those rights, can they enforce them and rely on them? How many people do not get access to what they should get, whether that is in terms of the minimum wage—we see a report on that from His Majesty's Revenue and Customs every year—or how they are treated during pregnancy or maternity leave and what access to those provisions they get? In that sense, the availability of a right relies on the ability to enforce that right.

On sick pay, in the UK, in a statutory sense, we do not have anything other than statutory sick pay, which I think is £72 a week, although I might have that wrong. Not many people will be able to live on £72 a week if they do not have any other occupational sick pay. That is an important part of supporting people when they are unwell but, for most people, the occupational benefit is important.

We do not have any data set on what occupational sick pay looks like across organisations.

**Kevin Stewart:** Thank you; I think that it was important to go over some of the issues around conditions, particularly given some of the commentary that has been made this week about maternity pay, from certain quarters.

I want to change tack a little bit. We talked about conditionality, and I think that we would all agree that that can work to a degree, but we have not said a huge amount about sectoral bargaining and the part that it can play. I will ask a devil's advocate question about sectoral bargaining. Let us take the example of social care, the issues around which we are all pretty well aware of. If we look at trade union membership and social care, the bulk of trade union membership exists in the public sector and local government, and not so much in the private and third sectors. Should trade unions have a greater role in persuading people to join them and trying to increase membership in the third sector and the private sector, so that we can get a real balance when it comes to sectoral bargaining?

**Professor Findlay:** The proposals in the new deal for working people and, indeed, the current discussions in Scotland around the establishment of sectoral bargaining for social care both recognise that a right of access is important. Trade unions, I am sure, want to increase their membership as much as possible. Sometimes, the reason why organisations or individuals are not contacted is to do with the unions' capacity constraints, but sometimes it is to do with a right of access.

We need to underpin an effective trade union voice which, again, on every indicator shows us a host of positive outcomes across the globe. That involves underpinning that right of access so that trade unions can access workers and have the conversations that enable individuals to make a free choice about whether they wish to be members. It looks like that will be at least part of the new deal for working people, and it is part of the current conversations in the social care fair work implementation group. That is important.

To go back to our earlier discussion about dialogue, effective dialogue requires there to be parties who can participate in that dialogue. The real challenges are in sectors where employers have a poor collective voice and workers have a poor collective voice because we simply do not have the fora and the process through which people can engage in improving a host of different things, including fair work. The presence of those collective groups—I include employers and trade unions in that—allows you to do what we in the convention do well, which is to convene people around a table and work out the intractable

challenges, what we can try to fix and what we have to be supported to fix. Without a voice in the room that has some collective representation, it is difficult to do that.

Hopefully, the right of access will underpin some of that and, again hopefully, some of the support for sectoral bargaining at a UK level as well as at a Scottish level for social care will allow those tricky and challenging, but ultimately productive, discussions to take place.

**Kevin Stewart:** You have talked a fair bit about having an effective voice and, in terms of the fair work agenda, that is spoken about a great deal. Mainly we talk about that from a trade union and worker perspective, but earlier you talked about the best models of ways in which to bring together workers, unions, employers and the Government, and gave Denmark as an example of somewhere where that works well. Do we have a job of work to do with many employers here to try to get them to see sectoral bargaining as a positive rather than a negative?

**Professor Findlay:** Yes, there is a significant job of work to do. Historically, sectoral bargaining was a feature of the UK system. Employers benefited from it as well as employees and trade unions. People accepted that that was the case and, therefore, they engaged in that activity.

Over recent decades, we have departed quite a lot from that—not everywhere—and that conversation about the potential benefits of sectoral arrangements needs to be supported because some employers and some managers will not have been exposed to it. Sometimes, people are concerned about things that they are unfamiliar with, but some of the most innovative, productive and successful businesses that I have worked with in Scotland have strong structures of collective representation and voice, and they use those structures to great effect to deal with the myriad challenges that they face.

Collective voice is important. We stress the importance of voice not just because it is good for individuals—which it is; a plethora of evidence tells us that—but also because it is good for businesses. It does negative things such as eliminating the risks and liabilities that a business might be exposed to, but it also does positive things around allowing a business to meet challenges that it faces. Voice is a good thing, and developing capability and capacity for voice is important, because voice is a skill.

I have a huge amount of sympathy with employers' organisations because, particularly in Scotland, they are relatively underresourced. They are relatively small organisations dealing with lots of different agendas, including policy agendas, so there is an issue of capacity. Facilitating that

effective voice from both the employer and the employee communities and from trade unions is the key to a path towards better social dialogue.

11:15

**Kevin Stewart:** I have one final question, which is about the disability pay gap and the measures around that across the comparator countries. Is there a breakdown of disability that takes account of neurodiverse folk? Do we have separate figures concerning neurodivergence? If not, should we think about having that?

**Professor Findlay:** The UK data allows you to understand broad groups of disability. I am not absolutely sure that it includes neurodiversity. It certainly includes learning disability, and it shows that people with learning disability have the poorest employment rates. As I said earlier, people with epilepsy have poor employment rates, which is not always especially consistent with the nature of their condition.

The data is broken down, but I cannot say whether it includes neurodiversity. However, we know that people's experience in the labour market differs depending on the specific nature of their disability. Sometimes, people have multiple disabilities, which is particularly challenging in terms of labour market participation.

**The Convener:** I will close with a couple of questions. We have some 18 months left of this session of Parliament. Are there areas that you think the committee should focus on in that time? Are there areas in your own work that we can work together on or that we can anticipate you publishing more reports on?

**Professor Findlay:** We have a programme of upcoming work. We are interested in following up on the areas that we have looked at that we think are challenging. We want to revisit the hospitality sector at a later point, as we are interested in making some improvement there.

The issue around awareness and engaging employers is important. I have a particular bugbear about the ILGs. As a mechanism, they could be much better and could provide a better place to have fair work discussions. I would like to see that discussed more.

As the chair of the convention, I sometimes feel a little bit concerned that, when we talk about fair work, it is very much suited to context—that is, it is fine to talk to the Scottish Trades Union Congress about fair work but not necessarily to industry leaders and employers' organisations and conferences and so forth. We have to have a positive dialogue about fair work for the future. Fair work is how we will deal with not just the host of demographic challenges that face Scotland in

terms of economic activity and labour force participation, but the challenges around artificial intelligence and technology and how we will deal with issues around net zero and sustainability. Quite a lot of the work that we have done has shown that we will not deliver on some of the things that are important unless we can get the fair work aspect right.

Some of the work around a just transition and how we move towards that while delivering fair work and facing quite difficult and problematic issues around provision of good quality jobs in fossil fuel sectors would be helped generally by a positive narrative around how what happens in our workplaces is important, not just to our economy but to the wellbeing of our society, to the lives that we lead, to our health, to how our families operate and to whether we can participate in our communities. I have an expansive idea of fair work. Most of us spend most of our time, outside of sleeping, at work. In actual fact, what happens there is crucially important not just to our economy—which, of course, is extremely important—but to our society as a whole. There is a place for a positive discussion of where we have come from and, indeed, where we might go.

**The Convener:** Thank you. I understand that there is a new memorandum of understanding between the convention and the Scottish Government. Do you want to say a bit about the purpose of that and what you hope that will achieve?

**Helen Martin:** Yes. The MOU was basically to strengthen the governance of the convention and to make sure that the roles of the convention and of ministers were clear and that the two organisations had clear working arrangements.

**The Convener:** That brings us to the end of the public part of today's meeting. Thank you both for giving evidence this morning. We now move into private session.

11:19

*Meeting continued in private until 11:34.*





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