

# making work better: an agenda for government

An independent inquiry into the world of work  
by Ed Sweeney and supported by  
the Smith Institute





### **The Smith Institute**

The Smith Institute is an independent think tank which provides a high-level forum for thought leadership and debate on public policy and politics. It seeks to engage politicians, senior decision makers, practitioners, academia, opinion formers and commentators on promoting policies for a fairer society.

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## Foreword

It was a privilege to be asked by the Smith Institute to lead the inquiry into *Making Work Better*. By any measure, it's been a fascinating and insightful journey. I have been particularly impressed by the quality of the evidence and would very much like to thank all those who took part in the interviews and events held around the country. I believe the value of the report and strength of its recommendations to government rests on the breadth and quality of the information we received and the experiences and stories we heard.

When I started out in February 2014 I wanted to try and achieve a number of objectives. First, I wanted to listen to the specialists and institutions associated with the world of work and find out what they believed were the problems and solutions facing the modern workplace in all its forms. Second, I wanted to see if my experience in employment relations dating back to the early 1970s could be put to some good use. And, third I wanted to see if it was possible to answer two simple, but deceptively difficult, questions: What constitutes good work? And, what does a good employer look like?

I think on balance these objectives have been met. The evidence we received shows that despite many improvements there is still a significant minority of people who work in jobs with serious problems. Many of these problems – around low pay, skills, insecurity and injustice at work, exploitative practices, and lack of voice – predate the recession but have got worse. There is also a wider group of employees who are disillusioned at work, many of whom feel that their employer is failing to make full use of their potential. But the report also highlights good employers and good employment practices and demonstrates that good work is a route to a more productive economy and a better society.

What came across loud and clear in the course of the inquiry was that good work makes a big difference to people's lives, not just materially but also in defining who we are and how we relate to others. Making work better is as much about our health and well-being as it is about our national prosperity. It is this message that underpins the report's proposals on workplace citizenship, representation and fairness at work.

I also hope that the report is seen as an attempt to set a forward-looking agenda, not least in the way it recognises the complexities and changes in the workplace. The current system is failing in many respects and needs urgent reform, but I also think it is clear to anyone who reads the report that we cannot simply go back to the past when the world of work was very different from now. Some of the changes in the labour market have been slow to emerge, but I would argue that we need new institutions and new policies to tackle the problems we face at work today.

I am very grateful to the Smith Institute's team and the inquiry's advisory group, which included representatives from industry, unions, professional bodies and academia. I would also like to thank Prospect, Unison, USDAW and Community for supporting the inquiry and to the TUC for the joint opinion poll.

This report offers a fresh assessment of the modern workplace and puts the spotlight on the challenges we face and some of the solutions that government can offer. It shows we have some great workplaces in the UK where we can make work better. The task in the immediate future is to raise the bar and bring the rest up to the level of the best.

*Ed Sweeney*



## Executive summary

We all spend a considerable proportion of our lives at work. Indeed, half the nation are working and our shared prosperity hinges on our combined efforts. What we do at work and the way we are treated at work not only affects us as employees, but also impacts on our living standards, life chances and quality of life. More fundamentally, work shapes our sense of worth and belonging and defines our communities.

For many, whether they are low-paid or in professional roles, work is often characterised by insecurity (anxiety, fear of losing job status or unemployment), a lack of a say in key decisions affecting them, and unreasonable treatment. Many workers have also experienced a sharp drop in pay over recent years, and a considerable number of working people are so low-paid they are in poverty. Inequality in the workplace is also felt by particular groups, such as women, younger or older workers and ethnic minorities.

Problems in the world of work are not confined to employees and employers. Work is critical to Britain's productivity, which continues to lag well behind that of otherwise comparable countries. We work long hours and have lower pay, but cannot match other EU nations that perform much better despite giving their employees greater protection and a bigger say in key decisions and how they organise their work. In fact, this report makes the argument that corporate and national economic success can be achieved by making work better and taking the "high road" to growth based on quality employment and fair pay, rather than job insecurity and widening wage inequality.

A high level of employment is obviously critical to national economic success. But better-paid, more productive work is also key to the nation's economic recovery. Repairing the public finances, for example, demands higher fiscal revenues, in part fed by higher wages. Continued sluggish wage growth is clearly affecting wider society and holding back the economy.

There are deep-rooted problems in the world of work, many of which have worsened since the recession. As the evidence to the inquiry showed, not only do we have widespread problems with productivity and pay, as well as growing insecurity at work, but also a significant minority of employees suffer from poor management, lack of meaningful voice and injustice at work. For too many workers, their talent, skills and potential go unrealised, leaving them less fulfilled and the economy failing to fire on all cylinders. This is not the case of course in every workplace in Britain, and the inquiry highlights good practice in both the public and private sectors. However, the gap between the best and the rest is widening, and we are witnessing more incidences of workplace exploitation.

The inquiry draws attention to the problems with the current employment system and identifies what needs to change. There are of course no quick fixes, and few of those involved in the inquiry believe that we can go back to the full-employment, highly unionised world of the 1970s and reinvent the workplace institutions that characterised that period. Instead the inquiry focuses on solutions for tomorrow's world of work, including the idea of "workplace citizenship" and creating a pervasive culture

of consultation and engagement. The view from many of the inquiry's witnesses was that government can lead the way as an employer, funder and regulator, but that social partnership is critical to changing hearts and minds. It was also stressed to the inquiry that government interventions must be fit for purpose and properly resourced, and that rights at work need to be enforced and effective. Capacity and capability to make work better and implement positive change over the longer term were often seen as the missing ingredients.

The inquiry has tried to focus on the majority of people at work and how government can help make work better for all employees, not just those who shout the loudest. As the evidence to the inquiry showed, levels of disquiet and dissatisfaction are not the preserve of the low-skilled and low-paid. Concerns about job security and job status are just as pronounced among skilled as unskilled workers, and the evidence suggests that worries about insecurity at work are increasing across the board and in all parts of the country.

Rather than produce a long list of grievances, the report is built around an agenda to help make work better and support the shift to a new economy, in which more workplaces are operating in high-value markets that support better-paid and higher-skilled jobs. The report in particular also seeks to highlight the importance of positive relations between a workforce and their employer, and within that the benefits of representation and voice at work.

The report's main recommendations to government centre on six key challenges:

- poor productivity at work;
- insecurity at work;
- pay at work;
- equality at work;
- justice at work; and
- voice at work.

### Poor productivity at work

Britain has a serious problem with productivity, on which it lags well behind France, Germany and the USA. There are too many low-wage, poor-performing organisations, and many workers' skills are underutilised. Too often what happens inside the workplace is the missing element in the productivity framework.

- *Government should make improving productivity and improving the quality of employment mutually reinforcing policy objectives. The focus must be more on integrating employment and skills policies with actions to help organisations produce higher-value goods and services.*
- *Government and the social partners should promote the idea of "workplace citizenship" as part of the solution to improving productivity and tackling the problems of short-termism and exploitation at work.*
- *Britain should invest significantly more in management training so that managers can manage their staff fairly*



and effectively. Sector skills bodies and trade associations could, for example, seek to make funds available for employers to support the implementation of the Health & Safety Executive's successful Management Standards.

- The government should reform the Department for Business, Innovation & Skills (BIS) so that it has a clearer remit to promote workforce development and good employment relations. In the longer term, consideration could be given to the idea of a new department focused on the world of work.

### Insecurity at work

Insecurity at work is increasing. This is not just a consequence of the rise in casual work or fear of unemployment but is also due to a wider sense of anxiety, or fear of loss of job status, which affects workers across the labour market (not only those on low pay).

- To avoid the abuses of zero-hours contracts, employees should be free to work for other employers (ending exclusivity clauses), have the right to be offered a contract with minimum hours after a regular period in work, and be entitled to compensation when shifts are cancelled at short notice.
- The government (and local government) should consider the benefits of local employment forums with binding agreements and codes of practice for those engaged in the employment of agency and temporary workers.
- The government should follow the example of the Welsh government's "two-tier code" for public service contracts and reform the Principles of Good Employment Practice to ensure higher labour standards.
- The government should review the recent changes to the TUPE Regulations<sup>1</sup> and consider reversing those amendments that encourage a move towards a two-tier workforce.
- The government should offer more support to local authorities and other public bodies that wish to use the power of procurement to "make work better", for instance through living-wage contracts in public procurement.
- The government should consider ways of incentivising private contractors to use employment clauses in their supply chains, such as those that promote the living wage and good employment practices.
- The government should consider changes to company law to oblige lead contractors to exercise due diligence to ensure that all their suppliers and subcontractors fully comply with employment laws, such as the minimum wage.
- There is a strong case for removing the "Swedish derogation"<sup>2</sup> to stop workers from being undercut by agency staff. This would help to ensure that the benefits to workers' security are matched by benefits for employers. Government should at the very least seek to remove the loopholes that in effect exempt agency workers from securing equal treatment in the Agency Workers Regulations.

### Pay at work

We are becoming a low-wage economy. Median wages have fallen and become disconnected from growth. Wage inequalities have widened, with top pay rising sharply despite poor performance. Low pay still affects a quarter of the workforce and some 5 million are paid below the living wage.

- The government should agree a new mandate with the Low Pay Commission (LPC) on a five-year plan to increase the national minimum wage (NMW) towards 60 percent of median earnings.
- The LPC should provide more information on which sectors might be able to pay more than the NMW. Tougher penalties for non-payment of the NMW should be imposed.
- The LPC should set up task forces with a remit to tackle low pay and work with BIS sector teams.
- The government should set a target of lifting 1 million low-paid workers on to the living wage by 2020. Government should lead by becoming a living-wage employer and consider the case for introducing "living-wage contracts", making use of procurement to ensure more private firms become living-wage employers.
- The government should plan for an orderly, phased return to normal public-sector pay negotiations. A new settlement on public-sector pay between government and public-sector unions should be a priority for government.
- Government should restore the role of the pay review bodies and ensure that public-sector workers benefit as the economy recovers.
- The government should legislate to require public companies and large private companies to disclose the ratio of executive director rewards to the pay of their lowest/median-paid workers, as well as the number of workers paid less than the living wage.
- The government should introduce regulations to require employee representation on the remuneration committees of public companies; such regulations must ensure that representatives have the resources and support to undertake the task.
- Government should promote the positive role that unions can play as a means of achieving fair pay and reducing wage inequalities, including granting the Advisory, Conciliation & Arbitration Service (ACAS) a power to promote collective bargaining and good employment relations.

### Equality at work

The gender pay gap remains at around 20 percent and there are serious challenges facing younger people entering the labour market as well as older people stepping down from it. Much more needs to be done to tackle discrimination at work and to support

working people with childcare and eldercare responsibilities.

- *The government should consider revising the Women and Work Sector Pathway Initiative or something similar as a means of targeting skills training for women.*
- *The government should enact and utilise section 78 of the Equalities Act 2010, enabling the government to require large companies to report on their gender pay gap.*
- *The Equality & Human Rights Commission's "equal pay review kits" should be extended to provide more sector-specific advice on equal pay.*
- *There is a case for bringing the equal pay legislation up to date so that it accommodates changes in the world of work, especially with regard to outsourced workers.*
- *The government should ensure better compliance with the Equalities Act and consider the benefits of increased transparency achieved by the Australian Workplace Gender Equality Agency's reporting scheme.*
- *The government should seek to extend free childcare for working parents of children aged three and over from 15 to 25 hours.*
- *The government should consider extending paternity leave and pay from two weeks paid at the statutory rate to four weeks paid at 90 percent of earnings, in order to improve the low rates of uptake.*
- *The government should consider introducing "use it or lose it" leave for both parents, underpinned by a higher rate of wage replacement.*
- *The government should seek to enforce the age discrimination laws and do more to help improve work for older workers, including better access to training.*
- *The government should consider the idea of an integrated voucher scheme for employees, covering both childcare and eldercare.*
- *The government should consider the idea of granting employees a legal right to request additional paid leave if they have worked for their employer for a period of more than five years.*
- *The government should correct the anomaly in holiday entitlements for those working six days a week.*
- *The government should ensure that anti-poverty strategies within Whitehall are aligned with those focused on equality. There is also a strong case for the government to monitor and publish data on progression of black, Asian and minority ethnic (BAME) workers and take-up of apprenticeships.*

### **Justice at work**

The UK has a high percentage of troubled workplaces. Nearly one in four employees experience unfair treatment at work. There are concerns over the application of employment rights, employee/worker status and the recent changes to the employment tribunals system. The current system is dysfunctional and fails to give meaningful access to justice.

- *The government should urgently reform the employment tribunal system to ensure affordability is not a barrier to justice. One option would be to require both parties to deposit a (low-value) bond with the tribunal, with the winning party receiving the full payment at the end of the process.*
- *The government should consider reducing the qualifying period for unfair dismissal protection to one year.*
- *The government needs to ensure blacklisting is prevented and that those affected have full rights to compensation.*
- *The government should review and clarify the question of employment status and the application of employment rights.*
- *The government should support the development of employment reporting and employment codes of practice. It should consider the case for a national employment standards kite-mark scheme. Employers and unions should also consider how they can collaborate on ways of progressing the idea of a national scheme.*

### **Voice at work**

Most workers don't have a proper voice at work. Only one in three employees say their employer is either good or very good at consulting them. Unions continue to play an important role, but the decline in membership (especially in the private sector) has left many employees without practical opportunities to influence decisions that affect them. The call is for more engagement, effective representation and a culture of consultation and co-operation.

- *The government should simplify and amend the existing Information & Consultation of Employees (ICE) Regulations to give employees a stronger collective voice and bring the UK more into line with other EU countries.*
- *Reform of the ICE Regulations could in the longer term help improve employment relations and boost pay and productivity.*
- *The government should establish a non-partisan commission involving all the key stakeholders to examine in detail the case for fundamental changes to the composition of British boards of directors, including the case for worker representation at board level.*
- *The government should support the establishment of new "partnership funds" to encourage collaboration and*

*a culture of consultation between employers and unions.  
Funding could be made available through local enterprise partnerships.*

- *The government could do more to promote employee voice in small firms, including helping representative bodies, like chambers of commerce, employers' body EEF, the Federation of Small Businesses, the CBI and the TUC, to spread best practice.*

**References**

- 1 See chapter three for details on these changes.
- 2 See chapter three.





## 1. The world of work

It is hard to imagine now the world of work that existed a mere 20 years ago – let alone that of 40 years ago, when there were no office computers, internet or mobile phones. The world of work has certainly changed, and the main drivers have been well documented, including a shift from manufacturing to services, a revolution in technologies, the growth of human resource management, a decline in trade union membership, a sharp rise in the number of skilled workers, and continued growth in the number of women in work.<sup>1</sup> All these trends, alongside globalisation and changes in attitudes and behaviour, have created today's modern workplace.

There are now more people in work, more qualified people in work, and much greater flexibility at work (especially for women). On the downside, although unemployment has fallen from its 2011 peak there are still 2 million unemployed (over a quarter of whom are aged 16-24)<sup>2</sup> and mounting evidence of a mismatch between the skills people have and the skills employers want. Moreover, as the following chapters explain, many of today's workplaces are also characterised by insecurity, low pay, considerable wage inequality, injustice, lack of voice and (often as a consequence) poor productivity.

The report concentrates on the world of work in 2014 and what needs to change. However, three-quarters of tomorrow's workforce are already in employment, and many of them may have to work into their 70s. The types of jobs around in 10

or 20 years' time may not be all that different, but the way we work and how we interact with each other and with new technologies (such as robotics and artificial intelligence) could change workplaces dramatically. This in turn will demand new models of management and perhaps different forms of business organisation.

The inquiry was told that a failure to invest in high-end goods and services would lead to a worsening of skills utilisation, persistent under-employment and continued job insecurity. This path could further encourage the development of a two-tier workforce, with secure and well-remunerated employment at the top and more insecure, low-paid work at the bottom. It could also widen the divide in labour standards between the public, private and voluntary sectors.

As well as adjusting for longer retirement, new entrants into the labour market will probably have to think about multiple jobs. One of the most important changes that we are already witnessing is a sharp fall in the number of people in jobs lasting more than a decade, especially for men aged over 35. Faced with the prospect of moving jobs every 10 years, workers will need to shoulder more responsibility for skills development and learn to adapt constantly to new technology and changes in work organisation. For some this may enable a better work-life balance and more satisfaction at work as well as perhaps more leisure time; for others working life may become harder and less rewarding.

**Table 1: The world of work, then and now**

	1974	1994	Now*
Population	56.2m	57.8m	64.1m <sup>3</sup>
Number of people in work	25.1m	25.4m	30.5m <sup>4</sup>
Labour force as a percentage of population	46%	49%	50%
Unemployment rate	2.1%	9.6%	6.6% <sup>5</sup>
Women as a percentage of those in work	39%	46%	46% <sup>6</sup>
Productivity (GDP per hour worked, 2013 prices)**	£14.80	£24.30	£32.30
Median hourly pay (today's prices)	£6.17	£9.52	£11.56 <sup>7</sup>
Hours worked weekly***	36 hours	33 hours	32 hours <sup>8</sup>
Percentage working part-time	(19%*)	23%	27% <sup>9</sup>
Union density	45%	35%	26% <sup>10</sup>
Working in services	55%	70%	80%
Working in industry	42%	28%	19%
Low-paid workers****	22%	20%	21% <sup>11</sup>
Gender wage gap	44%	28%	18%
Higher-education participation	~15% <sup>12</sup>	~33% <sup>13</sup>	49% <sup>14</sup>

Notes: Data from OECD statistics apart from where referenced.

\* Data from "now" refers to latest available statistics. From 2013 are population, median hourly wage, union density, low pay, and productivity; from 2012 are labour force as percent of population, percent working in services, percent working in industry, gender wage gap, and higher-education participation. The rest are from 2014.

\*\* Smith Institute analysis of OECD data

\*\*\* For 1974 and 1994 weekly hours worked is "average annual hours actually worked per worker" divided by 52.

\*\*\*\* Low pay is based on two-thirds of median hourly gross pay of *full-time* employees rather than two-thirds of median hourly gross pay for *all* employees. The latter approach is used by some in the UK and would result in a slightly higher proportion (around 22 percent).

It was found that the pace of change in the labour market has been much slower than people expected. For example, the inquiry observed that despite changes in the economy, patterns of work have only gradually changed. Most people still work nine to five and are in full-time or permanent employment, with a slow shift since the 1970s towards part-time work and self-employment. Furthermore, average job tenure has not changed much for men.

The inquiry was made aware of the literature about how work affects our state of mind and gives us self-respect and meaning. It was said many times at inquiry meetings that for most people work is much more than a mere transaction for income. It is also about our identity, friendships and self-development, our health and well-being, and our relationships with colleagues and managers. What we do at work and where we work shapes our lives, not least in terms of our standard of living, lifestyles, life chances, wealth and work-life balance. Furthermore, our attitudes and beliefs as workers and managers shape the world of work environments and communities in which we live.

The inquiry reviewed a wealth of research showing that the quality of work can have a big impact on both health and life expectancy.<sup>15</sup> Evidence was presented by Ruth Yeoman (of Oxford University), for example, which argued that "negative values at work foster a sense of meaninglessness and generate social bads, such as physical and mental ill-health, increased risk of poverty, stunted life trajectories and social unrest".<sup>16</sup> Recent surveys by the World Health Organization found similar if not more disturbing results, such as that:

- temporary workers have shorter life expectancies than those with permanent contracts;
- poor mental health outcomes are associated with precarious work; and
- those who are uncertain about their security of

employment experience significant adverse effects on their physical and mental health.<sup>17</sup>

Bad work can be intolerable for individuals, making life miserable and depressing, but it also has negative effects on employers, not least the level of sickness absence which adversely affects productivity and performance.

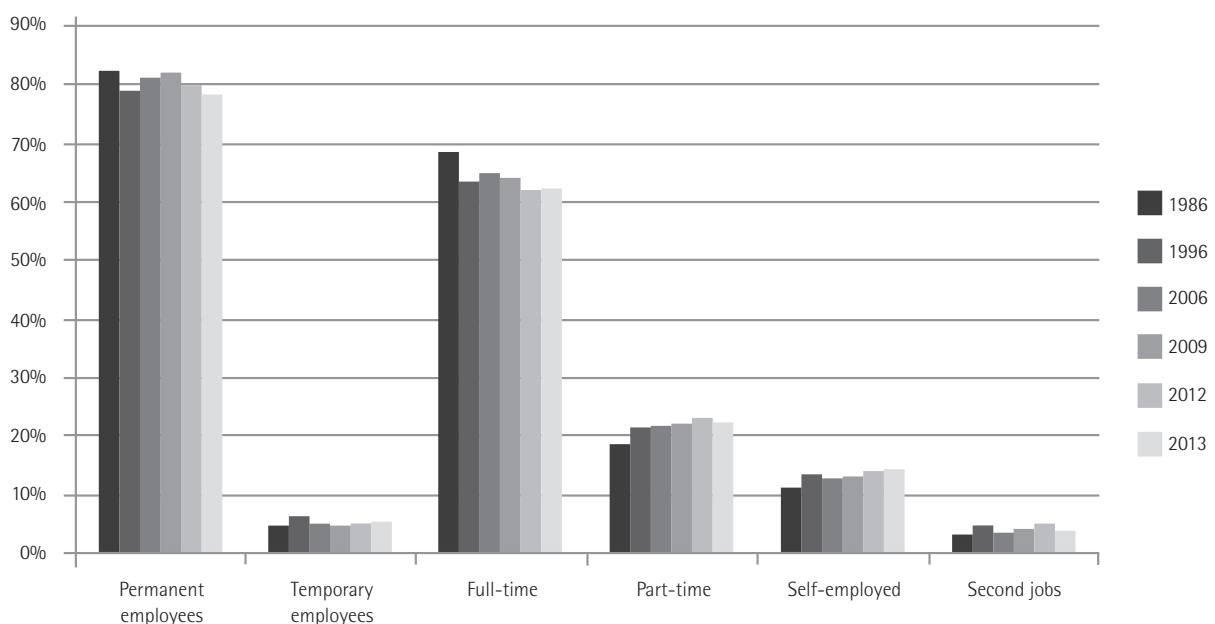
*Work is not just about the pound in the pocket but how we feel.*  
– Comment to the inquiry discussion in Leeds

Few would dispute that making work better and equipping individuals with the capabilities they need to find decent, well-rewarded employment in a labour market characterised by high-trust relationships between employers and employees is a worthwhile policy objective. Yet reaching these policy goals has proved difficult in a rapidly changing and globalised world where employees may be working for an employer based on the other side of the world, with unknown institutional shareholders.

### The rest and the best

There will always be differences of view about how the responsibilities, accountability and purposes of business (and other organisations, large and small) should relate to employees. Behind the rhetoric of "our staff are our greatest asset", many firms examined by the inquiry had explicit social goals and a strong commitment to corporate social responsibility (which included good employment policies). However, while the UK unquestionably has some excellent employers, with many possessing a good reputation for corporate social responsibility, the gap between the rest and the best appears far too wide, and in some sectors it is getting wider. Furthermore, as the tables on page 14 show, the UK also compares poorly with other OECD countries on measures of comparative productivity, wage inequality and employment protection.

**Chart 1: Structure of employment by contractual status 1986–2013**  
*Percentage of all in employment*



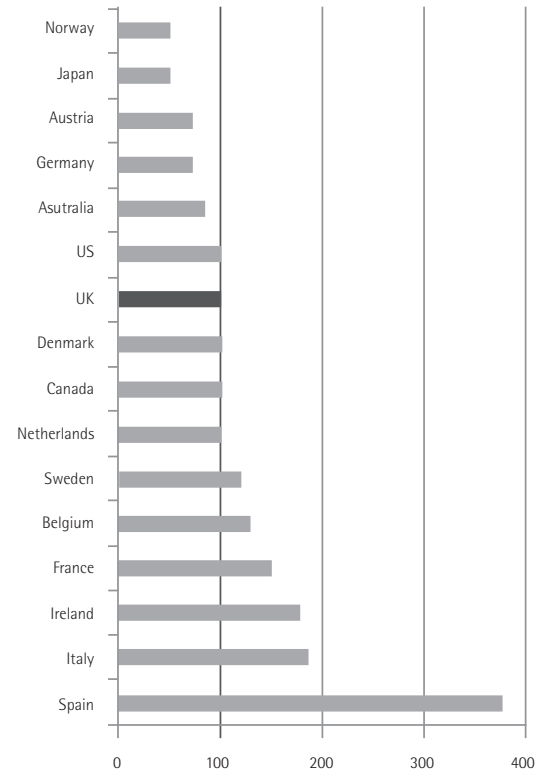
Source: Labour Force Survey

Chart 2: How the UK performs against selected OECD countries

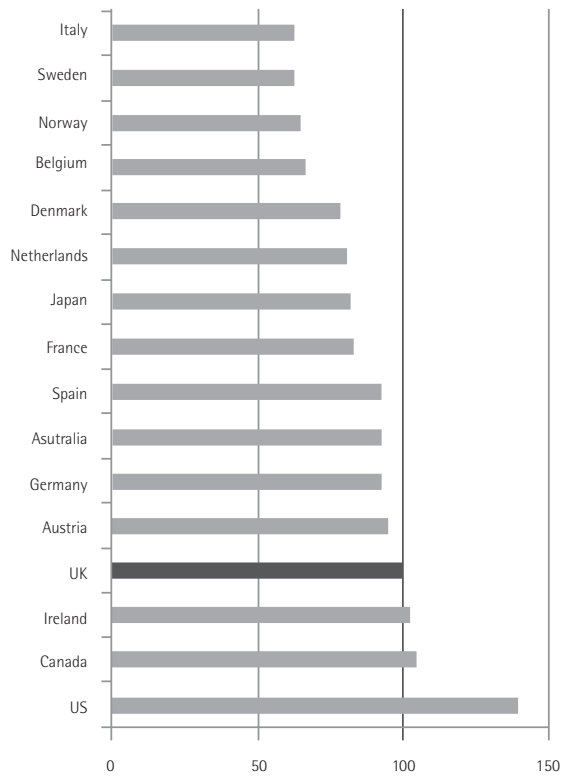
Productivity per hour worked (UK=100)



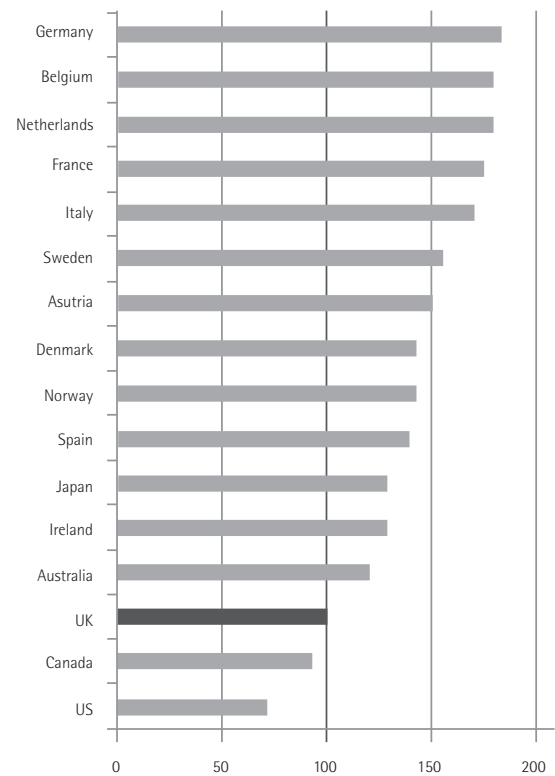
Unemployment rate (UK=100)



Wage inequality (UK=100)



Employment protection (UK=100)



Source: OECDstat. Productivity based on GDP per hour worked for 2013; wage inequality represents the 90:10 decile ratio in 2011; unemployment rate is harmonised unemployment rate for Q1 in 2014; employment protection is the OECD's measure of strictness of employment protection – individual and collective dismissals for 2013.



The inquiry's evidence suggests that the majority of employers are ambivalent at best towards seeing their employees as stakeholders and citizens at work, with a wider set of interests and ambitions than their employment contract implies. Few would disagree that employers must be able to run their organisations efficiently and effectively. However, the central argument throughout this report is that employers can best achieve these objectives by meaningfully engaging with their employees.

*We are at a crossroads and companies need to change the conversation and talk less about maximising shareholder value and more about long-term sustainability and being a responsible employer.*

– Norman Pickavance, former HR and communications director at Morrisons

### Happy and productive people equals growth

According to ACAS, the four key ingredients of a happier, more motivated and more productive workforce are:

- leaders with a vision who value how individuals contribute;
- line managers who empower rather than control their staff;
- values that are lived and not just spoken, leading to a sense of trust and integrity;
- employees who have the chance to voice their views and concerns.

People are key. Get it wrong and you may be faced with low morale, poor levels of motivation and higher levels of absence. And you will often be lacking that creative spark – particularly when it comes to interacting with your customers. What's more, engagement can't be imposed from above. It's about creating a cultural shift in the way organisations behave.

### What is good work?

Two of the central questions asked by the inquiry were: what is good work, and what makes for a good employer? A common riposte was to point out that higher-quality employment is not a preserve of the top professions. The argument for better jobs is about improving the quality of *all* jobs, not just those at the bottom of the labour market but in all occupations. Bankers may be very well paid, but that does not mean that they will never experience unfair treatment. Equally, workers in a fast food restaurant may (although most do not) have control over their work, find that their employer listens to their views and believe that they will be treated fairly when they experience difficulties at work. Just because a job has high status does not mean that a worker is employed in a good workplace or that he or she is happy and motivated at work.

### Why should government care?

This report seeks to set out an agenda for government to make work better. But why should government care? It is sometimes said that good work depends solely on the individual and how that person's needs and expectations are aligned with those of their employer. Work in this sense is viewed as purely transactional, and valued or disvalued accordingly. The government should therefore stay out of the employee-employer relationship and have only a minimal role in trying to improve job quality.

### What makes for good work?

Bad jobs are bad for prosperity, productivity and well-being. But what makes for good work? The inquiry found seven factors that stand out as being particularly important:

#### *Safe and secure*

A good workplace should feel safe and comfortable, with the employee being given clear and achievable objectives. Security does not necessarily imply a job for life or a workplace characterised by stability rather than change. It does mean that employees are not fearful about imminent job loss or (more likely today) a loss of job status.

#### *Autonomy and choice*

Wherever possible, employers should allow for flexibility. Employees need to feel in control and want a degree of discretion over their work, as well as the opportunity to participate in and influence the decisions that affect them.

#### *Effort and reward*

A person's effort should be reflected in the rewards they receive – so a fair day's work deserves a fair day's pay. Reward structure should be open and transparent, and pay differences should be felt to be fair. Reward also refers to the *recognition* of good performance, in terms of praise, esteem, respect and the availability of new opportunities.

#### *Skills training*

Opportunities to utilise and develop skills influence the quality of employment, making work more satisfying and valued. A good working environment is where workers can learn, develop and progress.

#### *Fairness and trust*

Being treated fairly is a basic right at work, and an experience of injustice can lead to anger and conflict. Behaving in an open, honest and inclusive way is key to building trust at work. If employees observe regular incidents of bad practice they are unlikely to believe their workplace is fair.

#### *Relationships*

Work is a social activity and maintaining good relationship builds trust and helps people (individually and in teams) respond to the challenges they face. Acting fairly while respecting differences and valuing diversity is important to good work.

#### *Voice*

Employees have the right to be heard and the right to associate with colleagues to express their views. This right to "voice" offers benefits to employees and employers. Voice also gives workers the confidence to challenge unfair treatment.

This laissez-faire perspective was not shared by the vast majority of people and organisations with which the inquiry spoke. Indeed, from the discussions held with people at work there emerged a widely held view that a big gap has opened up in many workplaces between what workers want and expect from their employer and what they experience in their day-to-day working lives. It was said on several occasions that there is a growing expectation among

the public that government should care more about creating better workplaces, and that "good work" makes for a more prosperous and cohesive society. The overwhelming sentiment expressed to the inquiry was that government had a big role to play in helping business compete on the basis of quality and value added, underpinned by a well-trained, well-paid and engaged workforce.

Public policy shapes the environment in which decisions in the workplace are made. Employment regulations can, for example, stamp out bad and unscrupulous behaviour, create a level playing field for good employers, promote health and well-being, protect the environment and tackle discrimination.

National and local politicians are acutely aware that interventions in the world of work – such as promoting equal opportunities, setting the state pension age, corporate governance reforms or setting public-sector pay – have wider political and policy implications. It was also said that the state not only has a lead role in terms of education and training and in tackling unemployment and supporting national competitiveness and innovation, but is also the UK's largest employer, with significant personnel, pay and pension responsibilities. Indeed, in many respects the public sector sets the standard of employment practice. It has huge influence through its supply chain and in the way it manages its staff (something explored in more detail later in the report, in regard to the government as a living-wage employer and the public sector making much greater use of labour clauses in public contracts).

*Government has a duty to disseminate what good work is.*

– Union representative

Although the UK also has a long and distinguished history of government interventions to improve the world of work (dating back to the Factory Acts of the early 19th century), much of our industrial relations history is built on voluntarism and free collective bargaining. This of course has often been fiercely contested in the past by the state setting limits on pay rises and intervening in industrial disputes, such as the miners' strike in 1984. In more recent times the government has kept a firm hand on industrial relations in the public sector, but has largely withdrawn from the private-sector labour market where it has endorsed a more individualised and flexible approach to employment regulation.

While the inquiry did not examine the impacts of labour market deregulation or evaluate the effect of "rolling back the state" in the world of work, much of the evidence suggests a strong correlation between liberalisation (deregulation) and a weakening of the bargaining power of organised labour and individual employees.

Government and non-governmental organisations provide the institutional architecture that regulates and supports skills, productivity, job quality and wages. Some of these labour market institutions, including unions and bodies like the former wages councils, support the rebalancing of power to enable market adjustments to deliver fair pay and good work. However, it was said that over the past 30 years these institutional arrangements have been gradually weakened and the actors that support them have been much less effective because of the state's preference for "light regulation". According to the Smith Institute's

study on workplace democracy:

*Sustaining an inclusive labour market certainly requires the right institutions but it also requires actors with the right capabilities (whether citizens, works councillors, unions or corporations). The successful implementation of policy depends on a partnership between the state and civil society.<sup>18</sup>*

It was often said to the inquiry that the government is good at regulating (and deregulating) in terms of passing employment law, but less effective at enforcement and compliance. The evidence seems to support this view, not least in respect of gangmasters and agency work and the national minimum wage.

The inquiry also heard that making work better could reduce pressure on the public purse and help meet social and health policy objectives.<sup>19</sup> In particular, the inquiry's attention was drawn to the amount paid in benefits to those in work. Evidence to the inquiry showed that the bill for housing benefit paid to those in work has increased from around £1.6 billion per year in 2008 to over £5 billion this year.<sup>20</sup> It was said that the state is in effect "subsidising employers", some of which are setting work patterns and pay rates such that employees can maximise their welfare benefits.

#### **Past six years**

The problems in the world of work are deep-rooted. However, the past six years have been tough for most people in work, and even harder for the unemployed. Since the onset of recession there has been a reversal of previous wage gains, widening wage inequalities, increased job insecurity (especially in the public sector), more precarious forms of work, and some winding back of past progress on equal opportunities and rights at work. While employment has been resilient (albeit with a growth in low-paid work), productivity growth has been sluggish and behind that of our competitors.

The inquiry recognises that the problems at work do not fall into neat categories, and many of the issues are interrelated and have common causes. Nevertheless, in order to understand the challenges we face and map out a coherent agenda for change, the report is structured around the following:

#### *The productivity problem*

- Productivity is now 30 percent higher in France, Germany and the USA. than here The UK has a more qualified workforce than at any time in the past, but the skills of workers are not being fully utilised by employers, representing a waste of productive potential.

#### *Concerns about insecurity*

- Insecurity at work is rising, and not just as a consequence of more casual employment. This is not always a matter of immediate fear of redundancy but more often an anxiety about loss of job status.

#### *Low pay and pay inequality*

- Since 2004 wages for those on the median wage or less

have been either stagnant or falling in real terms. Since 2010, median wages have fallen by more than 6 percent in real terms. Wage growth and productivity growth have become more disconnected and wage inequalities have widened.

#### *Equality and discrimination*

- The gender pay gap remains stuck at around 20 percent. The UK ranks 18th out of 27 OECD countries on this measure. There is a significant gap (of almost 30 percent) between the earnings of women working part-time and women working full-time.

#### *Justice and employment rights*

- Despite the recent drastic fall in applications following the introduction of charges (pricing many employees out), the number of applications to employment tribunals has risen over the longer term. The UK appears to have a high percentage of what might be described as "troubled

workplaces". Nearly one in four employees experienced at least three different kinds of unfair treatment and one in 10 experienced five different kinds of unfair treatment.

#### *Voice at work*

- Only one in three employees say their employer is either good or very good at consulting them about significant changes in the workplace. The UK compared very poorly with other EU countries in terms of the opportunities available to workers to participate in the governance of their workplace.

The evidence to the inquiry also highlights the need for policy makers to think differently about how these concerns will feature in tomorrow's labour market. In particular, future policies will need to accommodate a more flexible and individualised world of work, which demands different forms of voice at work and greater transferability of employment rights and benefits (such as pensions) between employers.

## References

- 1 For more information on historical trends, see for example: BIS Labour Force Survey figures; Trade Union Statistics 2013 (BIS, 2014); and Workplace Employment Relations Study surveys
- 2 Office for National Statistics *UK Labour Market, August 2014* (2014)
- 3 ONS *Mid-year Population Estimates, 2013* (2014)
- 4 ONS *Labour Market Statistics, June 2014* (2014)
- 5 Ibid
- 6 Ibid
- 7 ONS *UK Wages Over the Past Four Decades – 2014* (2014)
- 8 ONS *Labour Market Statistics, June 2014* (2014)
- 9 Ibid
- 10 BIS *Trade Union Membership, 2013* (2014)
- 11 Smith Institute analysis of *Annual Survey of Hours and Earnings, 2013 Provisional Results* (ONS, 2013)
- 12 "1974 and 1994 Higher Education Age Participation Index (API) – GB Institutions" from *The National Committee of Inquiry into Higher Education* (HMSO, 1997)
- 13 Ibid
- 14 BIS *Participation Rates in Higher Education: Academic Years 2006/2007 – 2011/2012 (Provisional)* (2013)
- 15 The classic study of British civil servants in Whitehall by Professor Richard Layard (director of the Wellbeing Programme at the LSE) found that "perhaps the most important issue is the extent to which you have control over what you do. There is a creative spark in each of us and if it finds no outlet we feel half-dead. This can be literally true: among British civil servants of any given grade those who do the most routine work experience the most rapid clogging of the arteries." – Layard, R *Happiness: Lessons from a New Science* (Allen Lane, 2005)
- 16 Yeoman, R *Meaningful Work: A Philosophy of Work and a Politics of Meaningfulness* (Palgrave Macmillan, 2014)
- 17 World Health Organization *Closing the Gap in a Generation: Health Equity through Action on the Social Determinants of Health* (2008); see also: Marmot, M *Fair Society, Healthy Lives* (Marmot Review, 2010)
- 18 Coats, D *Just Deserts: Poverty and Income Inequality: Can Workplace Democracy Make a Difference?* (Smith Institute, 2013)
- 19 The costs of ill health are borne by the taxpayer, either through the payment of means-tested benefits to those with work-related disabilities or through an increased burden on the NHS. See the 2010 Marmot review into health inequalities.
- 20 Research undertaken by the Smith Institute and based on data from the Department for Work & Pensions



## 2. Poor productivity at work

Productivity matters because it drives growth and raises living standards.<sup>1</sup> As the Nobel Prize winning economist Paul Krugman famously said: "Productivity isn't everything but in the long run it's almost everything." Government, employers, employees and unions all have a keen interest in improving productivity, although as was said many times to the inquiry, growing the economy without sharing the benefits is not only unjust but also is hardly a positive outcome if the aim is to reduce inequality and create a more socially balanced and cohesive society.

Furthermore, improving productivity is not a zero-sum game. As the inquiry's experts group pointed out, in principle rising prosperity in one country does not require the prosperity of another country to fall. There is no fixed quantity of wealth in the world in which countries must grab the largest share possible. In this respect, the so-called "race to the bottom" where firms adopt low-skill, low-cost, low-wage strategies is a false prospectus. As the evidence to the inquiry demonstrates, the road to making work better and tackling low pay is built on policies that can support sustainable productivity growth in higher-value businesses.

Rising productivity may fuel increases in the size of the economy, but there is no guarantee that the fruits of growth will be fairly distributed. As the experience of the last 20 years proves, in the absence of countervailing power and policy interventions (engendered by a culture of short-termism) it is perfectly possible for all the gains to be captured by those who are already affluent. In this sense (and as several witnesses to the inquiry pointed out), the discussion about production cannot be disentangled from concerns about distribution.

### We have a productivity problem

Prior to the 2008 recession, productivity in both the manufacturing and services sectors had risen in every year from 1999 to 2007, helped in part by government support for innovation and skills.<sup>2</sup>

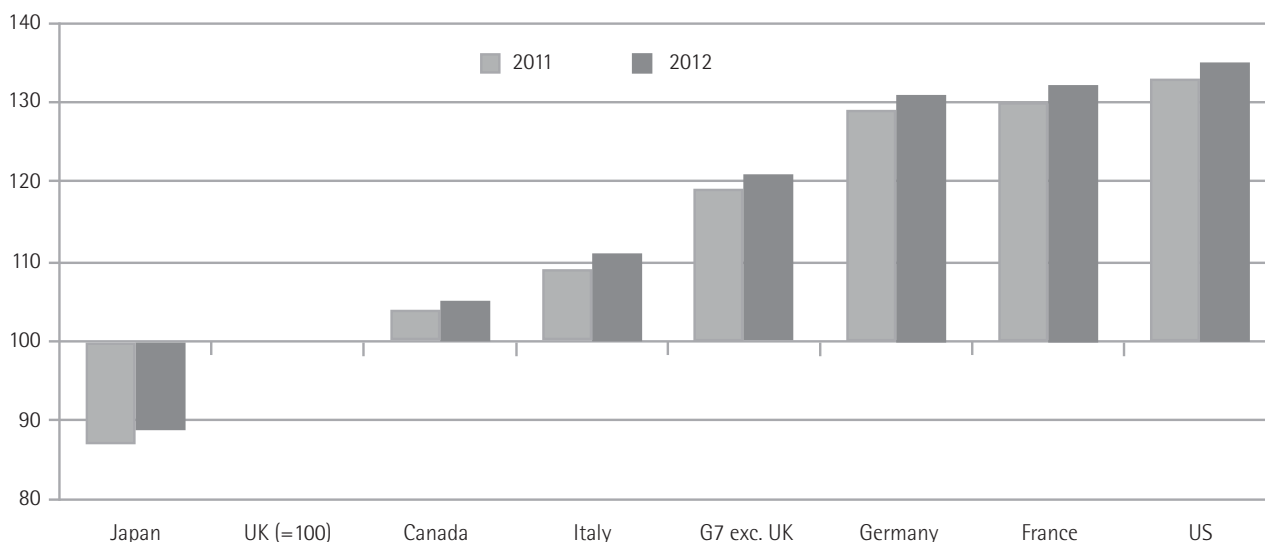
However, from 2008 onwards productivity per worker fell sharply and has failed to recover since (being especially weak outside London and the South East).<sup>3</sup> Productivity in the first quarter of 2014 was still more than 4 percent lower than in the first quarter 2008 (its pre-recession peak level).<sup>4</sup>

Two facets of recent experience were highlighted by the inquiry's experts group. First, despite the efforts of successive governments, the UK's performance remains lacklustre. The most recent official statistics show that, of the G7 developed countries, the UK has the second most disappointing productivity numbers. According to BIS estimates, UK productivity in 2012 was 20 percentage points below the G7 average – the widest productivity gap since 1992.

While the USA has the highest productivity per hour worked, France and Germany are not far behind. What the data shows is that deregulated labour markets with high levels of income inequality (like the USA and the UK) are not the only routes to high productivity. As was said several times to the inquiry, it is possible in an economy such as the UK to achieve a fairer distribution of incomes and good performance.

The consensus view from both business and unions is that the consequences for the UK will be severe if this phenomenon continues. To begin with, the relative standard of living is certain to fall – other developed countries may continue to get richer at the same time as the UK stagnates. Moreover, sluggish productivity growth is likely to result in continued weak wage growth, intensifying the experience of the squeeze on living standards for those on median to low incomes. Even if wages start to rise again, this is unlikely to be at a rate that generates a high level of confidence about medium-term economic prospects. Most seriously perhaps, assuming the exchange rate is stable, a failure to generate rising productivity can lead to growing unit labour costs, making British goods and services less competitive in international markets.

Chart 3: GDP per hour worked 2011-12 (UK=100)



Source: ONS

The second striking feature of past and current policy approaches to improving productivity is that they have little or nothing to say about the importance of what happens *inside* the workplace. It was impressed upon the inquiry that a wide range of public policies affect the management of the workplace, ranging from corporate governance requirements imposed by company law to legal obligations to pay the national minimum wage. Other policy interventions, such as duties on regulators to prioritise the promotion of competition, can also have significant impacts on employment standards and workloads. However, it seems there is a serious disconnect in policy between what government can do and what management can (and want to) achieve.

The Work Foundation echoed the views of other experts advising the inquiry in concluding from its research that although low-pay industries will continue to provide many new jobs, especially for young people, over time there will need to be...

*... a shift in employment from lower to higher productivity activities both within and between sectors. In some low productivity sub-sectors and for some low productivity activities that may mean fewer jobs rather than more. We propose that the Government sets out a strategic framework for a low pay strategy for the UK which explicitly aims to reduce the share of low-wage jobs in the British economy.<sup>5</sup>*

*Good work is well-managed work. What motivates people? A good manager.*

– Labour market expert

**Recommendation:** *What happens inside the workplace is the missing element in the productivity framework. Government*

*should make improving productivity and improving the quality of employment mutually reinforcing policy objectives.*

#### Investment in skills

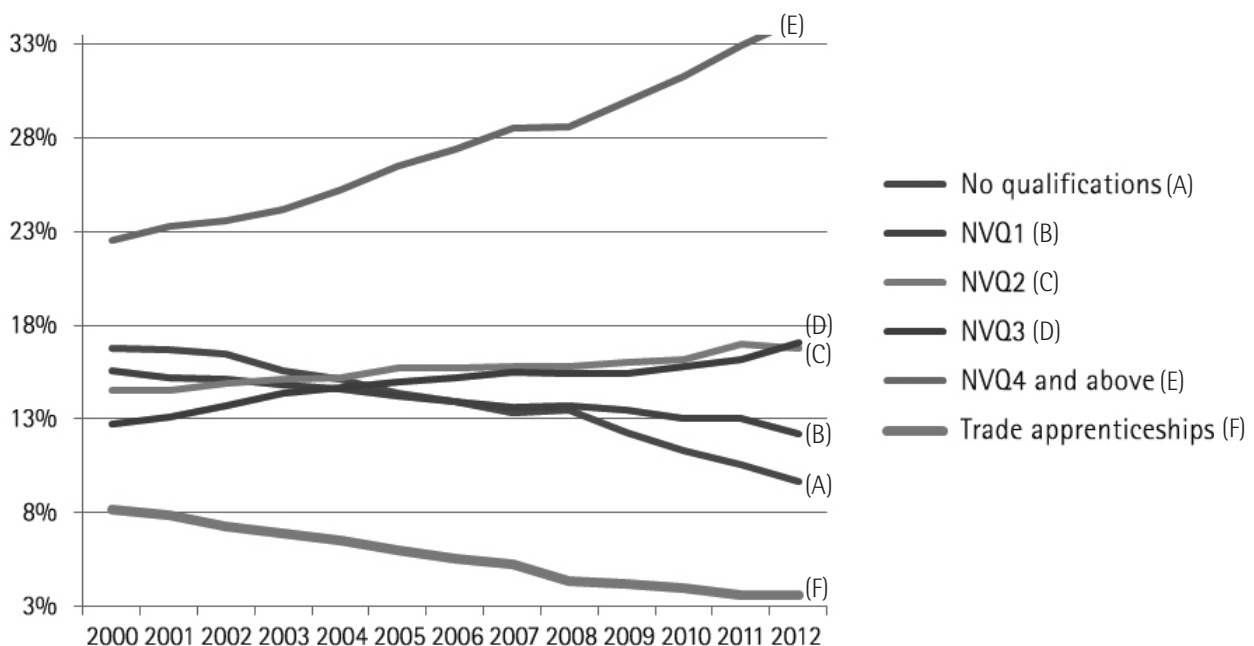
Although the last decade has seen considerable investment in skills, the UK is hardly a world leader. The evidence presented to the inquiry suggests that there has been an over-emphasis on improving supply and too little attention paid to improving the demand for skills. The problem seems to be largely with intermediate-level qualifications and trade apprenticeships, although in some key industries such as digital technology there are widespread skills shortages.<sup>6</sup>

*There's a disconnect between skills strategy and industrial strategy. There's an insular focus on supply of skills. But how do you stimulate demand for skills and encourage skills utilisation?*

– Labour market expert

It appears that the increase in the incidence of higher-level qualifications is well matched to the changes taking place in the labour market. The inquiry found that there is a clear trend towards job growth in higher-skilled occupations and a reduction in demand for lower-skilled manual jobs, which have generally been held by men in the past. On the other hand, growth is also projected in some service occupations characterised by low pay (the care sector is an obvious example). While the evidence might be read to suggest that the UK is moving in the direction of a knowledge economy (with more high-wage, high-skilled jobs), it also demonstrates the persistence of low-paid, low-skilled employment.

**Chart 4: Qualifications of the UK workforce, 2000–12**  
Percentage of all in employment

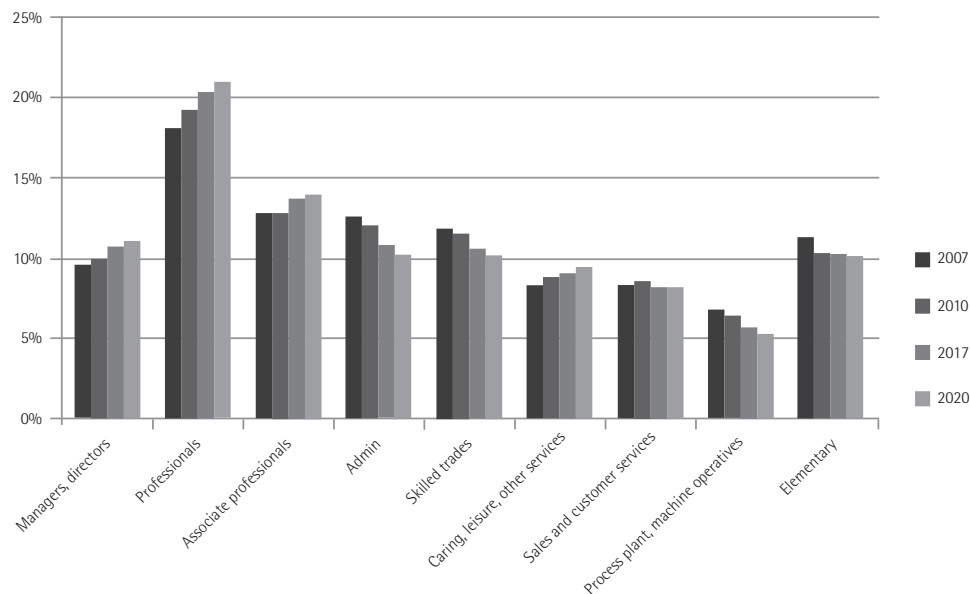


Source: ONS Annual Population Survey.

Note: Percentages sum to less than 100 because "other" qualifications are excluded.)



**Chart 5: What jobs do/will people do? The changing occupational structure, 2007–20**  
Percentage of all in employment



Institute for Employment Research/UK Commission for Employment & Skills *Working Futures*

### The BBC Academy

The BBC Academy, which embodies the BBC's wider commitment to training, is a key provider of training for the creative industries. It delivers over 50,000 days of training a year, including apprentices for the corporation's supply chain. The academy offers "fast train" events for freelancers, free access to online learning resources and social media workshops. The BBC's MediaCity in Salford and other regional centres are a catalyst for skills development across the country. The academy runs a varied and successful apprentice and trainee programme and partners with universities, arts and cultural organisations and media companies. The academy also includes the BBC's College of Journalism and its colleges of production and technology.

### Lifelong learning

Longer working lives are becoming a fact of life, making it certain that the skills someone acquires in their late teens or early twenties will need significant upgrading in middle age and beyond. It is also likely that career changes in mid-life will become more common and that people will choose a gradual exit from the labour market, avoiding the so-called cliff-edge where they are at work one day and retired the next.

In the inquiry's discussions on skills, the general view was that it is important to encourage an appetite for learning across the whole workforce. It was said that the focus should be on those with low skills, particularly if public policy is designed to rule out "low road" models and move the UK towards a higher-skill economy. According to National Numeracy the low levels of adult numeracy are costing the economy £20 billion a year.

The Workers' Education Association (WEA) told the inquiry that more needs to be done to promote adult education and part-time studying for all ages. In particular, the WEA calls on employers

and government to encourage skills development through training accounts and tax relief for learning. The WEA's *Manifesto 2014/15* also requests that the government safeguard the learning entitlement for literacy and numeracy for the long term.

Developing a culture of lifelong learning is in the interests of both employers and society more generally, but workers need to be given confidence that skills upgrading is an opportunity rather than a threat or a challenge. In their evidence several of the unions said that the institutional architecture could play an important role in shaping outcomes. Union learning representatives, for example, have played a highly significant role in recent years in both encouraging employers to invest in human capital and encouraging workers to develop their skills. Integrating these experiences into the new model for incremental innovation will be essential if the UK is to crack the productivity conundrum in the future.

Several examples of formal learning agreements between unions and employers were presented to the inquiry, including new agreements in the NHS, Public Health England, the Saudi Basic Industries Corporation, HMRC, and the East Coast train company.

### Deaf awareness for Tesco's staff

The Union of Shop, Distributive & Allied Workers (USDAW) organised a deaf awareness course at the Tesco store in Long Eaton, Derbyshire. Union learning representatives helped organise the training, which included a visit to a local special-needs school where the children use sign language. Tesco supported the visit by providing staff with paid time off. The union learning organiser said the course not only helped staff engage better with the local community, but also boosted people's confidence and, "more importantly, gave them a taste for learning new skills".



### Skills under-utilisation

The demand for low-skilled jobs (with more than one in five jobs requiring no more than primary education) at a time when governments have invested in higher-skill training has left the UK with a serious skills under-utilisation problem. Employees reported to the inquiry that their skills are consistently under-utilised, which means not only that they are overqualified for the jobs they do, but also that employers are failing to maximise the productive potential of the workforce. A recent report<sup>7</sup> from the UK Commission for Employment & Skills (UKCES) echoed this view. Its survey of 91,000 firms found nearly half (48 percent) admitted to recruiting people with higher levels of skills and knowledge than were required for the job. Indeed, the UK is one of the worst performers in the OECD in this respect, with almost one in three workers finding themselves in jobs below their accredited level of skill.

These results are consistent with the findings from the Skills and Employment Survey 2012<sup>8</sup> and the work of the Chartered Institute of Personnel & Development (CIPD), whose research shows that a third of UK workers are overqualified for their job.<sup>9</sup>

Most interesting perhaps is that the percentage of people at work overqualified for their current jobs is *higher* among the whole population than among graduates,<sup>10</sup> suggesting that graduate skills are being more effectively utilised than the skills of those with lower-level qualifications.

*We need to encourage more employer investment in building productive working environments, with investment in skills growth and the management and leadership skills needed to deliver higher performance workplaces, which are more likely*

*to compete through innovation, continuous improvement and quality.*<sup>11</sup>

– Chartered Institute of Personnel & Development

While employers told the inquiry they were concerned about skills shortages in specific sectors (such as manufacturing, construction and plumbing, as well health and social care) and in particular geographical areas (such as Wales and in cities like Liverpool and Birmingham), the impression at the roundtable events with employees was that many well-qualified workers are consistently employed in jobs that leave them bored and unsatisfied.<sup>12</sup>

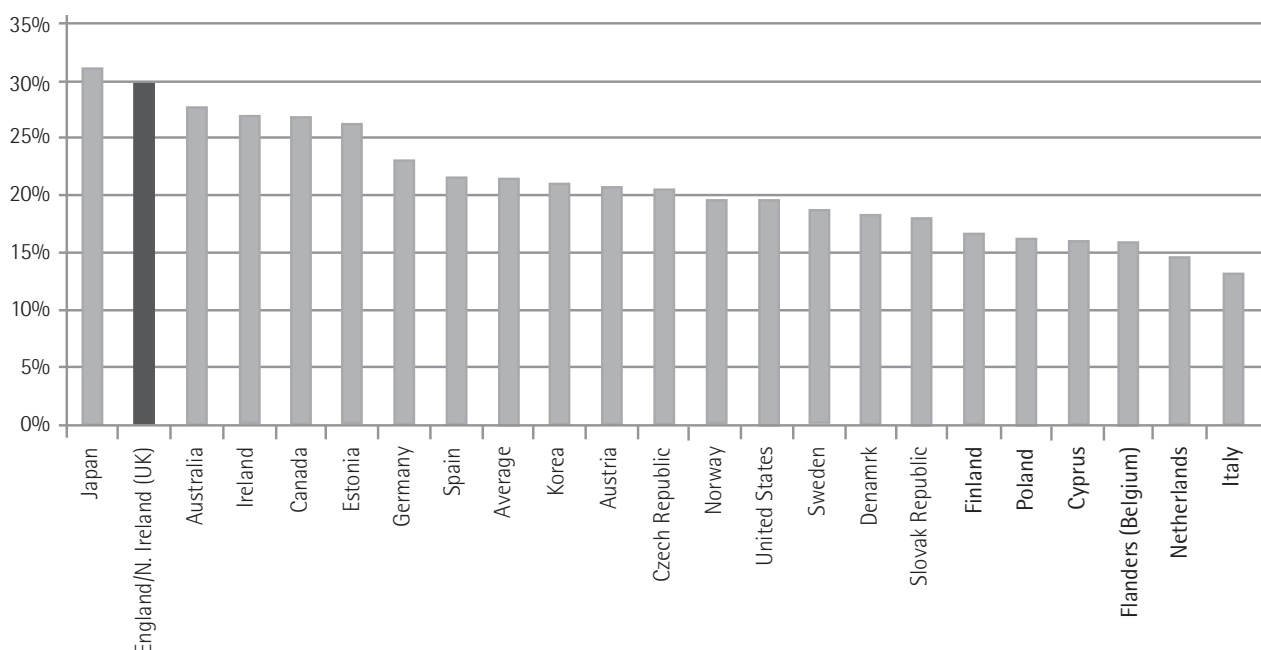
*There's a stubbornness by BIS about increasing skills utilisation.*

– Labour market expert

The inquiry found that OECD countries with better productivity records than the UK have *more* high-skilled employment and *less* unskilled employment. This assessment compels the conclusion that characteristics specific to the UK must be producing these outcomes. All developed countries are exposed to similar levels of technological change, and all are equally exposed to the forces of globalisation, but the structure of employment across the developed world varies widely between countries. One possibility is that the growth of income inequality in the UK has created a class of relatively poor citizens with an appetite for cheap (and sometimes poor-quality) goods and services.<sup>13</sup> Employers can therefore adopt "low road" strategies secure in the knowledge that there will be a demand for their products. Another dimension of rising income inequality suggested to the inquiry was that the affluent have more discretionary spending, which manifests itself in the demand for more low-skilled jobs in shops, restaurants, and leisure services.

**Chart 6: Incidence of overqualification**

*Percentage of workers whose highest qualification is higher than is necessary to get their job today*



Source: OECD Survey of Adult Skills (2012)

It was said that simply improving the supply of skills alone would not be sufficient to persuade employers to modify their business model. There are plenty of organisations that manage to make healthy profits with routinised production systems and a low-skilled workforce. However, the inquiry was also told that the latest data from the UK Commission for Employment & Skills shows the impact of skills shortages has been increased workloads for existing staff and can be a serious drag on company performance.

**Innovation**

In the conventional framework, innovation is about research and development involving technicians in white coats who come up with new, patentable ideas. Yet most workplace innovation is small-scale, incremental and depends upon engaged employees sharing their ideas freely with their employer. For many organisations, whether in manufacturing or services, this approach to innovation is just as important as the introduction of new, disruptive technologies. A well-documented strength of the German economy, especially in manufacturing, is that workplace relationships are configured to support this process of incremental improvement.<sup>14</sup>

*Industrial policy is too focused on high science. It is also about incremental innovation, giving workers discretion.*

– Labour market expert

The inquiry was made aware of examples of high-trust relationships inspiring workplace innovation in the UK. The success of the car industry, for example, is a tribute to the possibilities of workplace partnerships in otherwise adverse conditions. However, as mentioned later in the report, levels of trust at work remain poor and seem to be worsening. It was pointed out that this is hardly helping to deliver a step change in productivity growth.

The evidence to the inquiry on autonomy at work reflects the findings of the Skills and Employment Surveys, which recorded a significant *fall* in the level of job control over the course of the 1990s, but since 2001 the situation has stabilised.<sup>15</sup> By 2012, one in three workers were reporting that they had a low level of job control. Most seriously, perhaps, the percentage of employees reporting that they have a great deal or quite a lot of influence over the organisation of their work fell from just over one in three (36 percent) to just over one in four (27 percent) between 2001 and 2012.

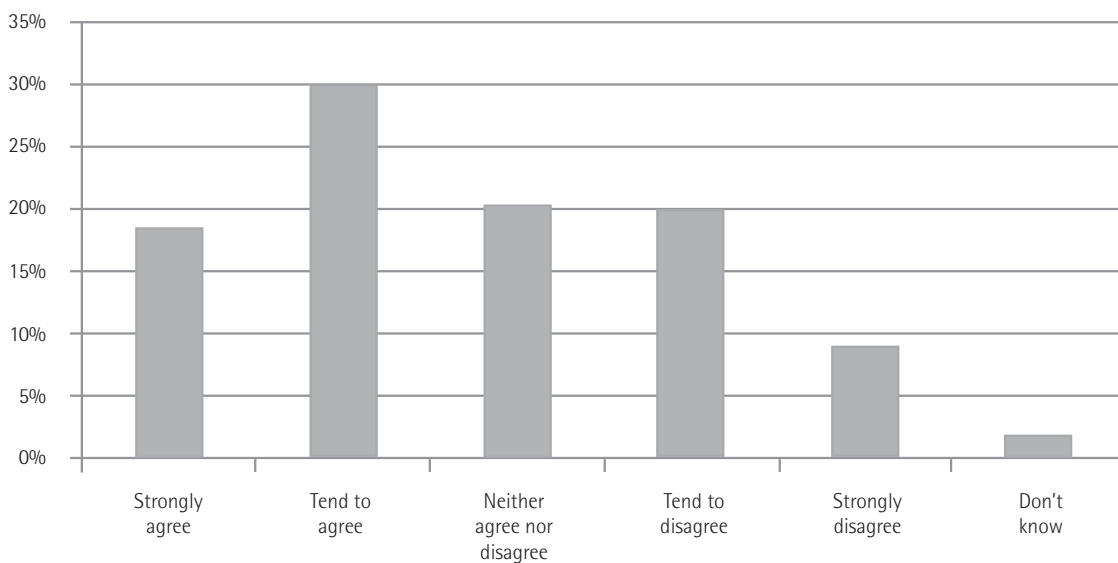
It would be unwise to generalise, but the evidence to the inquiry suggests that slightly more than a quarter of the workforce have the level of influence that would qualify their jobs as “high-quality”. In the majority of workplaces the employment relationship arguably falls short of the standards required for high performance.

If workers are to offer productivity-enhancing innovations, then they need to be able to take responsibility for their own

**Culture in work and the Post Office**

The Post Office recently piloted new operating models in partnership with the Communication Workers Union. The idea was to improve staff engagement, income and customer satisfaction by giving counter staff greater control over their local branch. For example, it gave staff greater freedom to decide branch layout and advertising; introduced “rapport-based” selling, rather than mandating staff to sell certain products; gave staff data on branch profit and customer satisfaction and made them responsible for working out how to improve services; and offered staff the opportunity to engage more with their local community. Staff engagement and motivation improved markedly over the course of the pilot. There were similarly marked improvements in terms of customer service and branch income.

**Chart 7: Employees' views on under-utilisation of skills**  
 Percentage agreeing with the statement: “My job does not make full use of my skills and abilities”



Source: YouGov poll commissioned by TUC/Smith Institute

Notes: Total sample size was 4,555 adults, of which 2,355 were employees. Fieldwork was undertaken on 5-7 August 2014. Survey was carried out online. Figures have been weighted and are representative of all GB adults (aged 18+).

work – and to be properly rewarded if they produce creative ideas to improve performance. However, it was said that it seems very unlikely that workers will be in this position if they are subject to a command and control management style or if they find that they have no discretion over what they do. It was said on several occasions at the inquiry's roundtables that managers are often themselves measured on crude performance targets, which if misused create distrust, stress and fear at work. It was said that some employers use new information technology to enable constant monitoring of staff against performance targets. This "surveillance management" mindset was seen as counterproductive to engaging and motivating staff.

### Better management

There are around 5 million managers in the UK, equal to 16 percent of the entire workforce. The quality of these managers (at all levels – from the line manager to the chief executive) inevitably has a significant impact on productivity, as well as on pay and the quality of employment. Even for low-cost/low-pay organisations good management can make work better. As the Joseph Rowntree Foundation's recent report on the problem of in-work poverty observed, good management practices that reduce stress at work and support training can have a positive impact on poverty.<sup>16</sup>

*How do you boost productivity? Better management, more investment in training and engaging employees to get the most out of them.*

– Business leader at the inquiry discussion in Leeds

A recent study by Nick Bloom and John van Reenen confirms the commonsense assessment that management matters and that differences in management practice can explain differences in productivity at both national and firm level.<sup>17</sup> However, studies from BIS conclude that management in the UK (in both the public and private sectors) has serious shortcomings and that in general we compare poorly with other OECD countries.<sup>18</sup> BIS research<sup>19</sup> shows that:

- ineffective management is estimated to be costing UK businesses over £19 billion a year in lost working hours;
- 43 percent of UK managers rate their own line manager as ineffective;
- nearly three-quarters of organisations in England reported a deficit of management and leadership skills in 2012; and
- incompetence or bad management of company directors causes 56 percent of corporate failures.

These findings are made worse by the evident lack of trust between employees and senior management. According to a CIPD survey, more than one in three employees report that their level of trust in senior managers is weak.<sup>20</sup> Perhaps most depressingly, levels of employee mistrust are roughly the same today as they were five years ago.

*Studies suggest that the comparative deficit in management quality contributes to the UK's well-known productivity gap with major competitors and results in the UK having a long tail of poorly managed firms.*

– John Philpott, chief economic adviser at the CIPD

Trust and confidence in management was shown to be a particular concern. The Workplace Employment Relations Study (WERS),<sup>21</sup> for example, showed trust in management at a level that is less than encouraging (at around half of the workforce, and just above 40 percent in the public sector). The nuance to many of the workplace surveys is that while people may be loyal to their organisation they may not necessarily share its values or feel good about their work-life balance or the opportunities they may have for career advancement. Moreover, they may also be far from content with their pay or autonomy at work.

According to the management consultant Richard Finn, organisational culture in the boardroom is largely to blame for poor corporate performance and lack of trust. He told the inquiry:

*... the problem is that boards have not seen culture as an organisational risk, at least as significant as share price or compliance; executives have not addressed engagement in the same way that they have shareholder value, and values have been something that organisations put on a poster and assume that in so doing all will be well.*

Finn says that boards usually fail to understand the advantages of investing in people and think solely about minimising cost, rather than recognising the merits of values-based recruitment. He also says that success is built on creating attractive places to work.

Sir George Cox also told the inquiry that short-term culture militates against good employment and that tackling it must be a priority for senior management, based on a shared common purpose. He remarked that it is "easier to build a culture with employees and unions, than try and change it". For some employers that process implies radical reform of corporate governance structures, for which shareholders and directors may have little appetite.

It was pointed out to the inquiry that the Companies Act 2006 does impose a duty on directors to "consider the interests of the company's employees". However, as several studies have highlighted, directors all too often focus on short-term decision making, fed by frequent evaluations of short-run financial performance.<sup>22</sup>

### Legal duties of directors

A director of a company must act in the way he or she considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (among other matters) to:

- the likely consequences of any decision in the long term;
- the interests of the company's employees;
- the need to foster the company's business relationships with suppliers, customers and others;
- the impact of the company's operations on the community and the environment;
- the desirability of the company maintaining a reputation for high standards of business conduct; and
- the need to act fairly as between members of the company.

Source: Companies Act 2006, section 172

An issue often raised in evidence given to the inquiry was the question of why there is such a gap between the best and the rest in terms of management and leadership? One conclusion may be the lack of management training, especially in SMEs. Research by the Institute of Directors in fact draws attention to a general lack of management and leadership skills.<sup>23</sup> The Institute of Leadership & Management similarly notes that managers have heavy workloads and feel under pressure to work long hours, which could in part explain the lack of time for training (and management's poor performance). The decline of unions may also paradoxically have weakened management, particularly the management of people, especially in the private sector.<sup>24</sup>

It is of course not just formal skills that matter but management standards, behaviour and culture. Obviously it is impossible to *regulate* for higher-quality management in the sense that governments cannot legislate to give employees a right to be well managed. It is possible, however, to use soft regulation to achieve better results. For example, the Health & Safety Executive's Management Standards contain clear guidance for ensuring that workers are managed fairly and effectively. The benefits would not be just for employees. Addressing management underperformance is in the interests of business too, given that it should lead to better organisational outcomes, higher-quality products and services and, other things being equal, higher profits too.

#### HSE Management Standards

The Health & Safety Executive's Management Standards<sup>25</sup> define the workplace characteristics where risks related to stress are being effectively managed. It covers six key areas of work design, which if not managed are associated with stress and result in poor health and well-being, lower productivity and increased sickness absence:

- demands (workload, work patterns and the work environment);
- control (the extent to which an employee has control over the way they do their work);
- support (including encouragement and resources provided by the organisation, managers and colleagues);
- relationships (promotion of positive working to help avoid conflict and the extent to which unacceptable behaviour is dealt with);
- role (the extent to which employees understand their role within the organisation, and not having conflicting roles); and
- change (how organisational change is managed and communicated).

The standards help demonstrate good practice through a risk assessment, encourage assessment of the current situation through surveys, help enable active discussion and partnership working with employees to make improvements, and help to simplify risk assessments (main risk factors, focus on prevention, benchmarking with other employers).

#### HR professionals

The inquiry was told that the human resources (HR) profession is

generally and increasingly undervalued within firms. For example, HR professionals are rarely on the boards of public companies and large private companies, and few company directors have an HR background.<sup>26</sup> The latest data from the ONS shows there are currently 77,000 HR directors working in the UK, compared with 207,000 finance directors and 129,000 marketing directors. According to Stephen Menko, director of HR recruiter Otus:

*This means there are just three HR directors for every five marketing directors and less than two per five financial directors. People are at the heart of any business, and failing to reflect this at the highest level indicates a failure to fully exploit the expertise of HR directors. In order to prevent HR functions being overlooked, those working in HR functions have to be more vocal in showing why their expertise is essential to business strategy at the highest level.*

The inquiry was told that the HR profession has a critical role to play in making work better, but that all too often employers failed to see the benefits of improving training and development, work organisation and employment relations. The emphasis in corporate Britain was said to be too much on managerial control and finance, rather than on supporting innovation and working smarter.

Keith Sisson, professor of industrial relations at the University of Warwick, says the UK lacks the general social dialogue arrangements and institutional framework to deal effectively with major problems at work. He nevertheless argues that a considerable amount can still be done to improve workplace performance, including spreading the sort of best practice and experience that conciliation service ACAS provides through its self-help toolkits and case studies. In his recent paper for ACAS, he concludes:

*Employment relations, however harmonious, cannot solve the productivity problem entirely, but Acas experience can teach us a great deal about what drives productivity when it comes to individual employees and teams and the importance of unlocking potential via good training, communication and involvement, well being, job design and, of course, pay. There are pockets of good practice and workplace innovation, but they are too few and far between.<sup>27</sup>*

**Recommendation:** *Britain should invest significantly more in management training so that managers can manage their staff fairly and effectively. Sector skills bodies and trade associations could, for example, seek to make funds available for employers to support the implementation of the HSE's successful Management Standards.*

#### Employee ownership

Encouraging various forms of employee ownership (for instance, co-operatives, mutuals and companies with employee stock ownership plans) was proposed to the inquiry as both a route to higher productivity and a way to make work better. Although the sector remains relatively small (around 2 percent of GDP, with most employee-owned firms converted from mainstream businesses), some of the largest employee-owned companies – like John Lewis and Arup – garner considerable public support.

According to research by the Employee Ownership Association (EOA) and Capital Strategies, the sector is expanding. The EOA claims that the largest employee-owned companies now generally outperform the largest non-employee-owned businesses, achieving 4.5 percent year-on-year productivity growth and a 25 percent annual increase in profits. ACAS suggests that employee ownership gives employees a voice in how a business is run – through employee engagement – as well as a stake in the success of the business.

The government's 2013 consultation on supporting the employee ownership sector demonstrated the high level of employee support for such organisations, although it also highlighted the importance of ensuring that the employee's role in the business is properly structured and well communicated. The evidence reviewed by the inquiry suggests that what seems to matter most is whether workers are able to participate in organisational decision making both individually and collectively. It was said that once worker voice is established then ownership policies can have a powerful reinforcing effect.<sup>28</sup>

It was suggested to the inquiry that a tax-advantaged employee-ownership scheme should only be made available to employers if, at the same time, some provision is also made for collective employee participation in the governance of the workplace, with the precise model to be left to the employer and employees to determine. What is especially important in this context is that employers must do more than satisfy a minimum set of conditions – for example, demonstrating that they have established a consultative committee.

While this approach sounds straightforward, it is not without risks or flaws. It was said, for example, that employers may seek to make use of the fiscal incentives by offering "sham" arrangements for consultation that are difficult to challenge. Graeme Nuttall, the government adviser for employee ownership, argues that "if employee ownership is to enter the mainstream, it must do so based on its commercial success, not on tax exemptions".

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- 20 CIPD *Employee Outlook: Focus on Trust in Leaders* (2013). Also see a 2010 survey by Lane4 consultants on trust in leaders, which showed that 93 percent say that trust in line management is important to performance, but one in eight (13 percent) distrust their line manager and 21 percent trust them less than last year.
- 21 The Workplace Employment Relations Study assesses how employment relations have changed. The latest study in 2011 covered 2,700 workplaces across the UK.
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- 25 For more information, see HSE website: <http://www.hse.gov.uk/stress/standards/>
- 26 A 2012 study by Otus showed that of the 595 board members of companies in the 50 largest quoted companies in the UK, only five came from an HR background, meaning fewer than 1 percent of the UK's most senior executives have expertise in HR.
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### 3. Insecurity at work

The evidence the inquiry reviewed showed that insecurity affects a broad cross-section of workers, including unskilled, low-paid workers as well as better-paid, skilled workers.<sup>1</sup> The problems could be permanent or episodic and range from underemployment and poor treatment at work to anxiety over loss of job status and abuse of zero-hours contracts. It was stressed that insecurity at work not only has detrimental effects on people's health and well-being, but can have negative effects on motivation and productivity too, as well as cost implications for the public purse.<sup>2</sup> Some evidence even suggests that the effect of perceived insecurity can be almost as serious as unemployment.<sup>3</sup>

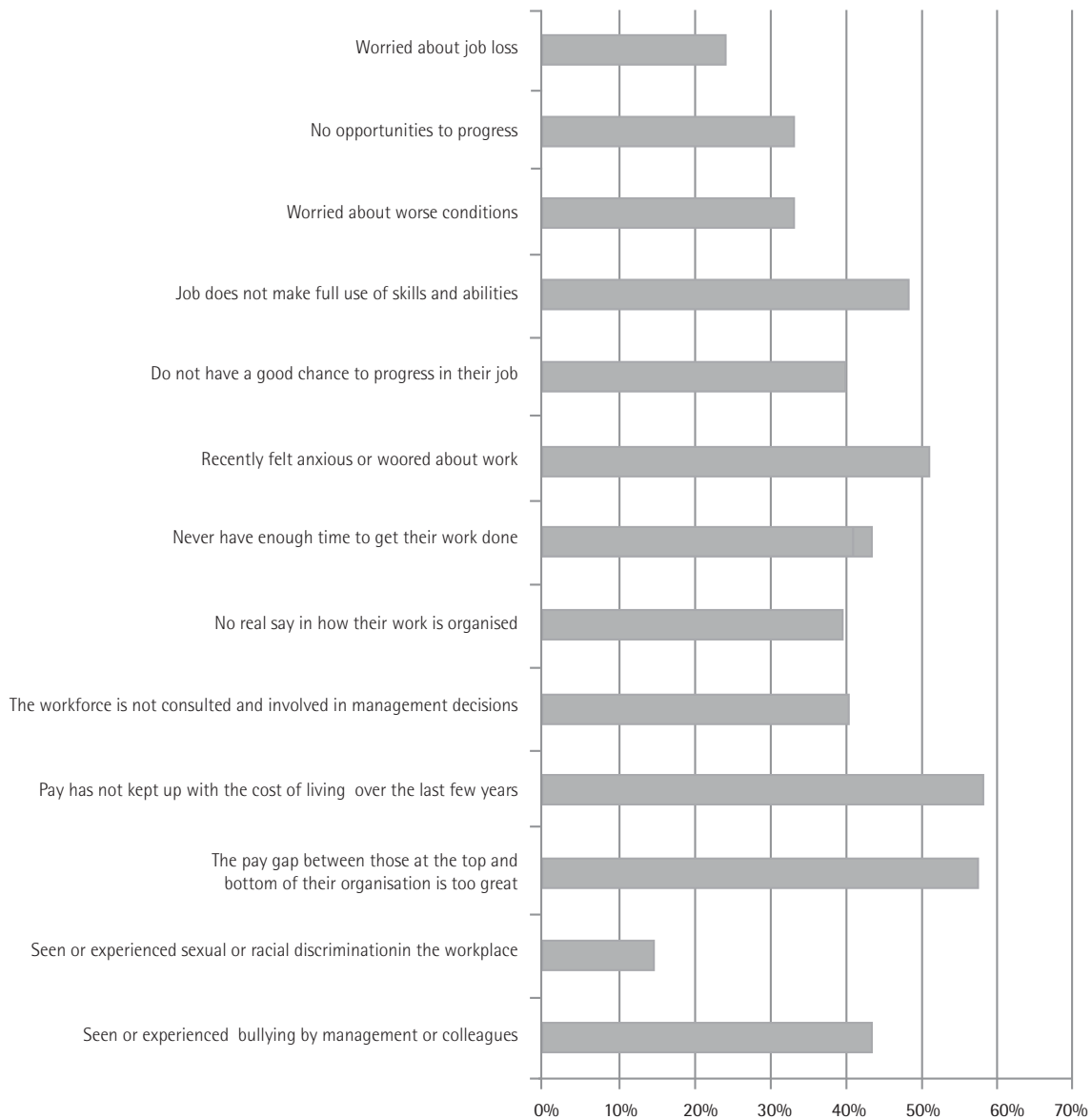
negative impact of job insecurity on workers,<sup>4</sup> including "psychological contract breach" where trust breaks down between employees and employers. For example, the British Psychological Society told the inquiry how major restructuring of organisations with resultant downsizing and outsourcing can lead to job insecurity. At its very least, insecurity at work threatens the notion of fair treatment and undermines the critical features of what makes for good work, such as the opportunity for personal control and skill use, job satisfaction, voice and engagement.

*Recent psychological studies confirm the negative impact of job insecurity on workers.*

– British Psychological Society

Recent psychological and sociological studies confirm the

**Chart 8: Problems in the world of work – survey of employees' views**



Source: YouGov poll commissioned by TUC/Smith Institute

Notes: Total sample size was 4,555 adults, of which, 2,355 were employees. Fieldwork was undertaken on 5–7 August 2014. Survey was carried out online. Figures have been weighted and are representative of all GB adults (aged 18+).



## Secure employment?

In a survey by Survation in February 2014 of 1,000 workers across different sectors, roughly a third said they feel less secure at work today than they did in 2010 and the vast majority identified secure full-time employment as a top priority. *The Guardian's* ICM poll in June 2014 on attitudes to work indicated that 34 percent of respondents feared redundancy and 54 percent were worried about their wages lagging behind living costs.

ONS data shows insecurity at work rose sharply during the recession, in part due to greater cost pressures, falling demand and higher unemployment.<sup>5</sup> Importantly, higher underemployment was also a factor, with one in five part-time workers working part-time because they cannot find full-time employment.<sup>6</sup> The inquiry was told that what we are witnessing at the bottom end of today's labour market is growing insecurity, the spread of low pay and more in-work poverty.

*There is a crisis of insecurity and mental health. Members fear redundancy, casualisation, and loss of identity and self-esteem.*

– Union representative at inquiry discussion in Cardiff

Case studies by the Joseph Rowntree Foundation on insecurity and low pay found that while some employers (mostly in the public sector) could make changes that would improve security and progression without damaging their organisation, private-sector employers of low-paid workers were unlikely to make changes of their own volition.<sup>7</sup>

*Some employers have a choice and could survive offering more secure employment...*

– Inquiry discussion with JRF in York

Insecurity at work is not, however, confined to low-skilled or low-paid employment. In some professions, such as IT, levels of insecurity remain high. A recent study of over 2,000 IT workers by Randstad Technologies, for example, indicated that over half of respondents felt insecure in their job. Mark Bull, the chief executive of Randstad UK, commented:

*Britain has a problem with professional fulfilment, with almost 10 million British employees saying they are not happy with their current employer, and the UK's workers being less professionally fulfilled than key peers internationally. We believe that employee fulfilment should matter to employers because it has a correlation with important factors such as retention and absenteeism and potentially UK worker productivity levels, which are currently below that of its international peers.<sup>8</sup>*

The view from the inquiry's labour market experts is that labour market regulations to tackle insecurity at work do not necessarily lead to higher unemployment. Before the recession hit, other countries with more rigorous labour market regulation achieved employment rates comparable to the UK's without witnessing greater insecurity at work – notably the Nordic countries, Germany, Austria and the Netherlands. The OECD, for example, could find no systematic relationship between the strength of labour market regulation and the level of unemployment.<sup>9</sup>

The evidence we received strongly suggests that the "race to the bottom" (and the insecurity at work that follows) is not an inevitable prerequisite of a modern, global and high-employment economy. Moreover, alongside changes in management ethos and employment practices, government interventions (through regulation and public procurement, for example) can combat the drivers of workplace insecurity.

## Worried about work

During the inquiry, employees voiced their concerns about the rising levels of anxiety in relation to insecurity at work. This is reflected in studies showing the percentage of the workforce afraid of losing their job and becoming unemployed rising significantly in the recession,<sup>10</sup> especially in the public sector. The view from both employers and unions was that workers who are stressed are less productive and less engaged.

Evidence from Professor Phil Taylor, of the University of Strathclyde, showed that employers' cost-reduction strategies (through performance management, lean working and sickness absence management programmes) had led to higher levels of stress and insecurity. Taylor says a vicious cycle emerges whereby punitive performance management leads to insecurity, which contributes to ill health and then the introduction of sickness management programmes.<sup>11</sup>

The inquiry was told that the level of fear at work is higher than in the 1980s, when a greater percentage of the workforce were unemployed. This is especially important because the *fear* of job loss can have the same effects on health and well-being as does unemployment. Perceived insecurity can increase the risk of physical and mental illness, both of which have a social cost.

*Insecurity is bad for individuals, bad for employers because workers will take more sick days and be less productive, and bad for the taxpayer because the costs to the NHS will be higher than would otherwise be the case.*

– Comment at the inquiry discussion in Liverpool

Insecurity also extends beyond the fear of being made redundant to anxiety about unfair treatment in the future. Evidence from workplace surveys shows that the fear of unfair treatment (such as arbitrary dismissal, discrimination or victimisation by management) rose as a consequence of the recession. Around a third of employees are concerned about the risk of at least one kind of unfair treatment. There are slightly higher levels of anxiety in the private sector, perhaps reflecting the absence of unions, whose presence in the public sector arguably acts as a guarantee of procedural justice.

Research reviewed by the Inquiry showed workers are concerned about pay reductions (just over one in three), job influence (just under one in three), being moved to a job with lower skill requirements (one in four) and being given less interesting work (just over one in five). Most seriously perhaps, more than half the workforce (51 percent) are concerned about at least one risk to their job status.<sup>12</sup>

*Poorly managed workplaces are not always visible. You can have good top management and really bad line management.*

– Comment at the inquiry discussion in London

These results will have been shaped by the experience of economic downturn, but the evidence to the inquiry suggests that insecurity at work is a long-term structural issue that will not simply disappear as we exit the recession.

**Table 2: Reasons for stress at work**  
*In England and Wales*

	Not very/ not at all stressful	Very/quite stressful
Frustration with poor management	27%	32%
Excessive workload	34%	26%
Not enough support from managers	34%	25%
Unrealistic targets	33%	25%
Job insecurity	38%	24%
Reduction in budgets	32%	23%
Bad workplace atmosphere	39%	22%
Threat of redundancy	41%	18%
Not enough support from colleagues	42%	18%
Friction with other staff	42%	15%
Too much overtime	41%	13%
Bullying	43%	9%

Source: Populus, 2013

### Health and well-being

Although the inquiry did not examine in any detail workplace health and safety and issues such as accidents at work and industrial diseases, it was made aware of the importance of workforce health and well-being in relation to organisational performance and national prosperity.<sup>13</sup> The inquiry saw evidence from the Health & Safety Executive<sup>14</sup> which showed that, for example, accident rates are lower (and awareness of workplace risks is higher) where employees genuinely feel they have a say in health and safety. Research has also shown that workplaces with health and safety committees where some members are selected by unions have significantly lower rates of work-related injury than those found in workplaces with no co-operative based health and safety management.

The inquiry was also told that not only is there a business case for promoting health and well-being at work but also prevention at the workplace saves the public purse.

*Factory acts guarded against spinning jennies. But now it is about stress and mental health.*

– Labour market expert

It was said that investing in staff health and well-being was a sign of a good employer and that unions had played an important role over many decades in improving health and safety (and well-being at work). The inquiry was told that it

### Union health and safety representatives

There are over 150,000 trade union safety representatives appointed and supported by unions. Evidence shows that workplaces with union safety reps and joint union-management safety committees have major injury rates less than half of those without. The safety reps' rights and functions (under the Safety Representatives and Safety Committees Regulations 1977) include a legal right to:

- represent employees in discussions with the employer on health, safety or welfare and in discussions with the Health & Safety Executive or other enforcing authorities;
- investigate hazards and dangerous occurrences;
- investigate complaints; carry out inspections of the workplace and inspect relevant documents;
- attend safety committees; and
- be paid for time spent on carrying out their functions, and to undergo training.

Safety reps in union-recognised workplaces have the legal right to paid time off for union-approved safety training. The regulations state that no legal duties are placed on safety reps, because of their functions and rights. A safety rep has no greater liability in law for health and safety breaches than does any other employee.

was vital that the government remained committed to keeping and improving the health and safety regulations and that more attention should be paid to preventing occupational diseases, such as certain cancers.

### Better health at work for Interflex staff

Unionlearn in the Northern region first met with Interflex, a multinational chemical company based in Sunderland, in November 2010. The first priority was to get the firm involved in the North East Better Health at Work Award, which they began in February 2011. It achieved the Bronze Award after completing three workplace health initiatives around smoking cessation, alcohol awareness and stress. Through the stress-buster sessions that were held as part of that health strand, problems with the new shift system were identified. It came to light that the introduction of continental shifts (four days of work comprising two days and two nights, then four days off) was having a negative impact on staff and causing burn-out. The same policies are now being followed on the main production site at Dalkeith, Scotland.

The inquiry was told that besides work-related stress, one of the biggest causes of absence at work is back pain and musculoskeletal injuries, which can affect all age groups. It was also noted that presenteeism – being at work when unfit or unwell – is a growing concern and needs to be taken more seriously by employers.<sup>15</sup>

The point was also made that occupational health is not only about protecting staff, but also about promoting the general health and well-being of employees. It was said that the numbers of employers who offer health benefits, such as free or subsidised gym membership and counselling services, has increased but that such benefits were confined

to larger organisations.

### Devonport Royal Dockyard

The dockyard improved its health and safety culture by getting the whole workforce involved in managing health and safety issues, ranging from working at height to radiation. In 2006 a Safety Culture Team was formed, including an industrial health and safety representative on secondment. The union guidance group look at basic safety, personal protective equipment, and better practice in risk assessments. It co-ordinates weekly safety meetings and also visits other companies to keep improving communication and joint working with the health and safety representatives. Staff take part in "Time Out for Safety" sessions and are encouraged to bring any safety matters to the attention of the team leader and to discuss any ideas they have for safer working. Benefits so far are: accidents down by 35 percent; profits up by 8 percent; and sickness absence is below 3 percent.

Source: Health & Safety Executive

Despite advances in technology and improvements in health and safety, construction is still one of Britain's most dangerous industries.<sup>16</sup> Although construction accounts for about 5 percent of all employees, according to the Health & Safety Executive it accounts for 27 percent of fatal injuries to employees and 10 percent of reported major injuries. In its submission to the inquiry, the Union of Construction, Allied Trades & Technicians (UCATT) said that construction workers face a multitude of risks to their health, including asbestos-related diseases such as pleural plaques.<sup>17</sup>

### Workplace counselling

The inquiry heard that just under half the workforce experience unreasonable treatment at work, mostly originating with managers and supervisors.<sup>18</sup> The most common forms are incivility and disrespect, with cases of violence and injury less common but still worryingly present in some workplaces.<sup>19</sup>

The British Association for Counselling & Psychotherapy told the inquiry that its research showed that at least three employees in every 10 suffer from mental health problems (ranging from short-term depression to more chronic conditions), which cost British business up to £1,000 per employee each year. Common causes are the kind of insecurity at work already mentioned, and changes to work practices and workloads, as well as poorly managed working relationships.

The BACP's evidence showed that workplace counselling paid for by employers (either in-house or through an employee assistance programme) is cost-effective and offers benefits to both employees and employers (not to mention the exchequer – the government's review of sickness absence in 2013 said that 300,000 people a year fall out of work and into the welfare system because of health-related issues).<sup>20</sup> Employers' schemes could also help reduce the pressure on NHS services.<sup>21</sup>

It was said that only a third of all employees receive any support to manage workplace stress<sup>22</sup> and that extending workplace counselling could make a difference. However, it was also said that psychological problems that manifest themselves at work as

stress may not be work-connected. It was also said that therapy is not always a quick or simple solution and that there needs to be more of a policy focus on prevention.

### Work-related stress and psychological disorders

Work-related stress is defined as a harmful reaction that people have to undue pressures and demands placed on them at work. The latest estimates from the Labour Force Survey show the following:

- The total number of cases of stress in 2011/12 was 428,000 (40 percent) out of a total of 1 million cases of work-related illness.
- The estimated cases of work-related stress, both total and new cases, have remained broadly flat over the past decade.
- The industries that report the highest rates of total cases of work-related stress (three-year average) were human health and social work, education, and public administration and defence.
- The occupations that reported the highest rates of total cases of work-related stress (three-year average) were health professionals (in particular nurses), teaching and educational professionals, and caring personal services (in particular welfare and housing association professionals).
- The main work activities that respondents said caused their work-related stress, or made it worse, were work pressure, lack of managerial support, and work-related violence and bullying.

Source: Health & Safety Executive

*In 18 months, stress related absence was cut by a third. This achievement resulted from a series of business-wide initiatives combined with a new approach to workplace counselling.*

– Royal Mail Group

### The Workplace Wellbeing Charter

The Charter (supported by Public Health England) is now widely recognised as *the* business standard for health, safety and well-being across England. It is a statement of intent, showing a commitment by the employer to its staff. It includes a series of actions for employers to implement to put good work and good health at the heart of their business. Organisations using the charter have:

- the ability to audit and benchmark against an established and independent set of standards – identifying what the organisation already has in place and what gaps there may be in the health, safety and well-being of their employees;
- the capacity to develop strategies and plans – the charter provides a clear structure that organisations can use to develop health, safety and well-being strategies and plans; and
- national recognition – the Charter award process is robust and evidence-based, and over 1,000 organisations across England hold the award.

The Charter focuses on leadership, culture and communications, where it claims even small steps can make a big difference to the health of staff.

### Precarious work

Precarious work runs alongside the fear of job loss, unfair treatment, and the reduction of job status as a source of insecurity. Concerns were raised about insecurity due to the contractual status of work: that too many workers do not have the security of a permanent contract or minimum hours, or have to work in more than one job to get by. There were also concerns about insecurity among the self-employed, and about the growth of insecurity in the public sector.

While the data suggests little change in some types of precarious work,<sup>23</sup> the proportion of workers with long-tenure jobs (those that last for more than 10 years) has fallen since the mid 1980s. For men over the age of 35, especially those with low skills, the availability of these jobs has reduced significantly at the same time as job tenures for women have risen – largely as a result of more generous maternity leave, maternity pay and (possibly) the right to request flexible hours of work. There is also evidence to show that lower-skilled men who lose their jobs find it difficult to secure alternative employment at comparable wages. The evidence suggests that there is a significant “unemployment pay penalty”.<sup>24</sup>

It was said to the inquiry on several occasions that the UK does not have to have an insecure labour market. Examples were given of low-paid retail work in Germany, for example, where 80 percent of retail workers have had two- to three-year apprenticeships and most of the work is full-time and stable, with low labour turnover. Although the stable German retail model is under threat from so-called mini-jobs, the contrast with the UK is still striking. According to Professor Caroline Lloyd of Cardiff University, the contrast between the UK and countries like Norway is even more noticeable. She comments that while cleaners earn lower than average salaries in Norway, the wage level is decent enough to make a living without a second job. There is also much more security at work and worker autonomy.

### Food processing in the UK and Denmark

Jobs can be designed to up-skill workers and increase pay. A study on low-wage work in wealthy countries compared food-processing work in the UK and Denmark. The study showed that Danish workers fared much better than their UK counterparts. For example:

<i>UK food processing workers</i>	<i>Danish food processing workers</i>
31 percent low-paid	less than 5 percent low-paid
routine, low-skilled work	high levels of automation and monitoring
piecemeal automation	emphasis on value added
limited exports	highly export-orientated
deteriorating job quality	high productivity

Source: Gautie, J and Schmitt, J *Low Wages in the Wealthy World* (2010)

### Self-employment

The self-employed make a considerable contribution to the nation's economy. For some, working for themselves is a positive

choice and offers greater flexibility and freedom. However, for others it is forced upon them and is a source of insecurity. Despite much media hype about high-tech self-employment, the most common self-employed occupations are taxi driving, construction and carpentry.<sup>25</sup>

According to the latest ONS statistics, self-employment is at a historically high level of almost 15 percent of all those in employment (4.6 million), compared with 13 percent in 1996 and only 8.7 percent in 1975. This figure is roughly in line with the EU average. A large and growing number of older people are now self-employed. This suggests that self-employment rises in recessionary conditions as people make a virtue of necessity after having lost their jobs as permanent employees, often establishing their own business using a redundancy payment. Recent research shows, for example, that around one in four of the self-employed report say they would like an employee job if such an opening became available.<sup>26</sup> Nevertheless, the ONS claims that fewer people left self-employment over the last five years than at any period in the last 20 years.

The average earnings for the self-employed have fallen in real terms by around 22 percent since 2008, confirming the story of people working for themselves and struggling to make ends meet. It was also said that many of the self-employed work much longer hours,<sup>27</sup> and have no holiday pay and no pension. The TUC pointed out that the number of self-employed who either run a business or are a sole director actually fell in 2010, suggesting perhaps that rising self-employment is part of a wider shift towards job insecurity.

Whether the current rise in self-employment is due to structural change or just cyclical, many more people are now self-employed. It was said that it is therefore important for policy makers to try to do more to help the self-employed, who are vulnerable to sudden drops in income through no fault of their own, when they cannot work. One suggestion was to improve employment protection insurance for the self-employed, which it was said is generally very expensive.

### Bogus self-employment

There are long-standing concerns about the problem of false employment in construction. The construction union UCATT claims that this affects over 400,000 construction workers. False self-employment can undermine pay and conditions and has negative consequences for safety and training – as firms that are unwilling to employ their workers directly often do not invest in training. The tax loss arising from false self-employment is estimated at around £1.7 billion a year, mostly from non-payment of national insurance contributions by employers.

*I have worked 25 years in construction: over 90 percent of that time has been on a false self-employed basis. You have no rights and can be sacked at a moment's notice and you rarely see any safety reps on site.*

– Bricklayer at inquiry discussion in Liverpool

While the government has sought to clamp down on the growth of “payroll companies” and umbrella firms that engage workers



on a bogus self-employed basis on behalf of employers, false employment continues to be ingrained across the construction sector.

It was mentioned to the inquiry that in Sweden the main contractor is ultimately liable for the actions of all subcontractors. Under a union agreement, the main employer accepts responsibility for everyone on site for all safety breaches. All contractors pay into a fund to pay unpaid wages of workers on site if the subcontractor does not pay. It was said that this is very different to the UK system, but there is merit in exploring this and other options to ensure legal compliance among subcontractors.

**Recommendation:** *More determined action is needed to tackle 'false' self-employment, especially in construction where there is evidence that it is widespread.*

### Homeworking

Homeworking is one of the fastest-growing parts of today's workforce, rising in numbers from 2.9 million in 1998 to 4.2 million today.<sup>28</sup> Although a proportion of homeworkers are in low-paid work and around a quarter are employees working from home, the majority are self-employed and in professional or skilled work.

The inquiry heard that while flexible working is common in most workplaces, employers were often sceptical about the productivity benefits of homeworking. However, Andrew Sutherland commented in a recent ACAS policy discussion paper:

*In fact, the notion that home workers are less productive than traditional office-based ones is heavily disputed by the overwhelming majority of commentators, who recognise that homeworking is often associated with increased productivity ... perhaps the most fundamental explanation is based on the frequent finding that homeworkers put in longer hours.<sup>29</sup>*

The inquiry heard that the picture of homeworking is far from straightforward and that a lot of homeworking is ad hoc and partial. It was said that a distinction needs to be drawn between those who work at home all the time and those who have the opportunity (or necessity) to undertake some work at home. ACAS's experience of homeworking is that those who homework moderately show the highest levels of well-being; more so than both office-based workers and those who work mainly from home.

According to Tim Dwelly, director of the Live/Work Network, more people are thinking differently about how they live and work, including a generation of skilled and motivated middle managers who have used their redundancy pay-off to launch a business. The advent of superfast broadband and changes to planning regulations<sup>30</sup> should encourage the trend, especially in remoter areas (the South West, for example, already has the highest density of homeworkers). As Caroline Waters, former BT director has commented:

*Work is something you do, not somewhere you go.*

More than half of homeworkers use collaborative workspaces or hubs, where facilities such as teleconferencing and meeting rooms are available. Evidence from Third Spaces Group, which operates work hubs in Australia, shows how teleworking reduces congestion (and is therefore environmentally friendly), improves work-life balance and supports small business growth. Its report states that...

*... in order to obtain the productivity benefits that will come from a knowledge economy, we need to look at new forms of working and the infrastructure required to support it.<sup>31</sup>*

According to the 2011 Workplace Employment Relations Study, around a third of British employers now offer homeworking to at least some of their employees, up from 25 percent in 2004. The CBI says that more of its members are offering teleworking from home or work hubs.<sup>32</sup> Several large companies, such as BT and Deloitte, have introduced homeworking schemes, which they claim are as productive (if not more productive) than office-based employment and help attract and retain staff. However, it was said that employees should be protected against being forced to work at home and be wary of their tax status (especially over tax reliefs and business rates).

### Agency and temporary work

At the sharp end of precarious employment is temporary and agency work, which affects around 6.5 percent of the workforce. Involuntary temporary workers (people in temporary jobs because they could not find permanent ones) have been growing in number since 2010, and now outnumber voluntary temporary workers by two to one.<sup>33</sup> The sharpest rise has been in casual (mainly agency) work, mostly in insecure, low-wage jobs.

*Agency workers are the underdogs at work and managers know it.*  
– Comment at discussion event in Liverpool

Some contributors raised concerns about this increase in involuntary temporary work. The Communication Workers Union, for example, told the inquiry that agency work (and pay-between-assignment - PBA - contracts)<sup>34</sup> are becoming increasingly prevalent in the postal, telecommunications and financial services industries. This view was shared by participants at the inquiry's roundtables, where it was said that agency and temporary work in these sectors generates a "race to the bottom" in pay and conditions. It was also noted that the extensive use of agency workers to plug short-term skills gaps may reduce the willingness of employers to invest in skills, with a detrimental effect on productivity.

*In one telecoms company where we have 3,000 members in agency work, the vast majority of them are on PBA agreements, which became the default contract following the Agency Workers Directive "Swedish derogation".*

– Communication Workers Union officer

It was reported to the inquiry that non-permanent contracts are also evident in the public sector. For example, the Chartered Society of Physiotherapy referred to its recent survey of NHS

physiotherapy staff. The survey indicated that 80 percent of NHS workplaces use short-term contracts and 60 percent say this is on the increase.

Agency work is now regulated by the Agency Worker Regulations 2010, which are designed to ensure agency workers are treated in the same way as comparable workers of a hiring employer after 12 weeks of employment – assuming that a comparable employee can be found (such workers are entitled in principle to the national minimum wage, rest breaks, paid annual leave, and health and safety protection). However, under the so-called “Swedish derogation” agency workers holding a permanent contract with an employment agency are excluded from the equal treatment rights. In principle this creates the possibility of a two-tier workforce, with the employees of the hiring employer enjoying better terms and conditions than workers employed by the agency. It can be argued that this defeats the purpose of the regulations and creates an incentive to use agency staff at lower cost.

The inquiry was made aware of initiatives by local authorities, such as Corby, which has developed an employment agency code of conduct to clamp down on poor practices and ensure that agencies and employers operate in a legally fair and responsible manner.

#### **Corby employment agency code of conduct**

Corby has a large number of employment agencies, some of which were found to be exploiting workers and adding to the climate of job insecurity in the town. In 2013 HMRC visited local employment agencies and discovered that £100,000 was owed to 3,000 workers in the area. In an effort to combat the problem the local MP, Andy Sawford, and the borough council recently established the Corby Employment Agencies Forum, which sets common, high standards for the town's businesses. The forum, which involves employers, unions, workers, employment agencies and trade associations, has adopted a Code of Practice for Employment Agencies, Client Companies and Temporary Workers, which includes a commitment by employment agencies to operate in a lawful and ethical way and for employers to:

- avoid the replacement of permanent jobs with temporary employment through effective workforce planning;
- carry out regular reviews with their agencies to establish that the management of temporary workers on site is carried out effectively and professionally; and
- contract only with agencies that sign up to the code of conduct.

The forum has signed up 11 of the town's employment agencies and employers, including TATA Steel and RS Components.

**Recommendations:** *There is a strong case for removing the ‘Swedish derogation’ to stop workers from being undercut by agency staff. This would help to ensure that the benefits to workers’ security are matched by benefits for employers. Government should at the very least seek to remove the loopholes that in effect exempt agency workers from securing equal treatment under the Agency Workers Regulations.*

*The government (and local government) should consider the benefits of local employment forums with binding agreements and codes of practice for those engaged in the employment of agency and temporary workers.*

#### **Zero-hours contracts**

The precarious and insecure nature of work in today's labour market is epitomised by zero-hours contracts. The ONS estimates that there are now 1.4 million zero-hours contracts.<sup>35</sup> Many are in the private sector in low-wage industries such as retail, hospitality, entertainment and leisure. But the problem is not just confined to low-paid industries. The inquiry received reports that zero-hours contracts are spreading in further and higher education, cardiology and psychiatry, the fire and rescue services and among commercial pilots.

*Zero-hours contracts have been a long-running sore in colleges and universities, where teaching staff on hourly contracts do the same work as those on permanent contracts but are paid much less and have worse conditions.*

– University lecturer

A recent study of the retail sector by Cambridge University concluded that zero-hours contracts “cause widespread anxiety, stress and depressed mental states in workers ... and can block worker access to education as well as much-needed additional income.”<sup>36</sup> The study's researchers claim that zero-hours contracts are the tip of the iceberg and that the abuse of workplace flexibility (in the form of extreme part-time contracts whereby workers have to work overtime, key-time contracts where workers are given a limited amount of hours and asked to state additional hours, and frequent rearranging of shifts) is becoming more widespread. According to the researchers:

*If employees have a right to request more predictable hours enshrined in legislation that the management would have to justify refusing, it would at least help redress the balance slightly.<sup>37</sup>*

The inquiry was also told by legal experts that employment contracts are often very poorly worded and in some cases workers on zero-hours contracts are unaware of their rights.

Although the inquiry recognised that not all zero-hours contracts are bad and such arrangements can work for both employers and employees,<sup>38</sup> the evidence suggests they leave a lot of scope for abuse and are therefore associated with exploitative working practices. Throughout the inquiry people called for something to be done to curb the spread of zero-hours contracts, which were said to be shifting the balance of risk too much onto employees. While there is recognition that not all such contracts create insecure employment and many workers are content with zero-hours flexible working, the majority of contributors to the inquiry claimed they were being widely misused as a management tool, leaving workers (especially those on low wages) vulnerable to periods without income. Indeed, ONS research estimates that around one in 10 employers report that they pay staff on zero-hours contracts less than those doing the same job under a permanent contract. Some of these contracts (covering 125,000 workers) also contain exclusivity clauses, preventing individuals

from accepting work from other employers even though the primary employer may not offer any work at all.

There was a huge response to the government's recent consultation on zero-hours contracts,<sup>39</sup> with the vast majority (some 83 percent) in favour of banning exclusivity clauses. The general response from the inquiry's roundtable discussions on the subject was that government action needs to go beyond banning exclusivity clauses and establish a voluntary joint code of practice between business representatives and unions.

**Recommendation:** *To avoid the abuses of zero-hours contracts, employees should be free to work for other employers (ending exclusivity clauses), have the right to be offered a contract with minimum hours after a regular period in work, and be entitled to compensation when shifts are cancelled at short notice.*

### Insecurity in the public sector

A consistent message emerging from analysis of the 2012 Skills and Employment Survey<sup>40</sup> is that insecurity is now increasingly as problematic in the public sector as in the private sector, which is a change from the historic pattern. Public-sector workers today feel more threatened and insecure than at any time in the recent past – more than one in four are afraid of losing their jobs and becoming unemployed.

Not only have perceptions of job security in the public sector declined markedly over the past decade, but among public-sector workers the inquiry found a sense that the public service ethos their employers once had towards considering wider social considerations has been almost lost in the drive for lower costs.

Outsourcing and contracting out were often mentioned as causes of instability at work in the public sector. For example, healthcare unions claimed that the growth in contract tendering under the recent NHS reforms is pressuring managers to make more of their workforce "flexible" so that they can easily downsize at short notice if they lose a contract. The financial squeeze has also encouraged a wider use of fixed-term contracts in other public services, such as education and local government. It was noted that many of these trends associated with outsourcing featured in the private sector, especially where there had been hostile takeovers and mergers and acquisitions.

The inquiry was told that the Transfer of Undertakings (Protection of Employment) Regulations (known as TUPE) (which are intended to preserve terms and conditions of employment when a business is transferred as a going concern from one owner to another – notably in the contracting out of public services and in mergers and acquisitions in the private sector) have been critical in protecting transferred employees. Although recent "tidying-up" reforms to the regulations were not as threatening as many feared, evidence presented to the inquiry suggests that some of the recent changes risk deepening the experience of insecurity. While some of the government's reforms have been relatively uncontroversial, concerns were raised that some of the measures make unilateral changes to terms and conditions and ignore the provisions of collective agreements in operation before the

transfer took place. Some of the public service unions to which the inquiry spoke, for example, had concerns about the way the new regulations allow for redundancy negotiations to begin before any transfer.

*Even where terms and conditions are protected under TUPE, we have witnessed transferees being levered out and replaced by new workers who are cheaper to employ and more flexibly deployed.*

– Union representative

It was said that the government must closely monitor and evaluate the impact of the TUPE changes to ensure that they do not encourage a move towards a two-tier workforce. The inquiry was also told that it was for government to ensure that TUPE protects transferred workers and that the regulations should seek to maintain and harmonise labour standards, not lower them.

### The Welsh government's two-tier workforce code

In June 2014 the Welsh government introduced its revised "two-tier workforce code", which aims to protect public services and support a fair deal for the workforce. The code aims to ensure, where public services are outsourced to a third party, that: staff will transfer and TUPE will apply and if TUPE does not strictly apply, the principles of TUPE should be followed; and new recruits to the service provider undertaking work on the contract will be employed on terms and conditions no less favourable than transferred staff. The code states that public service organisations will enforce any contract conditions placed on the service provider that have been put in place under the code. This means that compliance with the code must form part of the contract management process. The Welsh government monitors the application of the code by requiring public bodies to report annually on the number of outsourcing contracts entered into and whether or not the code was applied in each case, as well as information on any disputes arising from the code.

The inquiry was told that abolition in England of the two-tier code for public service contracts<sup>41</sup> (a non-statutory code introduced in 2005 to ensure that new staff would be employed on terms and conditions no less favourable than staff transferred to a new employer in cases where TUPE did not apply) had made it easier for private contractors to cut pay and conditions. Although the withdrawal of the two-tier code does not impact on existing TUPE contracts or stop public bodies incorporating the clauses of the code into individual contracts, evidence was presented to the inquiry to show that employees in some cases now have less protection than before in regard to outsourcing.<sup>42</sup>

A recent study by the Smith Institute showed that making cost savings in response to spending cuts is the key objective of outsourcing, and in some cases leads to significant cuts in pay and benefits and increased work intensity. Although TUPE offers some protection for transferred staff, the Smith Institute's case studies demonstrated that the new generation of outsourced workers generally receive lower pay, poorer pensions and less opportunity for progression and skills development.<sup>43</sup>

**Recommendations:** *The government should follow the example of the Welsh government's two-tier code for public service*

*contracts and reform the Principles of Good Employment Practice to ensure higher labour standards.*

*The government should review the recent changes to the TUPE Regulations and consider reversing those amendments that encourage a move towards a two-tier workforce.*

### **Responsible employment contracting**

Good corporate governance extends beyond the boardroom and management practices. It also embraces how an organisation contracts and relates to its stakeholders and suppliers, and whether it chooses to use its procurement for wider social and ethical purposes. The international evidence indicates that outsourcing and subcontracting (especially in sectors like social care, construction, food processing and production, contract cleaning and clothing manufacture) has contributed to the deterioration of employment conditions.<sup>44</sup> Studies of supply chain dynamics in highly competitive markets, like food production, reveal how the relationships between large buyers (such as supermarkets) and their smaller suppliers can lead to increased casualisation and agency working, insecurity at work, and work intensification.<sup>45</sup>

#### **Freedom company**

Freedom was founded in 1996 with a management buyout from Yorkshire Electricity. With offices throughout the UK and the USA, the company is increasingly recognised as a world-class provider of engineering services to the utility sector and wider markets, working primarily with electricity distribution networks. The company has a strong commitment towards ethical procurement which it believes "not only makes business sense, but also has the potential to improve the living and working standards of people around the world". Its objective is to ensure that people in the supply chain are treated with respect and have rights with regard to employment, including the rights to: freely choose employment, freedom of association, payment of a living wage, working hours that comply with national laws, equal opportunities, a recognised employment relationship, freedom from intimidation and a safe and healthy working environment. The company states that the same principle of fair and honest dealings must be extended to all others with whom its suppliers do business, including employees, subcontractors and other third parties, and their local communities.

Advocates of improving corporate social responsibility have long argued that procurement can make a positive contribution to sustainable development and that social clauses in contracts through the supply chain can improve the living standards and working conditions of workers and local citizens. The use of labour clauses in procurement, for example, has also long been supported by national and international trade unions as well as fair trade and anti-poverty campaigners. It was said that the need for such social clauses is now more urgent because so many firms "export" their employment relationships to third parties and contractors.

The level of business interest in responsible procurement has been less pronounced, although an increasing number of large and multinational companies are adopting social and ethical procurement policies. However, the focus is still largely on environmental standards and minimum employment rights, such

as prohibiting child labour and compliance with international health and safety standards. The degree to which companies use social clauses (for local community benefit or to ensure a standard of good employment practice or setting wage rates above the statutory minimum) in local markets is less well known, at least compared with information on the use of product standards in supply chains.

The evidence received by the inquiry suggests that although subcontracting and outsourcing have grown rapidly,<sup>46</sup> few companies volunteer additional social contract clauses in their procurement practices, such as requiring a supplier to pay a living wage or protecting the employment conditions of workers in the supply chain (although there are notable exceptions, such as the Freedom Company).

A submission to the inquiry from Professor Philip James of Middlesex University Business School and Professor David Walters of Cardiff University argued:

*The available evidence points clearly to the fact that trends towards outsourcing and subcontracting over the last three decades have made an important contribution to the way in which employment conditions in Britain have been deteriorating. Indeed, it is only too striking how a significant proportion of those in vulnerable employment are based in sectors in which supply chains dominated by powerful "lead players" play a significant role in directly and indirectly shaping employment policies and practices in supplier organisations.*

James and Walters advocate a stronger degree of supply chain regulation, perhaps building on the experience of the USA where the Obama administration has recently introduced new statutory arrangements aimed at encouraging "responsible" contracting practices.<sup>47</sup> They call for the imposition of legal duties on lead firms in the supply chain to ensure that their suppliers comply with all employment laws. It was said that there is also a case for lead firms to go further and seek to make work better by setting best-practice supply-chain employment standards, perhaps linked closer to supply-chain quality standards.

**Recommendations:** *The government should consider ways of incentivising private contractors to use employment clauses in their supply chains, such as those that promote the living wage and good employment practices.*

*The government should consider changes to company law to oblige lead contractors to exercise due diligence to ensure that all their suppliers and subcontractors fully comply with employment laws such as the minimum wage.*

### **The power of procurement**

Poor procurement practices can exacerbate problems with insecurity and low pay by creating downward pressure on contract prices and weakening employment standards. Denise Kingsmill's recent review of the social care sector, for example, concluded that the problems of low pay and poor working conditions in the sector are exacerbated by commissioning practices that fragment service provision.<sup>48</sup>



However, procurement can also be used to improve pay and working conditions. For example, despite the financial pressures and legal complexities, more local authorities and other public bodies appear willing to use social clauses in procurement to maintain and improve the employment conditions of contracted and outsourced workers in the private sector. The inquiry noticed that the devolved governments in Scotland and Wales, for example, are leading the way in using public procurement for community benefit, primarily through supporting the use of local employment and training requirements in local authority contracts (especially in construction). A recent study by the Joseph Rowntree Foundation also highlighted good-practice examples in Birmingham and other cities.<sup>49</sup> The authors of the report conclude that the inclusion of targeted recruitment and training clauses can be delivered at little or no extra cost and that they are “more robust than a voluntary or corporate responsibility approach”.

James and Walters also drew attention to how health and safety regulations already cover some subcontracting and how the UK could learn from the experience of Australia, where regulations have been introduced to protect homeworkers.<sup>50</sup>

### Employment clauses in Birmingham

Birmingham City Council included local employment and training requirements in the contract for the city's new, £189 million library. Using the powers to “promote the well being of the area” in the Local Government Act 2000, the council used social clauses to secure 250 jobs for local unemployed people and 75 apprenticeships with Carillion, the contractor.

UK and EU procurement rules support the use of social clauses in public procurement, provided they do not disadvantage non-local bidders and the benefits are measurable. The Public Services (Social Value) Act 2012 also makes it a duty of all public agencies to *consider* social benefits in procuring large service contracts.<sup>51</sup> In Wales community benefits are expected to apply to all public procurement over £2 million, where such benefits can be reached. Several witnesses to the inquiry said that contractors often react positively to such local employment and apprenticeship requirements, but that there is a lack of clarity and awareness about what other social clauses are legally permissible. There are also concerns about obligations on subcontractors and a tension between adding social and community benefit clauses and meeting cost-saving requirements and targets.

### Living-wage contracts in procurement

Local councils are increasingly using procurement to promote the living wage. Unison told the inquiry its research showed that more and more councils in England have become living-wage employers – as well as paying their own staff a living wage, this means using procurement to promote the living wage in their supply chains. In addition, more councils are considering the move. The majority are in London and the North West (and half in shire districts). The cost estimates vary depending on the numbers of low-paid staff affected. Islington Council, for example, found that the annual cost of paying directly employed staff the living wage was less than 0.05 percent of the total pay budget.

### Living-wage councils

Bassetlaw District Council	London Borough of Islington
Birmingham City Council	London Borough of Lambeth
Blackpool Council	London Borough of
Brighton & Hove City Council	Lewisham
Caerphilly County Borough Council	London Borough of Southwark
City of Lincoln Council	London Borough of Tower Hamlets
Crawley Borough Council	Ipswich Borough Council
Falkirk Council	Norwich City Council
Harlow Council	Ollerton & Boughton Town Council
Hessle Town Council	Otley Town Council
London Borough of Brent	Oxford City Council
London Borough of Camden	Preston City Council
London Borough of Ealing	Salford City Council
London Borough of Enfield	Selby Town Council
London Borough of Hounslow	York City Council

Source: Living Wage Foundation

There is clearly potential to use the power of procurement to encourage more employers to pay a living wage to their staff. However, it was said that local authority procurement officers and legal advisers were often overly cautious about inserting wage clauses, and in some cases may include contract clauses that prohibit pay rises in order to prevent firms from increasing the contract cost prior to retendering. In some cases, contracts are extended on the basis of a wage bill freeze.

Nevertheless, the case for a more progressive approach to procurement, including wider use of living-wage clauses, is gaining ground – in part encouraged by the greater clarity on the legality of such clauses (according to the Greater London Authority, “organisations, particularly in the public sector, should of course consider value for money and legal requirements when making procurement decisions. However, we are clear that it is legal to adopt living-wage standards within procurement”). According to Business in the Community:

*Making the living wage a highly weighted element within procurement contracts would help to create an environment where paying the living wage is more likely to become the norm.*

Recent changes to the EU procurement directives are soon to be implemented by the government. According to the National Association for Voluntary & Community Action, the new rules allow for:

- certain contracts, mainly in the social and health sectors, to be “reserved”, so that competition is restricted only to not-for-profit organisations or employee-owned companies;
- the extension of the rule allowing contracting authorities to limit competition to “sheltered workshops” where 50

percent or more of employees are disabled, so that it now also applies to disadvantaged workers as well, with the percentage of the workforce required to be disadvantaged 30 percent;

- involving potential bidders and stakeholders in planning and pre-procurement, so long as this does not result in unfair advantage.

While the principle objective of the EU directive is to open up procurement markets to competition across the EU, the new directive makes it clear that its purpose is also to promote wider objectives, particularly the participation of SMEs in public procurement and to make better use of public procurement in support of common societal goals (social value).

Despite the evidence to show that some public authorities are now building fair employment and living-wage contract clauses into the procurement process, the practice is far from commonplace. Central and local government can clearly do more to spread best practice and make employment clauses the norm, rather than the exception.

**Recommendation:** *The government should offer more support to local authorities and other public bodies that wish to use the power of procurement to 'make work better', such as through living-wage contracts in public procurement.*

## References

- 1 For example: YouGov Life and Omnibus research; Workplace Employment Relations Study; British Workplace Behaviour Survey; Fair Treatment at Work Survey; Fevre, R *Trouble at Work* (2012)
- 2 The CBI claims the direct costs of absence amounted to £14 billion across the economy in 2012. See: *Fit for Purpose: Absence and Workplace Health Survey* (CBI, 2013)
- 3 Gallie, D et al *Fear at Work in Britain* (Economic & Social Research Council/LLAKES, 2013); Marmot, M Fair Society, Healthy Lives (Marmot Review, 2010)
- 4 See: Cheng, GH-L and Chang, K-S "Who Suffers More from Job Insecurity? A Meta-analytic Review" in *Applied Psychology: An International Review* vol 57, no 2 (2008); Sparks, K, Faragher, B and Cooper, CL "Well-being and Occupational Health in the 21st Century Workplace" in *Journal of Occupational and Organisational Psychology* (2001)
- 5 ONS Measuring National Wellbeing programme, 2013 data
- 6 Around 2 million workers are in either part-time or temporary work because they are unable to find full-time or permanent work (according to ONS data for 2014).
- 7 Metcalf, H and Dhudwar, A *Employers' Role in the Low Pay/No Pay Cycle* (Joseph Rowntree Foundation, 2010)
- 8 Randstad UK *Fulfillment@work* (2014)
- 9 OECD *Employment Outlook* (2004)
- 10 According to the 2011 Workplace Employment Relations Study, the number of employees feeling insecure about their job rose over the period 2004-11 from 33 percent to 39 percent, with an increase in the public sector from 36 percent to 53 percent. See: Gallie, D et al *Fear at Work in Britain* (Economic & Social Research Council/LLAKES, 2013)
- 11 Prof Phil Taylor of the University Strathclyde's Department of Human Resource Management, presentation to Prospect Health & Safety conference, 2014
- 12 Gallie, D et al *Fear at Work in Britain* (Economic & Social Research Council/LLAKES, 2013)
- 13 According to the Health & Safety Executive, around 23 million days are lost each year due to work-related illness and around 4 million due to workplace injuries, with an estimated total cost of over £100 billion.
- 14 The Health & Safety Executive (HSE) is an executive non-departmental public body with Crown status, established under the Health & Safety at Work Etc Act 1974, and sponsored by the Department for Work & Pensions.
- 15 According to YouGov's Big Work Survey in 2013, nine in 10 workers are guilty of presenteeism.
- 16 The Health & Safety Executive's data identified 39 fatalities in construction in 2012/13, of which 12 were recorded as workers who were self-employed.
- 17 UCATT told the inquiry that sufferers of pleural plaques are entitled to compensation in Scotland and Northern Ireland, but not in England.
- 18 See the Economic & Social Research Council national study into ill-treatment in the workplace, 2011.
- 19 Research by Neall and Tuckey from the University of South Australia shows that workplace bullying and harassment is not uncommon in the UK.
- 20 See reports from the British Association for Counselling & Psychotherapy and the Employee Assistance Professionals Association. Research by Capita Health & Wellbeing also shows that employee assistance programmes can help to cut employees' inability to cope in work, from 51 percent to 5 percent.
- 21 Mental health services are significantly overstretched.
- 22 The BACP claims the average waiting time (from referral to assessment) for counselling from the NHS is 64 days via primary care, and that over 75 percent of people with depression and anxiety disorders receive no treatment at all.
- 22 Business in the Community *FTSE 100 Reporting: Employee Engagement and Wellbeing* (2014)
- 23 The official Labour Force Survey shows that the British labour market has been remarkably stable for a prolonged period. For example, there was more temporary employment in 1996 than there is today and a higher proportion of the workforce reported that they had second jobs too. Equally, there is no evidence of an increase in short-tenure jobs (those that endure for less than one year) over the last decade. See: Faggio, G, Gregg, P and Wadsworth, J "Job Tenure and Job Turnover" in Gregg, P and Wadsworth, J (eds) *The Labour Market in Winter: The State of Working Britain* (Oxford University Press, 2011).
- 24 Faggio, Gregg and Wadsworth, op cit
- 25 ONS *Self-employed Workers in the UK* (2014)
- 26 D'Arcy, C and Gardiner, L *Just the Job or a Working Compromise? The Changing Nature of Self-employment in the UK* (Resolution Foundation, 2014)
- 27 ONS data shows in 2014 that 13 percent of the self-employed work 60 hours or more, compared with 4 percent of all employees.
- 28 According to the ONS, homeworking now accounts for 14 percent of the workforce, compared with 11 percent in 1998.
- 29 Sutherland, A *Agile but Fragile: The Changing Face of UK Homeworking*, policy discussion paper (Advisory, Conciliation & Arbitration Service, 2014)
- 30 Since 2012 local plans should "facilitate flexible working practices, such as the integration of residential and commercial uses within the same unit".
- 31 Third Spaces Group *Breaking the Productivity Impasse* (2013)
- 32 In the CBI's survey of members in 2011, published in *Navigating Choppy Waters*, 59 percent were offering teleworking, up from 13 percent in 2006. Also see: Dwelly, T and Lake, A *Can Homeworking Save the Planet?* (Smith Institute, 2008)
- 33 According to the ONS, the temporary workforce has been growing for a number of years, increasing by 230,000 between 2005 and 2010.
- 34 PBA contracts make the worker an agency employee but their rights are slightly different to those of other agency workers – the agency will pay them if a job ends and they have to wait before starting a new one, but they will not be entitled to the same pay as other employees even after having worked for more than 12 weeks in the same role for the same employer.
- 35 ONS *Analysis of Employee Contracts That Do Not Guarantee a Minimum Number of Hours* (2014)
- 36 "Zero-hours Contracts are 'Tip of the Iceberg' of Damaging Shift Work, Say Researchers" on University of Cambridge research website, 18 April 2014 (<http://www.cam.ac.uk/research/news/zero-hours-contracts-are-tip-of-the-iceberg-of-damaging-shift-work-say-researchers#sthash.nRR96c0k.dpuf>)
- 37 Evidence to BIS consultation on zero-hours contracts (2013-14)

38 The Leonard Cheshire Disability charity, for example, said that zero-hours contracts may suit some disabled people.

39 BIS consultation on zero-hours contracts (2013-14)

40 The Skills and Employment Survey 2012 is a national study of people aged 20-65 who are in paid work. The survey (covering 3,200 people) focuses upon the work that people do and how working life has changed over time.

41 The government withdrew the Code of Practice in Workforce Matters in Public Sector Service Contracts (the two-tier code) in 2010 and replaced it with a voluntary code. The Code of Practice on Workforce Matters in Local Authority Service Contracts (in England) was abolished in 2003.

42 See: Smith Institute *Outsourcing the Cuts: Pay and Employment Effects of Contracting Out* (2014)

43 Smith Institute *Outsourcing the Cuts: Pay and Employment Effects of Contracting Out* (2014)

44 See David Weil's work in the USA, such as *The Fissured Workplace: Why Work Became So Bad for So Many and What Can Be Done to Improve It* (2014) and *Enforcing Labour Standards in Fissured Workplaces: The US Experience* (2011); and research by Jane Wills on subcontracted employment.

45 See study by Equality & Human Rights Commission in 2010 on employment in the meat industry, and work on retailer power in the food processing industry by James and Lloyd.

46 The 2011 Workplace Employment Relations Study found that around 58 percent of workplaces had outsourced building maintenance, 48 percent cleaning, 32 percent security and 25 percent transportation.

47 For example, in New York garment firms are liable for minimum wage violations by their contractors where they "knew or should have known" of them; under the California Labour Code anyone hiring a labour contractor in certain low-wage sectors can be made liable for back wages and specified damages; and the federal government has powers to embargo goods that have been manufactured in violation of the minimum wage laws.

48 Kingsmill, D *Taking Care: An Independent Report into Working Conditions in the Care Sector* (2014)

49 Richard Macfarlane with Anthony Collins Solicitors LLP *Tackling Poverty through Public Procurement* (Joseph Rowntree Foundation, 2014)

50 The regulations place legal obligations on major retailers to give regulatory agencies full access to contracting arrangements; include provisions obliging suppliers to provide homeworkers with relevant legal entitlements; and give rights to homeworkers to claim for unpaid "industrial entitlements" upon any firm in the supply chain. See work by Nossar et al on supply chains at the University of Technology Sydney Business School.

51 Local authorities can also provide a "best value" justification on some workplace matters.



## 4. Pay at work

A fair day's pay for a fair day's work is fundamental to the idea of good work. This notion embraces differences in pay between workers with different jobs, which in turn reflects variation in skills and responsibilities. The vast majority of people would accept these differences in pay as legitimate so long as they are "felt to be fair". However, for too many people the rewards for work seem anything but fair. Throughout the inquiry employees stated that despite working harder, feeling more insecure at work and working long hours, their pay remains the same while the cost of living continues to rise. There was also a genuine anger over high levels of boardroom pay and the disconnect between pay and performance.

What runs most against people's sense of fairness is that despite contributing to the success of their organisation, employees feel they are no longer rewarded in line with the gains made. This sense of unfairness has certainly become pronounced since the onset of recession, but it is not new. There has in fact been a steady shift since the 1980s in the way national income has been distributed, with the biggest shift being from lower-earning workers to higher-earning workers.

The view presented to the inquiry was that persistent unequal pay is not only a moral and ethical concern but also a constraint on growth and a cause of economic instability. This concern has been echoed by the IMF.<sup>1</sup> Furthermore, CBI director-general John Cridland has stated that there are "still far too many people stuck in minimum-wage jobs" and "one of the biggest challenges facing business is to deliver growth that will mean better pay and more opportunities for all their employees after a prolonged squeeze"<sup>2</sup>

*We have become a low-wage economy, and it is getting worse for the majority of workers.*

– Comment to the inquiry discussion in London

According to Ozlem Onaran, professor of workforce and economic development policy at Greenwich University, in wage-led economies more egalitarian policies are consistent with growth. She states that "even if we make a very cautious interpretation of the empirical findings, it is clear that there is room for policies to decrease income inequality without hurting the growth potential in a wage-led economy like the UK".<sup>3</sup>

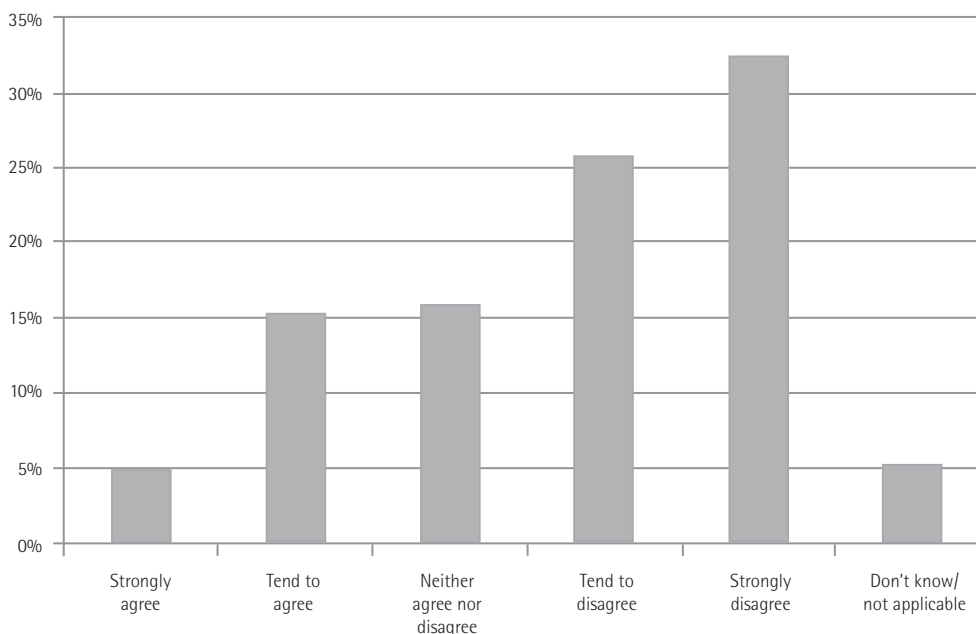
While the inquiry debated the necessity and effects of pay restraint in the aftermath of the financial crisis, the focus of the discussions with business and unions was on how, as the economy slowly exits recession, we can return to stronger, and fairer, wage growth. It was generally agreed that achieving fairness in pay would, at the very least, be a key indicator of making work better for the vast majority of employees.

### The squeeze on earnings

There has been growing public discontent about stagnating wages. Evidence to the inquiry from one survey showed that those in work saw increasing wages faster than inflation as more important than reducing the deficit or achieving a higher growth rate.<sup>4</sup> This concern about earnings growth is supported by analysis from the ONS and the Institute for Fiscal Studies,<sup>5</sup> which shows that gross earnings fell by 6.6 percent between 2010 and 2012; wage growth has been behind inflation since 2010; and average incomes today are lower than in 2002/03.

**Chart 9: Workers' opinions on whether their pay has kept up with the cost of living**

Response to the statement "My pay has kept up with (i.e. increased in line with) the cost of living over the last few years"



Source: YouGov poll commissioned by TUC/Smith Institute

Notes: Total sample size was 4,555 adults, of which, 2,355 were employees. Fieldwork was undertaken on 5–7 August 2014. Survey was carried out online. Figures have been weighted and are representative of all GB adults (aged 18+).

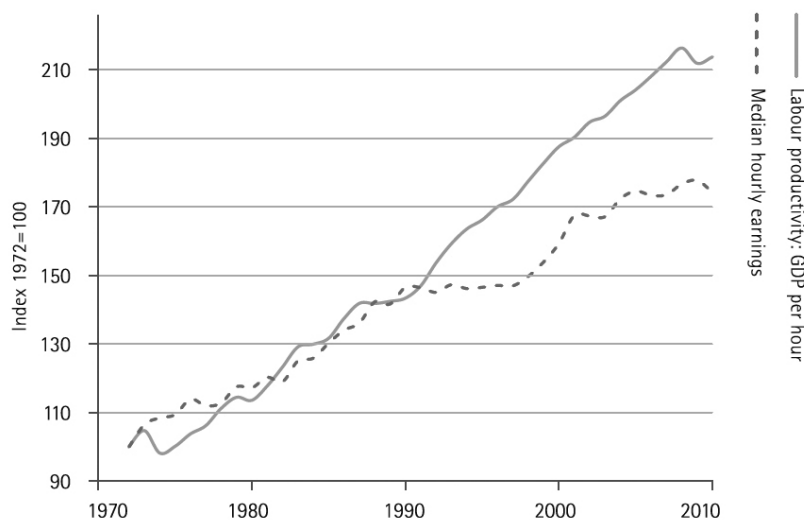
The list of problems facing pay is long, and while some are a *result* of the crisis, others predate it. For example:

- Wage stagnation for those on median earnings and below is a phenomenon that first emerged in the early 2000s and predates the recession;
- The disconnection of wage growth from productivity growth for workers at the median and below first emerged in the UK in the early 1990s;
- The growth of income inequality has continued for over 35 years, with the biggest increases taking place in the 1980s;
- The persistence of low pay has characterised the labour market – more than one in five workers in the UK is now paid below the living wage;
- The growth of pay at the top of the distribution continues relentlessly – rewards in the boardroom seem increasingly disconnected from performance and the pay of the majority of employees; and
- The suppression of public-sector pay growth has been in evidence since 2010, and may continue.

Although growth has belatedly returned to parts of the economy, so far there are no indications that the majority of people are benefiting from the higher level of economic activity. In normal times it would be reasonable to anticipate that economic growth will drive sustainable increases in pay and living standards. Unfortunately, as the Institute for Fiscal Studies has noted, there is no guarantee that this will be the case. According to Mark Carney, Governor of the Bank of England, real wages have fallen by around a tenth since the onset of the crisis, a phenomenon that has not been seen since the early 1920s.

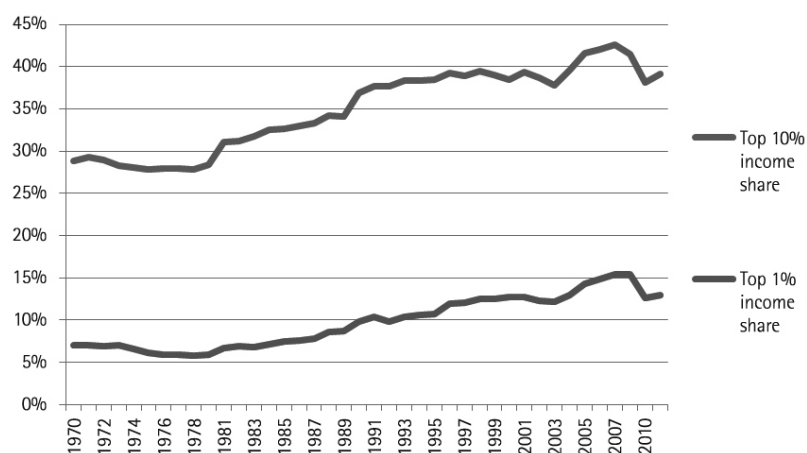
The key driver behind falling real wages for the majority of workers is the distribution of rewards. The inquiry's experts explained that the fruits of growth have been overwhelmingly enjoyed by those in the top half of the earnings distribution since the early 1990s. Indeed, the situation is probably even worse than that, with most of the gains accruing to those in the top 10 percent of the income distribution and very significant gains for those in the top 1 percent.

**Chart 10: Median earnings growth and productivity growth, 1970-2010**



Source: Pessoa, JP and van Reenen, J *Decoupling of Wage Growth and Productivity Growth?* (Resolution Foundation, 2012)

**Chart 11: Income shares of the top 10 percent and top 1 percent in the UK 1970-2011**



Source: World Top Incomes Database (<http://topincomes.g-mond.parisschoolofeconomics.eu/#Database>)



### Wage inequality is inevitable?

It is claimed by some in the business community that global and technological forces are driving a polarisation of the labour market, and that such forces cannot be tamed by national governments. However, the evidence presented to the inquiry suggests a more complicated picture that does not preclude government action. Not least, international comparisons show that other more highly productive and equally successful European economies have chosen a different path than a race to the bottom on wages.

A common explanation for the increase in income inequality is attributed to "skill-biased technical change". Those with higher-level skills are in great demand, meaning their rewards will become relatively larger as a result. Moreover, higher-skilled employees are much more productive than their less-skilled counterparts, and the increasing disparity in rewards therefore reflects these differences in productivity. According to the inquiry's experts group, this is not in line with experience across the developed world. Levels of inequality have increased almost everywhere, but at very different rates at very different times, and from very different starting points.<sup>6</sup> Given that technologies are ubiquitous, it is very difficult to argue that the demand for higher-level skills is the reason for rising income inequality. In the UK, for example, income inequality rose most rapidly in the 1980s. In Germany the phenomenon is more recent and followed the labour market reforms of the early 2000s. In France and the Netherlands there has been no significant increase in income inequality at all.

Moreover, differences in productivity do not explain the increased gap in rewards between the boardroom and the majority of employees. That explanation would hold true only if executives in the USA were proven to be significantly more productive than their colleagues in Europe and Japan. Furthermore, the inhabitants of America's boardrooms would need to be making a much greater contribution to corporate success than their colleagues in other developed countries.

Another explanation put forward is that the liberalisation of trade and the integration of global supply chains have put downward pressure on wages. Most economists would accept that there is some wage competition, and unions contributing to the inquiry confirmed that they are often threatened with the relocation of a plant to a lower-cost environment. However, an overly simplified view of globalisation is difficult to square with the facts. For example, the incidence of low pay varies widely across the OECD. To give a specific instance, wages in food processing in Denmark (see the chapter on insecurity at work) or hotels in Norway are significantly higher than in the UK, as the inquiry heard. Furthermore, most low-paid work is found in sectors that are not exposed to international competition. Some countries with very open economies (such as Nordic countries) remain the most egalitarian.

The evidence to the inquiry shows that widening inequality is not a natural phenomenon, experienced in the same way across the world. Many of these supposed global pressures are shaped by public policy, with institutions mediating the impact and developing powerful countervailing forces. It was said that the

phenomenon of a weakening of bargaining power could perhaps better explain why wage growth for workers on median earnings is no longer linked to the growth of productivity.<sup>7</sup> Indeed, the regulation of capital markets, the corporate governance regime, the extent of union membership and collective bargaining coverage all have an impact on the distribution of incomes before the state begins to intervene through the tax and benefits system. It was said that all these elements together explain why the Nordic countries secure better social outcomes than the UK.

The academic evidence shows that "pre-distribution" (with a focus on market outcomes that encourage a more equal distribution of economic power and rewards even before government collects taxes or pays out benefits)<sup>8</sup> and redistribution policies both contribute to better social outcomes, including fair wage growth.<sup>9</sup> Most importantly, it demonstrates that governments can, if they so choose, have a major effect on wage and income inequalities.

### Collective bargaining

Trade unions can play an important role in ensuring fair pay in workplaces where they are active and have collective agreements (which can cover both union and non-union staff). Currently collective bargaining covers around a third of the workforce, although the coverage is uneven, with three times more employees covered in the public than in the private sector).<sup>10</sup>

The inquiry was informed that workers in organised workplaces where there are collective bargaining structures are less likely to be low paid, less likely to experience discrimination on the grounds of gender, ethnicity, sexuality or disability and less likely to have an accident at work.<sup>11</sup> Moreover, workers covered by a collective agreement are paid more than their counterparts in comparable non-union establishments.<sup>12</sup>

*There has been decline in workplace collective voice and a rise of inequality.*

– Union representative at the inquiry discussion in London

The evidence shows that unions have the effect of reducing wage inequality, and this effect is strongest where union membership and coverage are high and where bargaining is "centralised", with national agreements at a sectoral level and a co-ordinated bargaining process across sectors. The evidence examined by the inquiry also showed:

- The decline in collective bargaining coverage has in fact been greater in the UK than in nearly all other OECD countries.<sup>13</sup>
- Declining union coverage rates have the effect of increasing income inequality.
- Countries with weaker employment protection legislation generally experience higher levels of inequality. This is especially true if temporary employment is subject to a different regulatory regime.
- Lower taxation of earnings has the effect of increasing wage inequality. Low-tax countries have a higher share of low-skilled, low-paid employees.
- Higher minimum wages, by setting a robust labour market floor, reduce wage inequality.



The story of growing wage inequality appears to be linked to the decline in the relative bargaining power of those with modest-to-low incomes.<sup>14</sup> It was put to the inquiry that there could, therefore, be a case for extending collective bargaining so that the many, not the few, benefit from growth. However, the inquiry found the difficulty with this proposition is that British unions represent barely one in six workers in the private sector (and have struggled to recruit new members in an expanding labour market). Furthermore, as BIS reports on trade union membership show, workers in larger workplaces (where union density is higher) are more likely to negotiate pay through collective bargaining than in smaller workplaces.<sup>15</sup> Union membership is also lower among temporary and part-time staff, who are largely concentrated in low-pay sectors and often seen as difficult to organise.

In order to extend collective agreements some unions called for the repeal of all the so-called anti-union laws (such as those regulating strikes, balloting and picketing). However, it was pointed out to the inquiry that repealing the laws would not in itself guarantee a significant revival of union membership. Others felt that changing skills composition in the economy, the rise of private services, and the relative decline of manufacturing play more important roles in explaining falling membership than could changes to the law.

Similarly, there is no causative connection to ensure that extending collective agreements by law to almost all the workforce (as is the case in France<sup>16</sup>) would increase union density. Indeed, although France has very high coverage of collective agreements, levels of union membership are low (15 percent in the public sector and only 5 percent in the private sector).

It was said to the inquiry that the decline in union membership might be slowed either a little or significantly depending on the framing of new legislation, but ultimately unions have to be the agents of their own resurgence. However, there were calls for government to take a more positive and proactive approach to unions and collective bargaining. It was suggested that conciliation service ACAS (a non-departmental public body, which aims to improve workplaces and working life through better employment working with both employers and employees) could play a more active role in promoting good employment relations.

It was said that consideration should be given to measures that extend the coverage of collective agreements to employers who have "strayed from the fold". In the past this was achieved through unilateral arbitration provisions, most recently embodied in schedule 11 of the Employment Protection Act 1975 and repealed by the Employment Act 1980. It was said that unions could make a complaint to the Central Arbitration Committee<sup>17</sup> that an employer was failing to observe the prevailing wage in an industry and the CAC could then make an order requiring the employer to observe the relevant collective agreement. To implement a suitably adapted measure today is perhaps somewhat ambitious, but it would ensure that there is no diminution of employment conditions and that an effective floor of pay and conditions is established. It was observed that similar provisions are found elsewhere in Northern Europe and have proved to be a source of trade union resilience in otherwise adverse conditions.

The inquiry noted that until 1993 ACAS had a duty to promote collective bargaining. The mere existence of the duty was a powerful statement of the notion of collective bargaining as a collective good for all parties. On the other hand, the duty could impose a degree of inflexibility in those cases where employees preferred to organise a staff association as an alternative to union membership, or where there was a desire on the employer's part to establish some consultative arrangements but no trade union was on the scene.

A more measured approach today – but with the same general policy intention – could be to give ACAS a statutory *power to promote* collective bargaining and collective voice. This has the advantage of giving ACAS real discretion so that the approach in each case can be tailored to the reality of the situation. If this power were established, government would be sending a very clear message to employers that critical decisions affecting the organisation need to be justified and legitimised through discussions with representatives of the workforce.

It was also said that extending collective bargaining is only part of the solution, and that much more needs to be done to build new institutions that promote productive and fair employment relations.

**Recommendation:** *Government should promote the positive role that unions can play as a means of achieving fair pay and reducing wage inequalities, including granting ACAS a power to promote collective bargaining and good employment relations.*

#### Union wage premium

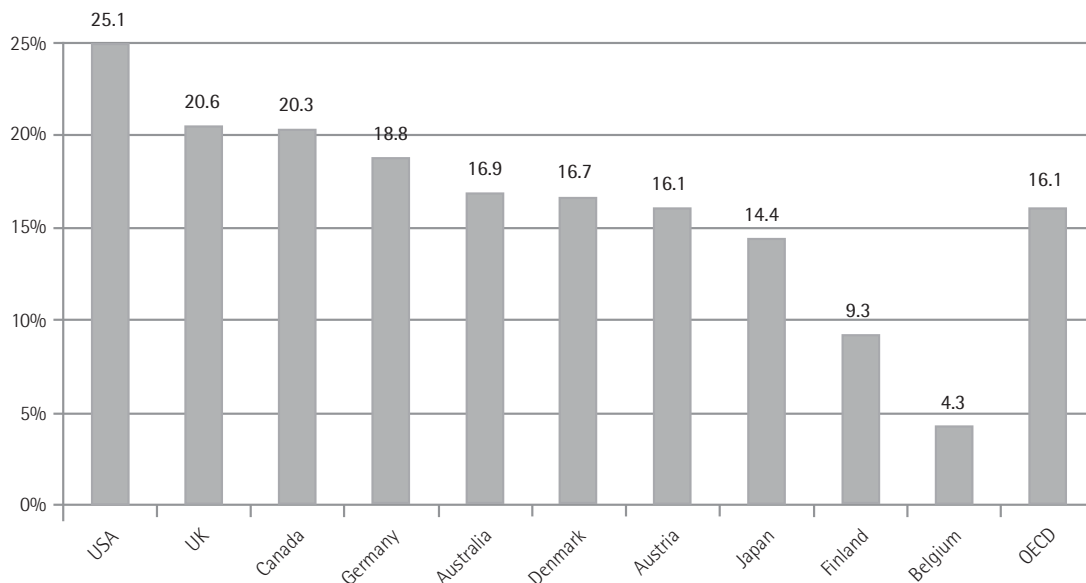
Although the number of workers covered by collective agreements has fallen, unions have maintained a wage premium for their members. According to the latest BIS data, the union raw wage premium (the percentage difference in average gross hourly earnings of union members compared with non-union members) in 2013 was 20 percent for the public sector and 7 percent for the private.<sup>18</sup> The overall regression-adjusted rate for all employees (taking into account difference such as gender, age and sector) was around 6 percent, compared with over 10 percent in the 1990s.<sup>19</sup> The overall wage gap between union members and non-members has nevertheless narrowed in recent years. The gap may, however, be wider in some sectors where bargaining results in a non-wage premium in the form of fringe benefits such as pensions and holiday pay. The union wage premium was also greater for women and younger workers.

#### Poverty wages

The overwhelming view of employees was that much more could, and should, be done to combat low pay in the UK. The inquiry observed that the rising tide of in-work poverty reflects a deep public unease that someone should be paid so little that they could not afford a decent, if basic, standard of living.

Widespread low pay is a symptom of a low-skilled, low-productivity economy. It was said to the inquiry several times that too many employers are able to pursue the "low road"

**Chart 12: Incidence of low pay in selected OECD countries, 2011**  
 Percentage of the working population earning less than two-thirds median earnings



Source: OECDStat

business model because the price of labour is low and there are plenty of low-income consumers who have the means to buy only cheap goods and services. Firms voiced concerns that if they were to increase the wages of low-paid workers, less scrupulous firms could undercut them by squeezing wages in highly price-sensitive markets. Similarly, public bodies and agencies claim that tight budgetary constraints mean they are often forced (unwillingly) down the same low pay road.

The conventional solution expressed to the inquiry was to encourage low-paid workers to improve their skills so that they can "escape" low-paid work. Inherent in this view, however, is that there is no real prospect of making the quality of work better and that there will always be jobs that people prefer not to do. But as the inquiry heard many times, the pay, conditions and quality of all these jobs *can* be improved.

It was stressed to the inquiry that low pay reflects the gender segmentation of the labour market. Most low-paid workers are women working part-time, who form 60 percent of all those receiving the national minimum wage. Almost half the total number of those on the minimum wage can be found in two sectors, retail and hospitality, with other significant groups including cleaning, caring and hairdressing. All of these are indispensable jobs but they are often given a low social value, precisely because women working part-time hold them (see the chapter on equalities for more details).

*Part-time workers are seen as second-class workers, and suffer a severe pay penalty.*

– Comment to the inquiry discussion in Liverpool

### Wage penalties

The inquiry was made aware of wage penalties among people at work defined in terms of race, religion and age. Research by the Centre for Economic Performance, for example, showed

that the racial employment and wage gaps increased with unemployment.<sup>20</sup> It was said that there is also a problem of wage discrimination by sexual orientation. According to a study by Alex Bryson at the National Institute of Economic & Social Research, while there may be less of an observable wage penalty today for gay men relative to heterosexual men, there is evidence of a wage penalty for bisexual men compared with heterosexual men, and for lesbians compared with heterosexual women (albeit confined to workplaces that lack robust equal opportunities policies). However, Bryson remarked:

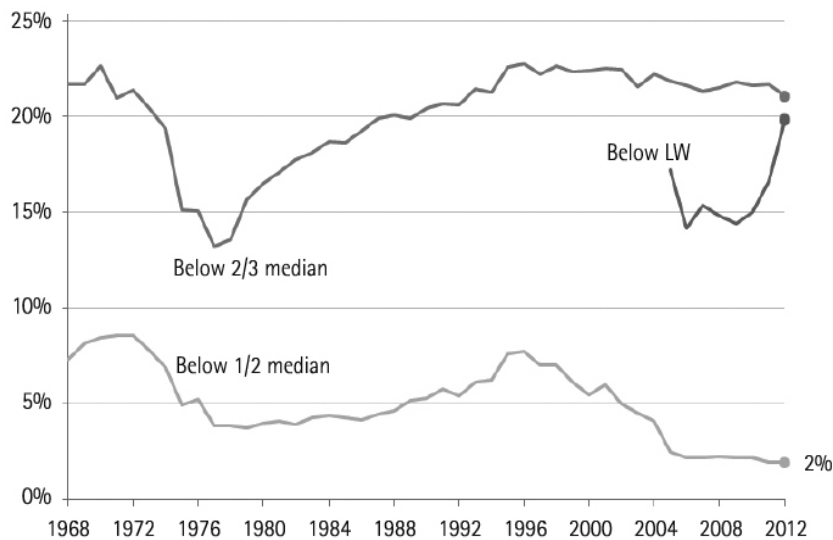
*... there is qualitative research indicating that the attitudes of both employers and employees towards bisexual employees lags behind the positive developments there have been with respect to perceptions of homosexual employees. Such attitudes lie behind the wage gap (Chamberlain and Valentine, 2009, Barker al., 2012).<sup>21</sup>*

### National minimum wage

In recent years the national minimum wage (NMW) has played an important role in reducing low pay. In particular it has reduced the incidence of what might be called "extreme low pay" (less than half the median). However, it has had little impact on the percentage of the workforce who are classified as low-paid on the international definition (two-thirds of median earnings). The inquiry was told that the increase in "extreme" low pay after 1993 is explained by the abolition of wages councils (tripartite bodies that fixed sectoral minimum wages), and the significant reduction in extreme low pay to a historically low level is a direct result of the NMW.<sup>22</sup>

One of the reasons for the persistence of low pay in the UK is the low level of the NMW. It was said that despite the gradual rise in the minimum wage (from £5.93 per hour in 2010 to £6.31 in 2014), it was still not enough for any household to make ends meet, especially as many workers in receipt of the NMW

**Chart 13: The impact of the national minimum wage**  
*Percentage paid below low-pay thresholds*



Source: Resolution Foundation, New Earnings Survey/Annual Survey of Hours and Earnings

work less than a "standard" working week. It was noted that in fact the prevalence of low pay also explains the high level of in-work poverty (mentioned earlier in the report). The inquiry was told that there are also concerns about the NMW for young people, which a number of union representatives the inquiry spoke to said is close to "poverty wages".

However, the inquiry's experts group emphasised that the NMW must be seen for what it is: a labour market floor and not a living wage. Gavin Kelly, chief executive of the Resolution Foundation, has also commented recently:

*... worryingly high proportions of minimum wage workers are now stuck on (or very near) the minimum wage for extended*

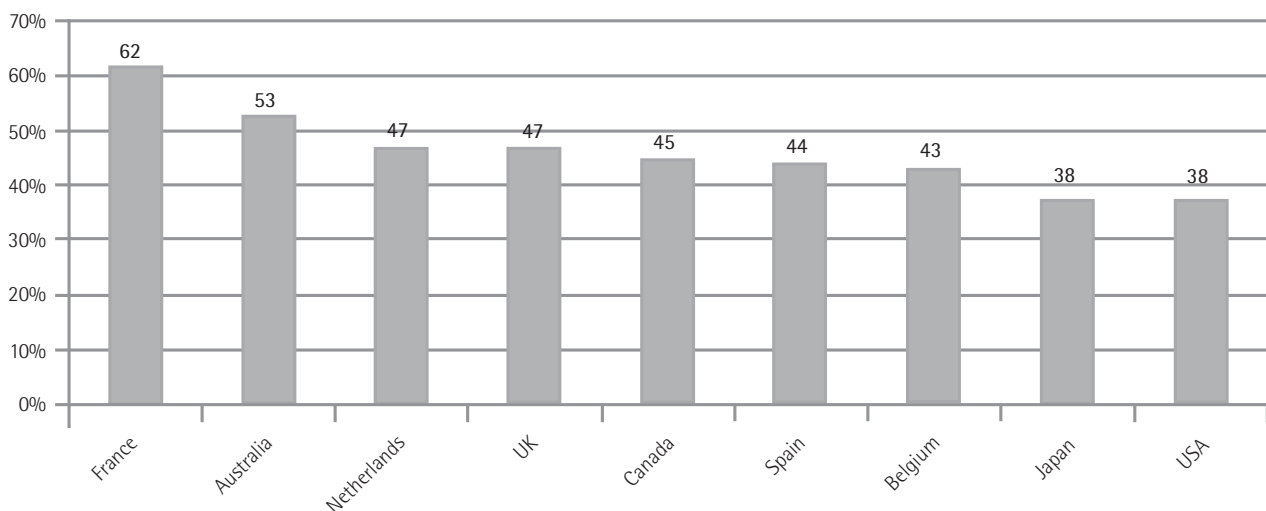
*periods... Simply scooping up ever more workers on a rising wage floor, without creating more opportunities and pressures for advancement beyond this, does not add up to anything like a coherent low pay strategy.<sup>23</sup>*

The inquiry was told that a record 1.2 million workers will gain from the October 2014 rise in the NMW and that another 2.5 million workers who earn within 50p of the minimum wage are also likely to benefit.

*It wasn't a conscious decision to say "I'm not going to pay this", but I've never really considered doing it because I've not had people come to me and say, "I'm not getting paid enough" or "Is this the minimum wage?"*

HMRC's list of excuses for not paying the NMW

**Chart 14: Minimum wage as a percentage of median earnings in a selection of OECD countries, 2011**



Source: OECDStat

It was generally agreed by unions and employers that the government, rather than the Low Pay Commission, should be the custodian of the low pay strategy. It was said that the LPC is a social partnership body and has proved to be successful precisely because its advice is based on agreement between employers and unions. It was said that the great advantage of the UK's minimum wage regime is in fact that it is neither political nor formulaic, and that unlike the USA's federal minimum wage, the NMW is not determined by politicians (ministers act on the LPC's advice, which so far has always been accepted).

Although there was little enthusiasm for the government to set the NMW, there was some support for enhancing the role of the LPC, with perhaps a specific remit to reduce employers' reliance on low pay. In place of acting as a minimum wage commission (reviewing the impact of previous up-ratings and recommending an increase for the forthcoming year), the LPC secretariat could have responsibility for developing a more comprehensive research programme on low pay – for example, investigating the causes of low pay, recording the real impact on poor households, and identifying successful strategies that encourage employers to change their business model or create opportunities for workers to develop in their jobs. Widening the LPC's terms of reference in this way would create a centre of expertise on low pay rather than just the NMW. This in turn would inform the national conversation about low pay and in-work poverty and influence the commission's decisions about the appropriate level of the NMW.

The work of the LPC secretariat could focus on the future trajectory of the NMW, identifying the conditions that must be met for sustained increases in the future.<sup>24</sup> Studies of particular low-paying sectors could investigate the prevalence of low pay and also identify where particular industries have significant scope to pay higher wages. Some industries have significant room for manoeuvre, and authoritative research could encourage a discussion between unions and employers about the possibility of higher rates above the NMW.

Alan Buckle, author of the 2014 Buckle review on low pay, told the inquiry that the Low Pay Commission should be reformed in order to strengthen the minimum wage. He also called for a new remit for the LPC, which should centre on a five-year plan to increase the NMW closer to median earnings. Buckle concluded:

*... a longer-term national mission to tackle low pay should be seen as part of a strategy to move towards a more high-skill, high-wage economy. Businesses have choices about how to compete, and policy makers should seek to create incentives to encourage more productive, higher-value business models that support higher wages.*

The inquiry was told that a target of lifting the NMW to 60 percent of median earnings would increase the NMW over time to well above the current rate. However, it was said that the LPC could map out a medium-term trajectory to meet the 60 percent as a target, with careful consideration given to issues of affordability and employment effects.

A number of people raised serious concerns about rising levels of non-compliance with the NMW. One recent government review found that "on average, a firm can expect a visit from HMRC inspectors once in every 250 years and expect to be prosecuted once in a million years".<sup>25</sup> The inquiry was told that a major problem is that too few resources are available to enforce the NMW. It was also suggested to the inquiry that there should be tougher penalties for non-payment of the minimum wage and that one of the responsibilities of the LPC should be to provide a comprehensive body of knowledge to inform enforcement activity.

Part of the answer may also lie in encouraging greater collaboration between agencies responsible for compliance. Employers in breach of the NMW are also likely to be flouting trading standards, ignoring health and safety regulations and seeking to evade other legal obligations, including basic employment rights. Local government already inspects local businesses on some of these grounds and could therefore have a role to play in helping to identify and enforce the NMW. However, it was noted that many councils would struggle to carry out this task without extra resources. It was said that devolving the enforcement functions could lead to a postcode lottery in compliance.

**Recommendation:** *The government should agree a new mandate with the Low Pay Commission on a five-year plan to increase the national minimum wage towards 60 percent of median earnings.*

### Sectoral approaches

There have been growing calls for action to ensure that where sectors can afford to pay more, they do. The inquiry was told that there are clearly some sectors which could absorb the higher costs; for example, increasing the lowest rate of pay in food processing to the level of the living wage would increase the wage bill by around 1.1 percent.<sup>26</sup> However, there was little enthusiasm for a return to the old (sector-based) wages councils. It was said that care should be taken to ensure that sectoral approaches do not have the unintended consequences of undermining the notion or level of the NMW.<sup>27</sup>

*As a former member of the Low Pay Commission I think there's a gap. It's never easy setting the same legal minimum for every workplace. And one big issue is that it is obvious that there are many sectors that could easily absorb a higher minimum wage but get the same floor as genuinely hard-pressed companies.*

– Frances O'Grady, TUC general secretary

There is also a risk that once the simple principle of a national minimum is abandoned, the argument for regional variation becomes more compelling – which could lead to a race to the bottom as local areas seek to attract employers by setting lower rates.

An alternative approach would be to encourage social dialogue in low-wage industries through new task forces made up of the social partners. These would be asked to come up with strategies to tackle low pay, including questions of skills, skills utilisation, work organisation and job design. BIS already has sector teams

in place to deliver the government's industrial strategy, and these teams engage with stakeholders on questions of investment, innovation, technology and skills. At present this activity is focused on manufacturing, but it was suggested to the inquiry that the remit could be extended to cover prevention of low pay.

**Recommendations:** *The Low Pay Commission should provide more information on which sectors might be able to pay more than the NMW. It should set up task forces in low-paid sectors and work on strategies to tackle low pay with BIS sector teams.*

*The Low Pay Commission should establish task forces in low-paid sectors with a remit to tackle low pay. Such task forces could work with BIS department's sector teams.*

### Living wage

Given the lack of union presence in low-wage sectors and the limits of the NMW, there has been renewed interest in a living wage among anti-poverty campaigners. Much of the discussion during the inquiry on low pay focused on the possibility of extending the living wage to many more low-paid workers. Campaigners had a simple message – no one should be paid below a basic minimum that enables them to participate fully in society.

Initiated by a group of community activists in east London, the campaign has grown in strength. It has established a means of calculating the rate (one for London and one for the rest of the UK) and has won the support of major UK businesses. Not only has it raised the wages of some 45,000 low-paid workers but it has also highlighted the problems of low pay and in-work poverty.

The campaign has stressed the lives and roles of low-paid employees beyond the workplace, including having time to spend with their family and in their communities. It also emphasises the importance of workplace citizenship, claiming low-paid workers often feel undervalued and disenfranchised in society and the workplace. Central to the idea of the living wage is that increased wages are preferable to increased benefits. For some supporters and low-paid employees, benefits are associated with dependence, whereas earnings (and therefore the living wage) are seen to confer independence. The campaign has also highlighted the cost to the Treasury of subsidising low-paid employers, as employees' wages often have to be topped up through the benefits system.

*Tax credits are a subsidy for inefficient productivity.*  
– Labour market expert

The introduction of the living wage can have wider societal and health benefits, as evidence from one study by Jane Wills of Queen Mary University and presented to the inquiry found:

*... those who worked in a London living-wage workplace had significantly higher psychological well-being scores on average than those who did not. This was shown to be irrespective of any differences in the composition of these two groups with regard to age, gender, ethnicity, working hours, educational attainment,*

*dependent children, having another job and being born in the UK.*

Public Health England commented that more widespread pay rates at the living wage should have positive health effects. However, it also stated that further research is needed to determine the impact of the living wage on social and health inequalities.<sup>28</sup>

In addition there is a clear business case for firms adopting the living wage. Employers accredited by the Living Wage Foundation happily acknowledge these benefits. Guy Stallard from KPMG has remarked:

*A living wage makes sense for business because, to have an efficient and effective operation, firms require staff who are motivated, rewarded and incentivised to go that extra mile in servicing customer needs. By way of example, since introducing the living wage, KPMG has seen a significant increase in the motivation and loyalty within on-site supplier staff over the last few years. We also found that staff turnover has more than halved, staff require less supervision and have also been trained to perform other activities which provide a more stimulating working day. There has been a marked improvement in the quality of service: our help desk gets far fewer complaints. And – perhaps the strongest business case for paying the living wage – there has been increased productivity, as attitudes are more flexible and positive.<sup>29</sup>*

Some contributors suggested to the inquiry that the NMW should be raised to the living wage. However, evidence reviewed by the inquiry's experts group suggested that such a sudden shift would be very problematic and could lead to unemployment.

It was said that setting a target of how many workers should be covered by the living wage would help concentrate minds about what needs to be done, and help shape partnerships between government, employers and employee representatives about combating low pay. This could include working alongside the Living Wage Foundation in supporting businesses making the transition to paying the living wage. Government (and the LPC) could also highlight those sectors where it thinks more could be done.

### Government and the living wage

The inquiry was told by the Living Wage Foundation that one of the strengths of the living wage is that it is voluntary, and that this enables campaigners to reach out "beyond the usual suspects". However, it was said that perhaps more could be done in the form of tax incentives to encourage employers, especially those who can clearly afford to pay the living wage yet choose not to.

The inquiry heard from the Living Wage Commission, led by the Archbishop of York, about the use of temporary tax breaks as a way of encouraging businesses to pay the living wage. The idea would be to offset some of the costs to employers of paying higher wages, such as the additional employers' national insurance contributions. Such a one-off tax break could provide a tipping point for low-wage employers and raise wider awareness among consumers.



However, it was also said that while a temporary tax break may attract some employers, care must be taken to ensure it is not too difficult to administer. It was said that the tax arrangements should ensure that the scheme would not permanently subsidise low-wage employers.

The inquiry was informed that central government as a major employer and purchaser/commissioner of goods and services from the private sector could do much more to extend the living wage. It was suggested that government (and public agencies) could become living-wage employers in much the same way as local authorities have. This would enable central government to champion the living wage.

The cost to Whitehall departments of moving all directly employed staff and indirectly (contracted-out) staff on to the living wage has been calculated at around £18 million (covering 31,000 workers).<sup>30</sup> Over time this could be extended to cover more workers. For example, new living-wage contracts<sup>31</sup> could be used in the public sector to ensure a higher wage floor across the supply chain. Some suggested that no provider of either goods or services to the government could gain access to public contracts unless they could demonstrate compliance with the living wage. It was said that if immediate implementation of such contracts was deemed too costly then the process could be phased.<sup>32</sup> The government could identify the low-pay hotspots in the public-sector supply chain and act there first.

It was, though, brought to the inquiry's attention that there are differing de facto wage floors in different fields, and some of these are higher than the living wage. In some industries there are collective agreements, for example. Given these differences, living-wage contracts could be adopted as follows:

- Where there is no relevant collective agreement and prevailing wages are lower than the living wage, then the living wage should be used as the wage floor.
- If there is no collective agreement and prevailing wages are higher than the living wage, then the prevailing wage should be the wage floor).
- Where relevant collective agreements are in operation, then they should set the wage floor.<sup>33</sup>

The inquiry also heard the case for ratification of the International Labour Organization's Convention No 94 on Labour Clauses in Public Contracts. It was said that ratifying the convention would give greater certainty and permanence to the use of living-wage clauses or contracts in public procurement.

**Recommendation:** *The government should set a target of lifting 1 million low-paid workers on to the living wage by 2020. Government should lead by example and become a living-wage employer and consider the case for introducing 'living-wage contracts', making use of procurement to ensure more private firms become living-wage employers.*

### Pay in the public sector

Public-sector workers expressed their anger and frustration about low pay and the fact that pay rises have failed to keep

pace with inflation.<sup>34</sup> The inquiry heard directly from workers and their representatives about the impact of the government's pay bill freeze, not just on living standards but also on service delivery, morale and staff retention.<sup>35</sup>

*The effect of public-sector pay restraint on morale is devastating.*  
– Public-sector worker

Although there was widespread recognition of the public finance challenge facing government and the difficult choices that had to be made in terms of funding public services, there was a strong sense from public-sector workers and unions that as the economy recovers the goal should be to agree a fair pay settlement. It was said the focus should shift from a wage bill freeze to a fair distribution of pay as the economy recovers.

The inquiry was told by the public services unions that the longer the restraint lasts the more problems the government is storing up for the future. NHS unions, for example, said it would inevitably become harder to recruit and retain the staff needed for the delivery of high-quality public services.<sup>36</sup> Nuffield Trust research indicates that the problems are already beginning to show themselves, with the cost of temporary staff rising 20 percent in 2012/13 and spending on contract and agency staff rising 27 percent in 2013/14.<sup>37</sup>

It is not only pay that attracts people to public service – a sense of vocation is, in many cases equally important – but a pay freeze hardly helps attract new recruits. Evidence from the 1990s and the early 2000s confirms that recruitment and retention difficulties are inevitable if public-sector pay drifts too far out of line with private-sector pay. According to the Institute for Fiscal Studies, public-sector pay is projected to fall by 8 percent in relation to private-sector pay over the period 2012–2019.<sup>38</sup> In addition the institute suggests that the pay bill freeze is making a relatively small contribution to controlling public-sector costs – job losses are far more significant.<sup>39</sup>

The Hutton review on fair pay in the public sector called for a fresh approach to public-sector pay based on a fair pay code, to be adopted by all organisations delivering public services on a "comply or explain why" basis. The code would include provisions on proportionality in executive pay, the use of variable pay and enhanced disclosure of executive pay. According to the review:

*The UK must take care to avoid making the public sector a fundamentally unattractive place for those with talent and drive. If the wider value of public service is diminished, the talented and motivated will only be willing to work in public services to the extent that they are paid what they can make elsewhere.<sup>40</sup>*

The general view from the inquiry discussions was that a continued pay freeze is not sustainable in either the short or the medium term. It was said that as the nation emerges from recession the government should seek to manage public-sector pay fairly and plan an orderly return to normal pay determination once the public finances have been restored to order. Reaching some understanding and agreement with public-sector unions is essential if government wishes to avoid disruption through

industrial action or a period of unmanaged catch-up as the economy recovers.

Several witnesses to the inquiry commented that it should be possible to secure a new pay settlement that offers an orderly return to normal pay determination. The pay bill freeze could be converted into a fair pay code and relaxed gradually, with phased increases in pay and specific provisions to improve the position of the lowest-paid public-sector workers as growth returns.

It was said that flanking policies could be adopted to complement a public services fair-wage settlement, including the use of living-wage contracts (see above) and a more determined effort to eliminate gender pay inequality in the public sector. The public service unions also mentioned the need to review widening pay differences for the same public service job.

The inquiry was also told that the growth in outsourcing had exacerbated wage inequalities between in-house staff, transferred staff and new employees working for a private contractor (see the discussion on outsourcing in the chapter on insecurity at work). It was said that contractors had a tendency to bid at the lowest wage rates unless tenders said otherwise.

The inquiry was told that this was, however, often difficult to prove because of the lack of information on the way outsourcing impacts on pay rates and terms and conditions. It was said that this was partly because independent public service providers are not covered by the same obligation to publish pay policy and data on staff as are public authorities. It was said the law could be changed to ensure that private firms providing public services are required to publish the same information on pay and conditions as are public authorities.

The role of the independent pay review bodies<sup>41</sup> in determining national pay awards in the public sector was examined by the inquiry. It was generally felt that the pay review bodies system, which dates back to the 1970s, has been successful in "keeping the industrial peace", as it were. However, the public service unions stated that the government's recent decision to reject the recommendations of certain pay review bodies<sup>42</sup> and its plans to move to wholesale local bargaining across the public sector could undermine the role of the pay review bodies. It was said that the government should respect the independence of the pay review bodies (and the Low Pay Commission) and avoid political interference.

**Recommendations:** *The government should plan for an orderly, phased return to normal public-sector pay negotiations. A new settlement on public-sector pay between government and public-sector unions should be a priority for government.*

*Government should restore the role of the pay review bodies and ensure that public-sector workers benefit as the economy recovers.*

### Pay in the boardroom

Since the financial crash top pay has caused public outcry. From

bankers' bonuses and rewards for failure there has been increased scrutiny and anger in relation to the rewards of those paid most. According to Simon Walker, director of the Institute of Directors:

*Median remuneration at FTSE 100 companies has risen much faster than the performance of the index, than retail price inflation, than at smaller companies. The link between executive pay, performance and the wider economy has become very hard to justify.*<sup>43</sup>

A recent poll has shown that over 80 percent of the public think bankers are paid too much.<sup>44</sup> Moreover, the vast majority of people think government should act to narrow pay differentials and believe that pay gaps are unfair and do not reflect how hard people work.<sup>45</sup>

*There's a disconnect between executive pay and performance.*

– Labour market expert

A study of 4,735 companies between 1991 and 2000 found that within-firm pay inequality is significantly associated with lower firm performance.<sup>46</sup> A second study that used compensation data from Standard & Poor's ExecuComp (covering around 1,500 companies per year) found that firm productivity is negatively correlated with pay disparity between top executives and lower-level employees.<sup>47</sup>

The inquiry heard from experts on the damaging effect that pay differentials can have if they are not felt to be fair. It was commented that observing the principle of "wage fairness" is not just a matter of distributive justice, but also has an effect on organisational cohesion and morale. It is hard for any business to be effective if workers have little trust in the leadership qualities of those guiding the organisations. As discussed earlier in the report, having one rule for the boardroom and another for ordinary workers is also likely to have a negative impact on productivity. Yet over the last 30 years there has been a widening gap between those at the top and the majority of the workforce, with little change in corporate behaviour towards top pay – despite several government-backed reports and reviews calling for reforms and the introduction of stewardship and governance codes of conduct and other regulatory changes.<sup>48</sup>

According to evidence from the High Pay Centre (and the High Pay Commission), between 1980 and 2011 boardroom pay in the UK rose by around 3,000 percent, while increases for workers on average earnings increased by a far more modest 300 percent over the same period.<sup>49</sup> In more recent times executive pay has continued to grow faster than average earnings, with bonuses rising 5 percent in 2013/14 to over £40 billion – the highest level since 2008. In 2011, for example, the latest year for which accurate figures are available, executive pay rose by 49 percent at a time when average pay rose by just 2.7 percent. According to Income Data Services, executive pay rose 14 percent in 2013, with FTSE 100 companies awarding directors large, share-based pay packages based on the sharp increases in dividends.<sup>50</sup>

The inquiry could find no plausible economic theory that can explain why the growth of executive pay should exceed the

growth in pay for average workers by a factor of 10. There is no evidence to show that executives became 100 times more productive than ordinary workers over this 1980-2011 period, or that their contribution to their business became more valuable in some other way.

The inquiry heard of concern about the membership of remuneration committees fixing executive pay representing a closed circle – executive directors from one company sit as non-executives on the board and remuneration committee of another. The current system seems to allow executives to fix their own rewards, with no relation to what is happening inside a company and no dissenting voices on remuneration committees.<sup>51</sup>

*We have to do something about the way [remuneration committees] are constituted.*

– Labour market expert

Some remuneration consultants argue that high and rising levels of executive pay are necessary to recruit and retain the best managers. This means that companies need to be in the top 10 per cent or the top quarter of the distribution of executive rewards. Remuneration consultants undertake extensive surveys to allow such comparisons to be made, but the evidence to the inquiry suggests that this approach also puts companies in a position where they are engaged in an arms race for the best talent – effectively ratcheting up pay awards regardless of performance.

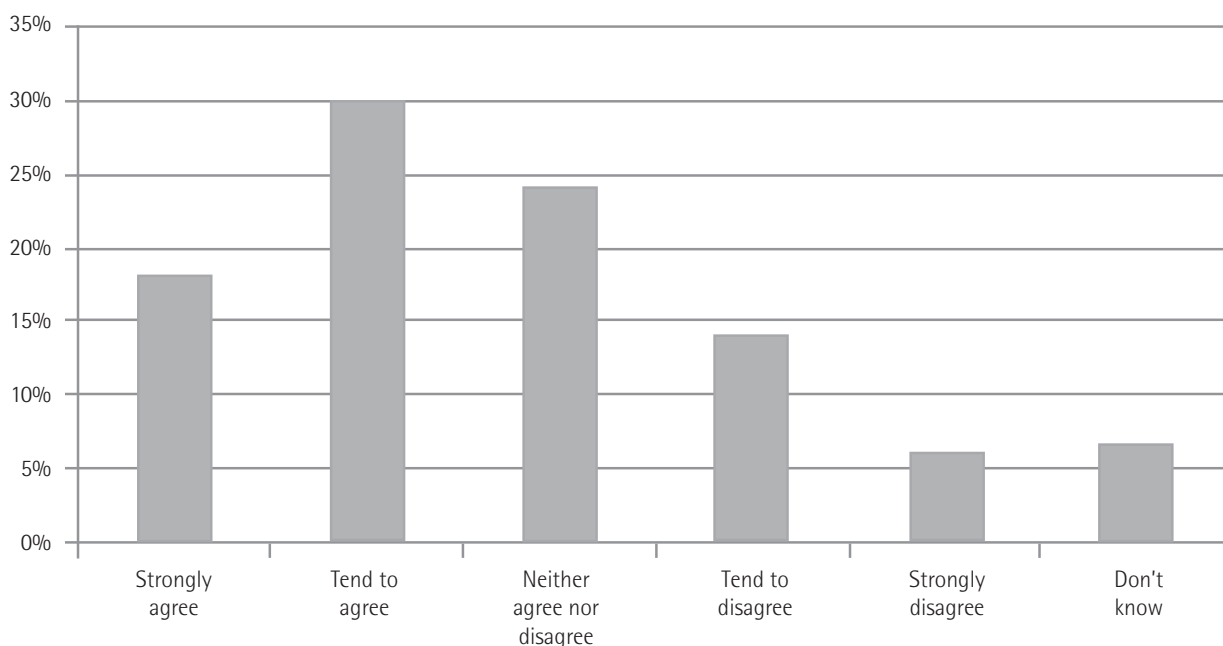
The inquiry examined evidence on top pay from other EU countries, which shows that the UK and the USA are very much the odd ones out. Those at the top have also secured increasingly

high remuneration packages in Germany, France and even Sweden, but the phenomenon is more subdued and, in France and Sweden, should be viewed alongside the maintenance of relatively egalitarian outcomes.<sup>52</sup> Moreover, relatively lower pay for senior executives seems not to be a source of difficulty for these economies. There is little evidence to prove that there is an international war for top executive talent and that those countries paying less achieve worse outcomes overall.

There is more transparency in executive pay in the UK than was the case in the past, and shareholder voting on top pay is under more scrutiny than ever. It is perhaps too early to judge whether the latest changes to disclosure of executive remuneration and to voting powers (under the Enterprise and Regulatory Reform Act 2013) will have a significant effect.<sup>53</sup> It was brought to the inquiry's attention that so far shareholders are in the main continuing to back excessive executive pay awards, often linked to generous bonus and share option schemes. This may change if shareholder activism on executive pay increases, although the inquiry could see few signs of a repeat of the so-called Shareholder Spring of 2012, which saw a wave of shareholder action against listed companies.

The inquiry was told that the regulations requiring public companies to disclose the detailed composition of directors' remuneration in their annual reports had been strengthened. Recent changes, for example, included disclosure of "the percentage change in total remuneration in comparison with the previous year for the CEO and the average percentage change for employees of the company as a whole". While it was said these reforms have been helpful, the indications are that companies are implementing them patchily.

**Chart 15: Views on whether employees should influence directors' pay**  
*Response to the statement "All staff should have a say in the pay of those at the top of organisations"*



Source: YouGov poll for TUC/Smith Institute  
 Total sample size was 4,555 adults, of which, 2,355 were employees. Fieldwork was undertaken on 5-7 August 2014. Survey was carried out online. Figures have been weighted and are representative of all GB adults (aged 18+).



There has also been interest in having employee representation on the remuneration committees of public limited companies to help curb executive pay. The inquiry heard from a number of experts, including from Germany, who thought that it was critical that worker representatives should have the resources to be able to challenge the views of consultants or the conventional views of existing members. It was said that any representatives would need time off work for training and rights to seek their own advice. There would also need to be safeguards to ensure that the representatives are seen as legitimate and able. It was said that this could be problematic in companies where structures for employee information and consultation are currently weak. The inquiry was told that there would have to be some meaningful system for selecting and electing representatives. Merely leaving it to the board to select a worker representative would not be satisfactory.

**Recommendations:** *The government should legislate to require public companies and large private companies to disclose the ratio of the rewards of executive directors to the lowest-paid/median-paid workers and the number of workers paid less than the living wage.*

*The government should introduce regulations to require employee representation on remuneration committees of public companies; such regulations must ensure that representatives have the resources and support to undertake the task.*

### Profit sharing

The High Pay Centre drew the inquiry's attention to the case for company-wide profit sharing, which it argued should be mandatory for companies over a certain size and could replace executive bonus schemes. Recent polling by the centre indicated that 81 percent of the public support profit sharing.<sup>54</sup> The Institute for Public Policy Research's research also advocates profit sharing as a "double dividend for employees – providing a greater part of the proceeds of success as well as raising base pay, while driving up productivity and the quality of work"<sup>55</sup>

The Institute for Public Policy Research suggests greater tax relief on profit sharing for all employees in large companies, but contingent on establishing workplace forums for employee engagement with limits to ensure that firms do not shift pay wholly over to profit sharing. In discussing the proposal, it was said that supporting the

spread of employee ownership is worthwhile only if it is matched by effective structures for worker participation. However, it was generally felt that creating workplace forums as a quid pro quo for profit sharing would be difficult in many workplaces. It was said that a better option might be to improve union access to workplaces.

Despite evidence to show that inclusive profit-sharing schemes are popular and can boost productivity,<sup>56</sup> they have yet to take hold in the UK. Unlike in France, where profit sharing is compulsory for all companies with over 50 employees (see panel), most schemes in the UK are in the financial sector and tend to reward management rather than average employees. According to the European Foundation for the Improvement of Living & Working Conditions' 2009 European company survey, only 8 percent of firms with 10 or more employees offer profit-sharing schemes in the UK, compared with an EU average of 14 percent.

The TUC suggests that share ownership should be open to all workers (including part-time workers) and offered as an addition to, rather than a substitute for, decent pay and pension provision. It also calls for shares or share revenues to be allocated on an equitable basis in order to avoid reinforcing existing pay differentials.

The evidence to the inquiry also suggests that it could be worth exploring legislative changes to protect some profit-sharing schemes from abolition as a result of management buy-outs and takeovers.

### Profit sharing in France

In France, all firms with 50 or more employees are obliged by law to share in the financial success of the company through deferred profit-sharing plans (*accords de participation*). For smaller firms, optional cash-based plans are available (*intéressement*). An employee can engage in a number of schemes, each of which can have its own objective. The voluntary gain-sharing scheme may be used by any company and is usually linked to company profits, with cash bonuses to staff (under limits linked to an employee's social security contributions). Companies that voluntarily set up profit-sharing plans receive tax breaks, with the precise terms agreed with unions or by a two-thirds majority of staff. Employers can also set up voluntary saving programmes through which employees can buy shares. One popular way of implementing employee share ownership is through a closed investment fund, the Fonds Commun de Placement d'Entreprise.

## References

- 1 An IMF paper showed that low-income households had become increasingly indebted to maintain their living standards as they sought to compensate for stagnant or falling real wages. The financial system repackaged these debts in derivative instruments, the true value of which proved hard to determine. When the underlying loans began to default, the tower of derivatives collapsed, leading to the credit crunch and the global financial crisis. See: Kumhof, M and Ranciere, R Leverage, *Inequality and Crisis*, IMF working paper 10/268 (2010). More recently Christine Lagarde, managing director of the IMF, told the 2013 World Economic Forum that "excessive inequality is corrosive to growth; it is corrosive to society".
- 2 John Cridland's "New Year Message" for 2013
- 3 Centre for Labour & Social Studies *State Intervention for Wage-led Development*, policy paper (2014)
- 4 Unions21 survey
- 5 Cribb, J et al *Living Standards, Poverty and Inequality in the UK: 2013* (Institute for Fiscal Studies, 2013)
- 6 Coats, D, Johnson, N and Hackett, P *From the Poor Law to Welfare to Work* (Smith Institute, 2012); Coats, D *Just Deserts?* (Smith Institute, 2013)
- 7 Pessoa, JP and van Reenen, J *Decoupling of Wage Growth and Productivity Growth?* (Resolution Foundation, 2012)
- 8 Hacker, J *The Institutional Foundations of Middle-class Democracy* (Policy Network, 2011)
- 9 Coats, D *Just Deserts?* (Smith Institute, 2013)
- 10 According to the 2014 Labour Force Survey, collective bargaining coverage is 29.5 percent, with private-sector coverage at 16.6 percent and public-sector at 63.8 percent.
- 11 Metcalf, D et al "Unions and the Sword of Justice: Unions and Pay Systems, Pay Inequality, Pay Discrimination and Low Pay" in *National Institute Economic Review* no 176 (2001)
- 12 This wage premium has fallen by half in the last decade, confirming that union bargaining power is being eroded – Bryson, A and Forth, J *Trade Union Membership and Influence 1999–2009*, CEP discussion paper no 1003 (Centre for Economic Performance, LSE, 2010)
- 13 See: Cowdery, C *Gaining from Growth: The Final Report of the Commission on Living Standards* (Resolution Foundation, 2012)
- 14 The argument could be extended further as the bargaining power for many of those in the top half of the distribution has declined too, explaining why the benefits of growth have been enjoyed by the top 10 per cent.
- 15 "The proportion of employees who belonged to a union in larger workplaces was 34 percent in 2013, compared with 16 percent in workplaces with less than 50 employees" – *Trade Union Membership 2013*, statistical bulletin (BIS, 2014)
- 16 In France collective agreements (mostly concerning wages) are pervasive (coverage is nearly 100 percent) because such agreements can be legally extended to all workplaces at the request of the union or employer.
- 17 The CAC seeks to promote fair and efficient employment relations arrangements in the workplace by resolving collective disputes through practicable, lawful and impartial adjudication, facilitating where possible voluntary outcomes.
- 18 BIS *Trade Union Statistics 2013* (2014)
- 19 Bryson, A and Forth J *Trade Union Membership and Influence 1999–2009*, NIESR discussion paper no 362 (National Institute of Economic & Social Research, 2010)
- 20 Johnston, D and Lordan, G *When Work Disappears: Racial Prejudice and Recession Labour Market Penalties*, discussion paper (Centre for Economic Performance, 2014)
- 21 Bryson, A *Pay Equity After the Equality Act 2010: Does Sexual Orientation Still Matter?* (National Institute of Economic & Social Research, 2014)
- 22 It is worth noting that it has reduced extreme low pay with no apparent negative impact on unemployment (Low Pay Commission, 2013). Experience in the UK reflects the evidence gathered across the developed world. A minimum wage fixed sensibly and flexibly, with separate arrangements for young workers, has no negative impact on employment.
- 23 Kelly, G *Where Next for the Minimum Wage* (Resolution Foundation, 2014)
- 24 A report published earlier this year by the LPC has begun tentatively to explore this territory.
- 25 Migration Advisory Committee *Migrants in Low-skilled Work: The Growth of EU and Non-EU Labour in Low-skilled Jobs and Its Impact on the UK* (2014)
- 26 Resolution Foundation, 2013
- 27 If the highest of the wages councils rates from 1993 had been up-rated in line with earnings growth and used as a benchmark for the NMW in 1999, then the introductory rate would have been around £4.00 an hour instead of the £3.60 fixed by the LPC (TUC *Submission to the Low Pay Commission*, mimeo [Trades Union Congress, 1999]). Up-rating other wages councils rates using a similar methodology would have produced much lower figures.
- 28 Public Health England *Health Inequalities and the Living Wage* (2014)
- 29 Stallard, G "Offering a Living Wage is Good Business Sense" in *TouchStone* (2014) (<http://touchstoneblog.org.uk/2014/03/offering-a-living-wage-is-good-business-sense/>)
- 30 Smith Institute *Setting a Fair Pay Standard* (2014)
- 31 Such contracts would be similar to fair wages resolutions, which were first introduced by parliament in 1891. The fair wages resolutions required firms undertaking contracts to observe fair labour standards, including collectively bargained terms and conditions of employment. They were rescinded in 1983.
- 32 Research by the Smith Institute examined the top 10 highest-value contracts, which account for over 26 percent of the total value of contracts. The top 10 contracts provide a list of 61 unique companies, which aggregately employ 464,000 workers. Some 104,300 workers would be affected by such a policy, resulting in a total estimated direct cost for the market of approximately £153 million.
- 33 Given that trade union members currently enjoy a wage premium of around 5 percent over comparable non-members, it is very unlikely that a collective agreement will fall below either of the other thresholds.
- 34 In the 2011 Autumn Statement, the chancellor of the exchequer announced that public-sector pay awards would average at 1 percent for the two years following the pay freeze (2013/14 and 2014/15). In the 2013 Budget, the government announced that public-sector pay awards would be limited to an average of up to 1 percent in 2015/16. Plans were also announced to end automatic

time-served progression pay.

35 The TUC claims that since 2010 public-sector workers are in real terms worse off by on average £2,245 a year, as a result of the pay freeze.

36 A view, according to Unison, shared by the healthcare regulator, Monitor

37 Nuffield Trust *Into the Red: The State of the NHS Finances* (2014)

38 Institute for Fiscal Studies *The IFS Green Budget 2013* (2013)

390 Ibid

40 Hutton *Review of Fair Pay in the Public Sector: Final Report* (2011)

41 The Office of Manpower Economics provides an independent secretariat to the seven pay review bodies and two police boards (in England and Wales), which make recommendations impacting 2½ million workers – around 40 percent of public-sector staff – and a pay bill of £95 billion.

42 The government rejected the body's recommendation for 2014/15 that all staff should get a 1 percent increase, in addition to any incremental increase for time served.

43 Quoted in *Daily Mail*, August 2014, and on the High Pay Centre website

44 YouGov-Cambridge *Public Trust in Banking* (2013)

45 High Pay Centre *Reform Agenda: How to Make Top Pay Fairer* (2014)

46 Martins, P *Dispersion in Wage Premiums and Firm Performance*, working paper no 8 (Centre for Globalisation Research, 2008)

47 Faleye, O, Reis, E and Venkateswaran, A *The Effect of Executive-Employee Pay Disparity on Labor Productivity* (European Financial Management Association, 2010)

48 Over the past 20 years there have been several high-profile corporate governance reviews and reports, including Cadbury (1992), Greenbury (1995), Hampel (1998), Turnbull (1999),

Myners (2001 and 2014), Higgs (2003), Smith (2003) and Walker (2009).

49 High Pay Commission *Cheques with Balances: The Final Report of the High Pay Commission* (2011)

50 *The Guardian* (November 2013) quotes Institute of Development Studies research which states that while basic salaries rose by 4.1 percent and annual bonuses fell by 8.8 percent, the total pay package for an average FTSE 100 director rose sharply through a 58 percent surge in the value of long-term incentive plan awards being cashed in.

51 Lord Myners, author of the Myners review on corporate governance, has long argued for directors' pay to be compared with the lowest paid, or to the median pay, of the organisations they lead.

52 Piketty, T *Capital in the Twenty-first Century* (Belknap-Harvard, 2014)

53 The changes made by the new statutory reporting requirements require that large and medium-sized firms report on each director's pay package, the value of their pension schemes and the value of the share options they have received. In addition, these companies must have a clear remuneration policy. There is now a binding shareholder vote on whether to approve the remuneration policy and an advisory vote on whether to approve the remuneration package in any particular year. Both these developments represent a step forward, but they still depend on shareholders being willing to challenge both the policies and the proposed pay packages.

54 High Pay Centre *Reform Agenda: How to Make Top Pay Fairer* (2014)

55 Lawton, K and Lanning, T *Sharing Profits and Power: Harnessing Employee Engagement to Raise Company Performance* (Institute for Public Policy Research, 2013)

56 See: Kruse, D, Freeman, R and Blasi, J *Does Shared Capitalism Help the Best Firms Do Even Better?* (Centre for Economic Performance, LSE, 2011)





## 5. Equality at work

It is a matter of consensus that discrimination on the grounds of gender, race, disability, sexuality, faith or belief, gender identity or age is unacceptable.<sup>1</sup> Protection against such discrimination has been given effect through the Equality Act 2010, the Human Rights Act 1998 and earlier legislation enacted from the early 1970s onwards. These laws have unquestionably improved equality at work.

However, as the evidence to the inquiry showed, the world of work in 2014 is still characterised by deep inequalities and injustice. There remains, for example, a significant gender pay gap, exacerbated by the difficulties parents face in reconciling work and childcare. Disabled people in work, or those who have illness such as cancer and are in work, generally experience worse labour market outcomes than their able-bodied colleagues and are also more likely to experience unfair treatment in the workplace. Workers from the black and minority ethnic (BAME) communities are also much more likely to become unemployed than their white counterparts. In addition, young people under the age of 24 are much more likely to experience unemployment than "prime age" workers – those aged between 24 and 65.

Some of these problems may have been exacerbated by the recession, but most predate it and are influenced by wider factors, such as the pressures of an ageing population and cultural and class issues. The inquiry also heard from the Equality & Diversity Forum, which said that the challenge is to normalise diversity, rather than it being a box-ticking exercise. The Employers Network for Equality & Inclusion also drew attention to its research on unconscious bias, which highlights the lack of openness in some workplaces and a concern about causing offence which leads to "social distancing" behaviours between managers and staff.<sup>2</sup>

The inquiry was told that some of the equalities legislation needs reform to remain relevant to the changing world of work. It was said, for example, that the provisions of the Equal Pay Act (now part of the Equalities Act 2010) are unsuited to the growing occurrence of outsourcing labour. Many women in such employment are unable to compare themselves with male colleagues because they are employed by different companies, albeit working in the same job environment.

The inquiry was informed that the UK has a relatively poor record on equalities compared with other comparable countries. According to PwC's 2014 Women in Work Index, for example, the UK has made progress in narrowing the gender wage gap and increasing female labour participation, but other countries have improved at a faster rate (leaving the UK 18th out of the 27 OECD countries in terms of overall female economic empowerment, unchanged since 2011).<sup>3</sup>

### Women in the workplace

There are more women in employment today than at any time since records began in 1971. And, as the inquiry heard, women are changing the world of work for the better in ways that could not have been imagined when the Equal Pay Act was introduced in 1970. However, as Maria Miller MP, the former women and

### The CBI and boosting diversity

The CBI recently stated that business needs to:

- tackle gender segregation in careers right from the outset;
- take active steps to widen the pipeline of young people going into science, technology, engineering and maths work, to include more girls and women;
- keep doing more to support women in the workplace and make sure managers are engaged;
- commit to meaningful diversity policies and aspirational targets that can deliver real progress;
- place renewed focus on effective recruitment, retention and succession planning; and
- ensure the equal pay agenda is highlighted as an important issue within any business diversity strategy.

It has called on government to:

- do more to push a wider awareness and understanding of the benefits and options for flexible working;
- provide more guidance around the details of the forthcoming shared parental leave system to make it workable in practice for employees; and
- help employers deliver flexible, high-quality, affordable childcare so that parents with caring responsibilities can maintain contact with the labour market.

Source: CBI *Building on Progress: Boosting Diversity*, position paper (2014)

equalities minister, told the House of Commons in 2013, "this is still a workplace designed by men for men. There is a great deal that this government still has to do to make sure that we can allow women to play their full part."

It was said on numerous occasions to the inquiry that the under-utilisation of women in the workplace is not only unjust and unfair but also a loss to the economy. It also has wider effects on poverty and income inequality. For example, women's pensions are significantly less than men's, and as a consequence women will have to save more or risk working until their seventies.<sup>4</sup>

Opportunities for women at work vary from employer to employer and depend on a mix of factors, not least pay rates, open and fair competition, flexibility, available and affordable childcare, management policies and culture, and the attitudes of their peers and of men. The inquiry was told that although the overall picture is improving (especially for professional women), too many women are underpaid, under-promoted and overlooked. It was said that some women face discrimination, while others are often held back by caring responsibilities for their parents and children and by inertia and stereotyping.

The inquiry was told that sexual harassment and sexist attitudes continue to afflict the lives of women at work. According to a survey by *Labour Research* magazine, the problem endures, despite legislation outlawing it. Reference was also made to a major survey by the law firm Slater & Gordon, which found that

six in 10 working women have had a male colleague behave “inappropriately” towards them, and that nearly a quarter of women have experienced a senior colleague making a pass at them at some point in their career.<sup>5</sup>

The inquiry was made aware of the influential 2013 report by the House of Commons BIS committee, *Women in the Workplace*, which set out a comprehensive reform agenda, including: wider use of positive action provisions in the Equality Act; government targets for women in atypical work sectors; more support for the public-sector equality duty and equality impact assessments; and a new government Equality Office voluntary code of practice on part-time and flexible working. The inquiry touched on these and other equality issues, including concerns about occupational segregation and the need for government to take a more positive stance on encouraging more women to go into traditionally male-dominated industries.

Baroness Prosser told the inquiry that although the government has accepted a number of the committee’s recommendations, they have largely not been implemented. She drew attention to the decision in 2011 to terminate the successful, employer-backed Women and Work Sectors Pathways Initiative (a women-only training and up-skilling programme run by the sector skills councils). The initiative, which was positively reviewed by Leeds Metropolitan University, helped over 21,000 women during its five-year lifespan.

#### Women in work – basic facts

- 14 million women are in work (67 percent of all working-age women, accounting for 46 percent of the workforce)
- 12.5 million work as employees (compared with 13 million men)
- 8.1 million work full-time, and the number is increasing
- 5.1 million work part-time (compared with 2.2 million for men) and this number is falling slightly
- 1.4 million are self-employed (compared with 3 million men) and this is increasing
- 50 percent of self-employed women work part-time
- 12 percent of all women in work are managers (compared with 19 percent for men)
- 14 percent of all women in work are professionals (compared with 15 percent for men)
- 26 percent of women work in sales and customer services and personal services
- 10 percent is the difference in men’s and women’s median full-time hourly earnings
- 19.7 percent is the gender pay gap for all employees
- 18 percent of SMEs are led by women – around 22 percent in retail and transportation
- 20.4 percent of FTSE 100 directors are women (compared with 12.55 in 2011)

Source: House of Commons Library, latest ONS data for 2013/14

It was said that women face more barriers at work than their male counterparts, such as unequal access to formal and informal networks, lack of mentors and role models, and gender

stereotyping. Attention was drawn to recent research in the USA by Catalyst, a leading advisory organisation dedicated to advancing women at work, which suggests that gender-based stereotyping – and not fact-based information – often informs senior executives’ perceptions of men and women leaders and misrepresents the true talents of women leaders. The 2014 report *Women “Take Care,” Men “Take Charge”: Stereotyping of US Business Leaders Exposed* showed, for example, that men consider women to be less adept at problem solving, one of the qualities most commonly associated with effective leadership and a hallmark behaviour of a chief executive.

It was noted that the public sector is already under a statutory duty to promote equality.<sup>6</sup> However, the inquiry was told that the duty is not always respected. It was said that local authorities are getting to grips with equalities clauses in public contracts and that unions are helping,<sup>7</sup> but that there is a need for clearer guidance and stronger enforcement by the Equality & Human Rights Commission.<sup>8</sup>

It was suggested that the UK could learn from the work of the Australian statutory Workplace Gender Equality Agency, which is part of the Australian Department of Employment. The agency is charged with promoting and improving gender equality in the workplace, working with employers, unions and professional organisations. One of its key tasks is to help employers comply with compulsory gender equality reporting requirements under the Australian Workplace Gender Equality Act 2012.<sup>9</sup> Government and business leaders claim the reporting scheme has helped to drive improvements in gender equality and improve female workforce participation.

**Recommendations:** *The government should ensure better compliance with the Equalities Act 2010 and consider the benefits of increased transparency achieved by the Australian Workplace Gender Equality Agency’s reporting scheme.*

*The government should consider revising the Women and Work Sector Pathway Initiative or something similar, as a means of targeting skills training for women.*

#### Workplace gender reporting

In Australia, private-sector employers with over 100 staff have a duty to submit a report to the Workplace Gender Equality Agency each year. Reporting is done online and final reports must also be signed by the company chief executive. The report captures information on six gender equality indicators: gender composition of the workforce; gender composition of governing bodies of relevant employers; equal remuneration between women and men; availability and utility of employment terms, conditions and practices relating to flexible working arrangements for employees and to working arrangements supporting employees with family or caring responsibilities; consultation with employees on issues concerning gender equality in the workplace; lastly, any other matters specified, such as sex-based harassment. The reports are publicly available, although any personal information is excluded. The agency claims almost eight out of 10 employers say gender equality benchmarking reports are valuable.



### Older women in work

The particular concerns of older women at work were discussed by the inquiry. Evidence was presented from the 2013 Commission on Older Women, which demonstrates that older women at work are undervalued and many suffer discrimination. Unemployment among older women has increased, the pay gap between older women and men is twice that for women and men overall, and many older women struggle to juggle work and caring for a family member. It was commented that older women often face double discrimination on the grounds of age and gender, and that employers (especially smaller firms) often still seek information on age during the recruitment process (even though it is unlawful).<sup>10</sup>

The inquiry was told that although the UK has a comparatively high employment rate for older women, recent improvements have been slow by EU standards. According to the TUC's analysis:

*Two in five women over 50 wanted to work fewer hours but anecdotal evidence suggests that negotiating flexible working arrangements is not always as straightforward as it should be and many older women simply cannot afford to reduce their working hours.*<sup>11</sup>

The government and employers' bodies could do more to support older women at work, including better training and support and better-quality flexible working. Unison's 2014 report *Women Deserve Better – A Better Deal for Women Aged 50 and Over in Employment* also suggests that the government should seek to extend the availability of phased/flexible retirement options to more employers and consider mechanisms to widen access to partial pension take-up by older employees who are working reduced hours.

### The gender pay gap

All the evidence shows that low pay is a gendered phenomenon – almost three in every five workers receiving the NMW is a woman working part-time. Almost half of those are employed in either retail or hospitality, with significant numbers also employed in cleaning, caring and hairdressing. The Women & Work Commission<sup>12</sup> noted that much low pay could be explained by the prevalence of women's employment in the "Five Cs" – occupations that could be classified as caring, catering, cashiering, cleaning and clerical. It was impressed on the inquiry that all of these jobs make a significant social contribution and in some cases require high levels of skill, but they are nonetheless given a low economic value. The inquiry was told that many care workers are not even getting the NMW because of the issue of travelling time, and that most low-paid women workers are denied training and progression opportunities.

According to the latest ONS data, the pay gap narrowed by just over 7 percent between 2002 and 2010, but has slowly widened again year-on-year since. The gap is particularly pronounced in London, which partly reflects City bonuses to men. Although there have been marked improvements over a 20-30 year period,<sup>13</sup> the gap widened for full-time workers in 2013, with women who have GCSE qualifications and above paid on average 18 percent less an hour than their male counterparts and those with

no qualifications paid 14.3 percent less. The gap is even wider at the top end of the pay scale and among the self-employed.<sup>14</sup> The Chartered Management Institute reported in 2011 that the gap between how much male and female managers are paid has widened to £10,546, adding that it would take nearly a century to gain parity at current rates of change.

*I see the failure to make things happen as the usual one of not seeing women's working conditions as much of a priority.*

Comment to the inquiry discussion in London

The inquiry's experts group commented that the statistics on the pay gap can be misleading. For example, the gender pay gap in *hourly earnings* for full-time work is much less than the gender pay gap in *total earnings* for full-time work (confirming that men work more overtime and longer hours). However, the data does show a large gap in hourly earnings between *men working full-time* and *women working part-time*.<sup>15</sup> It also reveals that much of the discrimination in the workplace today is due to labour market segmentation (where there are lots of sub-groups with little or no crossover) and the impact of motherhood on both the opportunities to work and the earnings available.

### Gender pay gap since 1997

Between 1997 and 2013 the gender pay gap has, in general, narrowed for all age bands up to and including 40- to 49-year-olds. For the oldest age groups the pay gap has stayed fairly static since 2005. Within different occupations it has changed in different ways since 1997. The pay gap has consistently been large for those in the skilled trades (such as plumbers and electricians) and for managers and directors. The pay gap has been consistently less than the national average for professional and associate professional occupations. Between 1997 and 2013 the pay gap decreased the most for the lowest earners. The gap for those earning the most has not decreased by as much, indicating that the gap between the highest-earning males and females is not narrowing at the same rate as in the rest of the economy.

Source: Equal Pay Portal

Many of the measures discussed in the chapter on low pay are particularly relevant to women in low-paid work. For example, boosting the bargaining power of women on modest-to-low incomes, wider coverage of the living wage and ensuring decent labour standards in the public-sector supply chain could all make a significant contribution to the achievement of more egalitarian outcomes. The point that was made several times to the inquiry was that actions like these to tackle low pay also help hugely towards equal pay. It was said too that although the gender pay gap is narrower at the bottom of the wage distribution (largely due to the NMW wage floor), increasing the pay and progression of low-paid women would still make the biggest difference in narrowing the gender pay gap – because women disproportionately work in low-paid jobs.

There is an age dimension to the gender pay gap too. Women with children who have spent time out of the labour market often experience a significant "motherhood pay penalty" compared with women without children.<sup>16</sup> In the UK this is in the region of 11



percent, although it depends on the length of time spent outside the labour market. In a comparison of mothers and fathers, the Institute for Public Policy Research found that a mother born in 1970 could expect to earn 26 percent less than the average father by the time they were in their late thirties.<sup>17</sup>

The inquiry heard that government business initiatives (like the "Think, Act, Report" programme) to raise the profile of gender equality in the workplace on issues such as pay are helpful, but that progress has been slow. It was suggested that the government needs to push for a more preventative approach, and that the regulations under section 78 of the Equality Act – which are an element of the act not yet put into force – should be used to enable it to report on the gender pay gap. It was said that a reporting requirement would lead to greater transparency, which in turn would ensure compliance with the law and company policies. Publication of the results of an audit in the annual report could also give investors (and current/future employees) an insight into how well the organisation is managing its equalities and pay policies.

Section 78 of the Equality Act 2010 gives the government powers to require employers to publish information relating to the pay of employees for the purpose of showing whether there are differences between the pay of male and female employees. However, this section was not enacted by the current government. The powers provided by section 78 of the Equality Act are also restricted to companies with more than 250 employees. Some consider there is a case for requiring smaller businesses (with 50-250 employees) to undertake reporting too, perhaps every three years rather than annually.

The inquiry was also told that many of the key rights in the Equality Act rely on the principle of comparison. However, in situations where the workforce has been outsourced, many women are unable to compare themselves with male colleagues because they are employed by different companies, even though they may be working in the same environment doing similar work.

It was said that that some of the equal pay legislation, which dates back to the 1970s, is out of touch with today's work structures and needs to be overhauled.

Several witnesses referred to the work of the Equality & Human Rights Commission, which offers extensive guidance to employers and employees. Sarah Welfare, director of Work & Pay Research, suggested that the EHRC should build on its well-regarded equal pay review kits by offering sector-specific versions, especially in the harder-to-reach industries like retail and care work.

**Recommendations:** *The government should enact and utilise section 78 of the Equalities Act, enabling the government to require large companies to report on their gender pay gap.*

*The Equality & Human Rights Commission's 'equal pay review kits' should be extended to provide more sector-specific advice on equal pay.*

*There is a case for bringing the equal pay legislation up to date*

*so that it accommodates changes in the world of work, especially with regard to outsourced workers.*

### Opportunity Now

Business in the Community runs a benchmarking scheme called Opportunity Now, which details and analyses data on good workplaces for women and what is needed to drive change. The results of the top 50 employers, which are published in *The Times*, highlight what the best employers have in common:

- Having a clear purpose on gender opportunity drives change. Those organisations with the highest number of women in senior roles are twice as likely to have gender-focused objectives in their diversity strategies.
- Those organisations with more women at middle and senior levels have a single reward structure for all employees. Organisations with a clear and transparent pay structure are more likely to have women at the top.
- There is a positive correlation between high representation of women managers and the uptake of flexible working. Organisations that offer flexible working are also more likely to promote BAME employees.
- Organisations that perform best on gender carry out regular pay audits, have a very senior diversity champion with a gender remit, publically report targets for board composition, publically report workforce gender composition, and provide training to combat unconscious bias for all involved in recruitment.

### Top employers for women

Private sector	Public sector
BT	Environment Agency
DHL Supply Chain	Foreign & Commonwealth Office
Enterprise Rent-A-Car	Genesis
Ernst & Young	HM Revenue & Customs
KPMG	Home Office
National Grid	Leicestershire Police
Nationwide Building Society	National Audit Office
PwC	Ofcom
Royal Bank of Scotland	Royal Air Force
Royal Mail Group	Royal Navy

### Childcare

For the 4 million families with young children, it was said that one of the biggest problems is affordability of childcare, with the growth in costs hugely outstripping trends in family income. According to the Family & Childcare Trust, for a family of two children, the cost of keeping one child in part-time nursery and one in an after-school club is now £7,549 a year, compared with the average annual UK mortgage cost of £7,207.<sup>18</sup> Several witnesses to the inquiry stated that the rising costs of childcare and the lack of after-school care form a major barrier to women entering the workforce. Although government plans to extend free childcare for working parents with young children were

welcomed, it was said that there is a need for more help for parents with children over three – on which the UK lags behind many other EU countries.<sup>19</sup>

It was reported to the inquiry that women with young children often find that they must either leave the labour market completely (because no affordable childcare is available), or reduce their working hours (to accommodate their caring responsibilities), or accept that they will not seek a promotion while their children are below school age, or move to another (part-time) job in a different industry. It was also remarked that for women returning to the labour market it is often difficult to find a job with pay and seniority comparable to their previous employment. Women who put their careers on hold while they have young children can find that opportunities for advancement have passed them by.

*Childcare enables people to work. Money goes back to the exchequer... There's a strong economic argument for universal childcare.*

– Parliamentarian

**Recommendation:** *The government should seek to extend free childcare for working parents with children aged three and over from 15 to 25 hours a week.*

#### Centrica – flexible working

Flexible working is well established for certain groups of employees at Centrica, with its 8,500 engineers all homeworkers, using laptop and wireless technology to deliver service to customers. Centrica's Workwise programme (first piloted in 2003) was designed to offer individuals, irrespective of grade or statutory requirements, greater control over their work-life balance, while achieving a more efficient use of office space. The programme resulted in 60 percent of Centrica's worldwide workforce using some form of flexible working arrangements. The programme delivered a property saving of £10 million a year for the business, and Centrica has been able to improve the working environment for a large number of employees. Centrica says Workwise has been a great success and recommends the creation of a carers policy, in dialogue with employees, managers and unions.

Source: Centrica, Eurofound, Employers Forum on Age

#### Maternity leave

The inquiry was informed by Maternity Action that pregnancy discrimination at work affects almost half the pregnant women in work, and leads to 60,000 women losing their jobs.<sup>20</sup> Organisations like Mumsnet also provide plenty of anecdotal evidence about discrimination against mothers in the workplace and when applying for jobs. It is difficult to know precisely how extensive the problem is because the vast majority of affected women do not act against their employer, deterred by the emotional stress as well as the costs and pressures of taking formal action. However, a survey in 2013 by recruitment specialist maternitycover.com claimed that almost three-quarters of mothers felt that taking maternity leave put their jobs in jeopardy, and one in three working women said they felt they had been overlooked for a promotion because they were of childbearing age.

While maternity leave and maternity pay are more generous today than they were, the inquiry was told that two-thirds of women now earn less than they did before having a baby and half end their leave early for financial reasons.<sup>21</sup>

The inquiry was told that the £1,200 fee to lodge a maternity discrimination claim to an employment tribunal is a barrier to justice and is deterring many new mothers who want to pursue a claim. It was noted that the House of Commons BIS committee has already called on the government to abolish the fee.

#### Equal paternity rights

Good and affordable childcare is foremost in the minds of working parents. As several reports have shown, improving childcare also helps many women (and men) who are excluded from the labour market.<sup>22</sup> The point was made at the inquiry discussions that achieving a family-friendly work-life balance also demands change in the way men are seen as breadwinners, and that more should be done to support parental leave policies that explicitly include fathers.

Witnesses to the inquiry welcomed the government's plans to allow parents to share their maternity and paternity leave (as from April 2015). However, it was commented that only 55 percent of fathers take up their statutory rights to paternity leave, and only a tiny proportion take any of the shared parental leave entitlement.<sup>23</sup> Cultural barriers play a part, but a critical difference in maternity and paternity leave incentives is the level at which they are paid, with women able to receive 90 percent of previous earnings in the first six weeks of leave, but men being paid a flat rate of £136.78 for their two-week entitlement.

Research by the Equality & Human Rights Commission showed that over half of parents say their family leave arrangements are by necessity rather than choice, with lower-income families most likely to feel constrained by financial realities.<sup>24</sup> Thus the pay gap between mother and father (and the relatively low levels of statutory maternity/paternity pay) is likely to continue to deter fathers from taking up their entitled leave.

*The current system of leave cannot be described as flexible and does little to encourage shared parenting. It also perpetuates a gender imbalance in terms of attachment to, and position in, the labour market.*

BIS Impact Assessment on Shared Parental Leave (2014)

Low take-up of shared entitlements by fathers led Norway to introduce a period of non-transferable ("use it or lose it") leave for each parent, underpinned by high levels of wage replacement. Take-up rates increased from 4 percent to over 80 percent. A similar sharp rise in take-up rates occurred in Iceland when ring-fenced paid leave was introduced for fathers. The inquiry was told there is also good international evidence that incentives to increase take-up of leave by fathers improves female employment rates.<sup>25</sup>

According to a recent survey on paternity pay and leave, the vast majority of employers support the new right to shared paternal leave.<sup>26</sup> However, the inquiry heard that the new system

seems overly complex. In addition, employers will have the right to require leave to be taken in a continuous block, which could arguably discourage firms from redesigning jobs to better accommodate family commitments.

**Recommendations:** *The sharing of parental leave is a positive step forward, but take-up is likely to remain low unless there is an increase to the statutory payments to make it financially viable for both parents to take leave.*

*The government should consider extending paternity leave and pay from two weeks paid at the statutory rate to four weeks paid at 90 percent of earnings in order to improve the low rates of take-up.*

*The government should consider introducing 'use it or lose it' leave for both parents, perhaps underpinned by a higher rate of wage replacement.*

### Childcare vouchers 2015

From 2015, parents will be able to use an online tax-free voucher system, which will mean up to a fifth of childcare costs (up to £1,200 a year) are paid for by the state. Initially parents of children under the age of five will benefit. This will rise over time to cover households with children under the age of 12. Parents will have to work at least 16 hours a week and earn below £150,000 a year (households with two working parents could earn up to £300,000 a year and still be entitled). The current voluntary tax relief scheme, which the voucher scheme replaces, helps about 500,000 households. The government claims 2.5 million will be eligible for the current, employer-backed scheme.

### Age discrimination

Older workers aged 50-plus, who account for around 30 percent of the workforce,<sup>27</sup> are at least as productive as younger workers, and many are working by choice for longer than ever before. However, as the evidence to the inquiry from Age UK showed, many others are facing discrimination at work and are being forced out of the labour market:

*Perceptions and stereotypes of older workers – usually negative – are still firmly held, and challenging these is of great importance for individuals, employers and the government.<sup>28</sup>*

Age discrimination has been illegal since the introduction of the Employment Equality (Age) Regulations in 2006, and in general employer policies and practices have become more age-friendly (in part due to the end of the default retirement age in 2011). Despite this, the inquiry heard that age discrimination and prejudice against older workers is still rife in workplaces across the country.<sup>29</sup>

The inquiry was told that older workers are less likely to receive training than younger workers and more likely to be made redundant. The Employers Forum on Age quotes survey research showing that only 10 percent of jobseekers over 50 say they have never experienced age discrimination while looking for work, and 38 percent claim they have suffered age discrimination while at work.<sup>30</sup>

It was said that while most people still wish to retire at 65 (and some have no option due to the physical nature of their work), an increasing number of citizens will work for longer. Government will therefore have to do more to help employers manage the transition to somewhat later retirement.

The inquiry heard how today's generation of older workers are adapting to the changing labour market and that those aged over 50 are embracing flexible working and have a greater propensity to work for themselves.<sup>31</sup> Many employers too are becoming more aware of the benefits of employing a mixed-age workforce. McDonald's, for instance, found that its customer satisfaction rates were higher in restaurants employing older workers.<sup>32</sup>

*Flexibility for older people should be a real gain, so they can have control over exit rather than cliff-edge retirement.*

– Parliamentarian

Age UK stressed that while mutually agreed flexible working can offer great benefits to older workers, all too often it is mostly on the employer's terms and governed solely by workforce requirements, rather than the needs of the individual. It was also said that flexible working is usually concentrated in certain jobs (often lower-paid work) and rarely embedded in an organisation. Age UK called for all jobs to be flexible by default, meaning that employees would be able to work flexibly unless the employer could justify otherwise.

**Recommendation:** *The government should do more to enforce the age discrimination laws to help improve work for older workers, including better access to training.*

### Flexibility and eldercare support

The work-family balance is changing, with more people having to adjust their lives to care not only for their children but increasingly also for elderly parents – the so-called "sandwich generation". The ageing population presents huge challenges for the world of work, for both women and men.<sup>33</sup> It has been estimated that nearly 3.5 million additional carers will be needed by 2037, and that by 2017 the UK will reach the tipping point for care when the number of older people needing care will outstrip the number of working-age family members available to meet that need.<sup>34</sup> As the number of people who leave work to become carers rises, so the cost to employers and the wider economy increases. Evidence to the inquiry suggests the problem is getting worse. According to latest research, only 20 percent of medium-sized employers have formal company-wide policies in place to help carers remain in work.<sup>35</sup>

While most employers recognise the benefits of good-quality maternity and paternity leave and offer some form of flexible working,<sup>36</sup> eldercare is less talked about. Despite evidence showing that there is strong demand for eldercare support, relatively few employers offer eldercare-related employee benefits.<sup>37</sup> A recent survey by Allianz Global Assistance suggested that very few employees would actually turn to their employer if they needed to provide care for a relative, although half of respondents said they would be interested in employer-based elderly emergency care support schemes.<sup>38</sup> Surveys by My Family Care, which advises

firms on parental support, also indicate that employees are now thinking much more about eldercare support.

**Flexible working**

- Flexitime (choosing when to do some or all of your hours)
- Homeworking or teleworking (some or all work done away from the employer's workplace)
- Job sharing
- Part-time working
- Term-time working
- Shift swapping or self-rostering (employees agree shifts among themselves)
- Staggered hours (employees have various starting and finishing times)
- Compressed hours (employees work their total hours over fewer working days)
- Annualised hours (working hours are calculated over a whole year and then split into "fixed shifts" and "reserve shifts", which can be agreed on a more flexible basis)

Source: Carers UK

There were mixed views on the new rights to flexible working, which give all employees (regardless of their dependents and provided they have worked for their employer for 26 weeks) one "flexibility request" per year. While some employees welcome any progress in regard to caring leave, it was stressed that this is not an automatic right to work flexibly, only a right to request. Moreover, employers have been given a long list of permitted business reasons to turn down the request. Some employer bodies, like the Federation of Small Businesses, have also warned that "the right to request" can introduce an unwelcome negative dynamic into the workplace.

*Flexibility is not just for working parents; it has to be wider and include carers.*

– Comment at inquiry discussion in Glasgow

Witnesses to the inquiry called for better job protection for employees who require a sudden leave of absence to deal with a family member's illness. It was said that the rights to unpaid leave (under the Work and Families Act 2006) are insufficient to cope with long-running care responsibilities. Reference was also made to the call by Carers UK for government to do more with employer bodies and local authorities to support initiatives like Employers for Carers and to embed good practice around flexible working.

The point was also made to the inquiry that a big part of the problem lies with shortages of homecare workers. It was said that many employees have no choice but to care for their loved ones.<sup>39</sup>

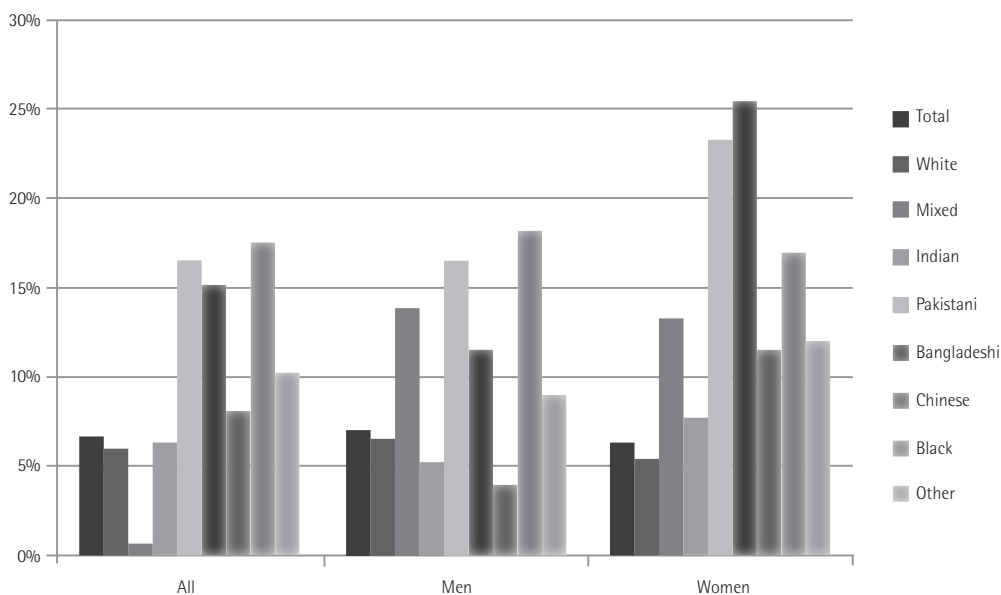
More radical suggestions were for employers to receive much bigger tax breaks for eldercare support or for a national scheme of eldercare vouchers – perhaps linked to the childcare voucher scheme, which is planned for 2015. It was noted that ministers have in the past spoken about carers getting the same flexible working opportunities and support as parents with young children.<sup>40</sup>

**Recommendation:** *The government should consider the idea of an integrated voucher scheme for employees covering both childcare and eldercare.*

**Ethnicity and the labour market**

Discrimination in employment on the grounds of ethnicity was outlawed by the Race Relations Act 1976. There can be no doubt that the measure has had some effect, although it is still the case that many black and Asian workers claim they have not been hired for a job because of racial discrimination. Evidence to the inquiry showed that people from black, Asian and minority ethnic (BAME) communities do in fact have considerably less opportunity in the labour market than anyone else. The level of unemployment for black and Asian workers is nearly three times that for white workers,<sup>41</sup> and almost half of all young black people under 24 are unemployed (47 percent). The evidence suggests that

**Chart 16: Ethnicity and unemployment, January to March 2014**



Source: ONS Labour Force Survey

BAME groups have been among the hardest hit by the recession and by job cuts in the public sector. Ethnic minorities are also underrepresented in high-quality apprenticeship schemes.<sup>42</sup>

Chris Whitewell, director of Friends, Families & Travellers, told the inquiry that employers should be doing more to use equalities monitoring to identify gaps within their workforce and then take targeted action to address those gaps. He said:

*We are aware that many employers these days do some form of equalities monitoring, but this is often partial and does not necessarily encourage those marginalised and discriminated-against groups (such as gypsies and travellers, and lesbian, gay, bisexual and transgender) to self-ascribe.*

Whitewell also commented that within some service delivery organisations there persists an “us and them” mentality in regard to services for BAME groups and others, such as disabled people. He suggested that this could be overcome if the profile of people delivering the service was more closely matched to those receiving the services.

Discrimination and inequality do not just affect those seeking work but also those in work. Evidence reviewed by the inquiry shows that 42 percent of those of Pakistani origin and 48 percent of people with a Bangladeshi background are low-paid, compared with 25 percent of white British employees.<sup>43</sup> Evidence sent to the inquiry from the Joseph Rowntree Foundation<sup>44</sup> highlighted the following as barriers to decently paid work for BAME workers: lack of support from line managers, “everyday racism”, and cultural stereotypes such as particular ethnic minorities being aggressive or not pushing themselves forward.

**Recommendations:** *Government should do more to support agencies such as the EHRC, ACAS and Jobcentre Plus in the equalities work they do. It could also support and promote benchmarking and best-practice schemes such as Business in the Community’s Race for Opportunity.*

*Government should ensure that anti-poverty strategies within Whitehall are aligned with those focused on equality. There is also a strong case for government to monitor and publish data on the progression of ethnic-minority workers and take-up of apprenticeships.*

### **Migrant workers**

The inquiry touched on the controversial topic of migrant workers, who make up 16 percent of the workforce (of these migrants, 6 percent were born in the EU and the rest outside the EU) – double the level in 1997. The inquiry heard different views on whether migrant workers (particularly from Eastern Europe) are undercutting British workers. The inquiry was told that there is evidence of undercutting in some sectors, especially those associated with low pay and exploitation,<sup>45</sup> although the impact at the macroeconomic level on growth, productivity or employment is hard to quantify. Surveys by the Chartered Institute of Personnel & Development suggest that the majority of employers think the availability of migrant workers has had no impact on wages.<sup>46</sup>

The problems of undercutting and exploitation of migrant workers require more effective regulation in order to tackle rogue employers. The inquiry found that there is more exploitation of migrant workers because they tend to be recruited via a private employment agency or gangmaster. The problem in some sectors, such as horticulture, seems to be a lack of protection and weak enforcement. The government’s Migration Advisory Committee report on migrants in low-skilled work<sup>47</sup> concluded that: employment agency enforcement is inadequate (just two or three people dealing with non-wage-related issues nationally); there is little incentive for rogue employers to be compliant given the minimal chance of inspection and even smaller risk of prosecution; and penalties – either financial or reputational (naming and shaming) – are either little used or not strong enough.

Ten years after the tragic deaths of 23 Chinese cockle-pickers in Morecambe Bay, trafficking workers into the UK for forced labour is still a serious problem. The inquiry heard how the Gangmasters Licensing Authority (created to prevent the exploitation of workers and recently transferred to the Home Office) is working hard to enforce labour standards and tackle rogue employers. However, it was remarked that despite recent increases in funding to the licensing authority and higher fines for employers found using illegal workers, more needs to be done, particularly in those sectors not covered by the Gangmasters Licensing Authority.

### **Mental health, physical disabilities and work**

Discrimination on the basis of disability has been illegal since 1995. However, those with work-limiting disability are still more likely to be low-paid. Disabled people are 28 percent more likely to be unemployed than the able-bodied, despite very few impairments actually preventing someone from working if reasonable adjustments are made.<sup>48</sup>

The inquiry received evidence from the Centre for Mental Health showing that those with mental health conditions report numerous barriers to work, such as discrimination and ineffective support, including from government programmes.<sup>49</sup> Although the stigma of mental health affects many aspects of people’s lives, it is most prominent in the world of work. Employers are often reluctant to employ someone with a mental health condition (one study showing that only half would) and surveys show that, even once they have been employed, they are often denied opportunities for training, promotion or transfer. Colleagues too have been found to feel uncomfortable working with someone who has a mental health illness.

Following on from the Black and Frost review on sickness at work (2011), it was said that government could also consider adopting a job brokering service for employees on long-term sickness absence who are unable to return to their current employer. The review estimated that the state could save up to £300 million a year by introducing this service and increase economic output by up to £800 million a year.<sup>50</sup>

It was suggested that the government should run a national campaign to reduce the stigma associated with mental health



illnesses and disabilities at work, and that as part of the campaign more needed to be done to support workplace training for managers.

### Young people in work

Unemployment among those aged under 24 is more than twice as high as the average. Among the young unemployed, a third have been jobless for more than a year and close to half unemployed for more than six months. As the inquiry was made aware, getting into work and staying there is the principal problem facing people under 24.

It was said that the government should ensure that any young person unemployed for six months or more is given the opportunity of a job for at least six months paid at the NMW or above. The evidence seen by the inquiry shows that previous job guarantee schemes were effective,<sup>51</sup> not least in keeping young people in touch with the world of work.

*Employers are not really interested in training, and it feels they don't really want young people.*

– Comment to the inquiry discussion in Brighton

### McDonald's engaging young people

Several contributors to the Inquiry mentioned the good work that McDonald's is doing to help young people into work. 75% of the McDonald's workforce is aged between 16 and 25, which means 43,000 jobs for 16 – 21 year olds, making it one of the UK's largest employers. For many people – especially young people and those with few qualifications – McDonald's provides an opportunity to gain new skills and qualifications and valuable work experience. Since 2006 more than 55,000 nationally-recognised qualifications have been achieved by McDonald's people – around 20,000 of these are in maths and English. According to Jez Langhorn, Senior Vice President and Chief People Officer, McDonald's UK; McDonald's has improved its reputation as an employer because of its strong commitment to training and development. Not only has it led to measureable business success but also boosted employee confidence and commitment: "Seeing the benefits it was giving to people, the business and customers made the board want to invest further in skills training". Langhorn comments that "Good jobs are good for people, regardless of what sector they are in, as long as they provide opportunity." McDonald's is accredited by Ofsted and was awarded a Grade 2 (Good) rating for its apprenticeship programme in 2010.

The inquiry was told that attitudes towards youth unemployment are changing as the labour market picks up. It was also noted that recent surveys indicate that many employers feel a duty to help young people into work.<sup>52</sup> However, the TUC has major concerns about the effects of long-term youth unemployment and has called for an expansion in the government's job subsidy scheme.

As mentioned in the chapter on pay, many more young people today are low-paid. According to the ONS, the average rate of pay for young people is around 42 percent lower than for the rest of the workforce, aged over 25. Research by the Resolution Foundation and the Work Foundation has also shown that young people are hugely overrepresented in low pay, a trend dating back

the 1990s. The inquiry was told that this is partly explained by the fact that pay rises faster at the age of 30 and above, and that there has been an increase in the number of young people studying longer. However, tackling the problem of low-paid employment for young people must be a policy priority for government.

### Volunteering and internships

Volunteering plays an important part in our society and is respected by the public and most employers. However, in some instances volunteers (especially interns in non-charitable companies) are exploited and used as alternatives to entry-level paid employment. Guidance on unpaid internships is available from ACAS and from the government's Pay and Work Rights Helpline, as well as interns' awareness-raising groups.

It was brought to the inquiry's attention that some employers are unaware of regulations concerning internships and compliance with the NMW. The Low Pay Commission noted that the government's guidance on NMW compliance has been cut back and said that it continues to receive...

*... evidence of widespread non-payment of the minimum wage for positions that appear to be work. The longer this continues the greater is the risk that work from unpaid interns becomes a "new normal".*

Low Pay Commission *NMW Annual Report 2013*

It was said that government needs to make more effort to raise awareness of the regulations concerning internships and the NMW and clamp down on illegal practices. It was also suggested that perhaps the HMRC could consider establishing some form of employer registration scheme for all internships. There were mixed views on the practicality of such an idea and whether it should be compulsory.

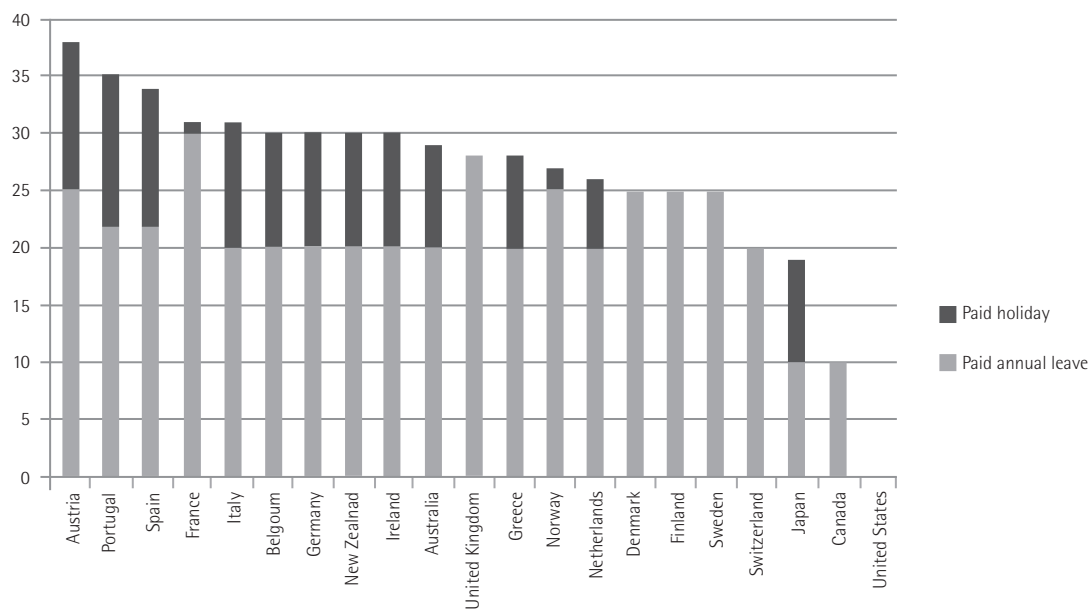
The inquiry was told that around 800,000 people are employed by the voluntary sector, which is almost double the number in 2001. According to the National Council of Voluntary Organisations, nearly 60 percent are engaged in health and social work, and their pay is much lower than in either the public or private sectors. It was said that the sector has a relatively high rate of part-time and temporary work and lower pay than both the private and public sectors (although the gap with the public sector has narrowed over the past 20 years).

Some witnesses claimed that the spending cuts have spawned a growth in non-standard and insecure work in the sector. It was said that voluntary organisations and social enterprises are being forced into bidding for public contracts at low tenders, based on minimum wages. However, according to the Third Sector Research Centre, factors that give rise to poor-quality jobs are no more likely to be found in the third sector than in the public or private sectors.<sup>53</sup>

### Working time and annual leave

The inquiry was told that although average working hours have steadily fallen to 32 hours per week, full-time employees in the UK still work longer hours than the EU average. Moreover, the number of employees working long hours has increased. A survey

**Chart 17: Paid leave in different countries**  
*Number of days of statutory paid days per year*



Source: Ray, R et al *No-Vacation Nation Revisited* (Centre for Economic & Policy Research, 2013)

by the charity Working Families showed that fewer than half of the parents it asked left work on time every day. According to the TUC, unpaid overtime contributes around £30 billion to the economy each year.

Paid annual leave is an important component of striking the right work-life balance. The inquiry heard that being overworked not only affects employee well-being but can also act as a brake on productivity. Yet prior to 1998 UK workers had few rights to paid annual leave. The situation improved in 2009 with employees having the right to 28 days' paid leave (to stop loopholes over bank holidays) and the UK now ranks in the middle of OECD countries for paid time off. However, the inquiry was told that nearly 2 million employees do not receive their statutory minimum annual leave entitlement. According to a YouGov/Croner poll report, 52 percent of the British employees surveyed (those who are not self-employed) admit to working through their holidays, and one in five (18 percent) say they make a regular habit of it.<sup>54</sup> A poll by the recruitment firm Adecco in 2013 indicated that a third of office workers do not take all their holiday leave. Hilton Hotels' survey had similar results, showing that up to 4.5 million employees fail to take annual leave through not booking time off.<sup>55</sup>

The inquiry examined the case for extending statutory paid annual leave and noted that any extension would result in increased

labour costs even if it boosted productivity per hour worked and reduced sick days. Given the likely impact on growth (when it is still fragile) and the marked improvement over the last 15 years, there were few calls for major change. Nevertheless, government could consider the idea of a "right to request" additional paid leave for those who have worked for more than five years for their organisation (thus supporting long-term commitment to employers). However, it was also said that such a right may make little difference if there is no compulsion or arbitration – employers could simply decline any request.

Government should also revisit statutory holiday entitlement for those who work six days a week but are still only entitled to 28 days' leave (rather than the 33.6 days to which they would be entitled if calculated on the same basis as those who work five days a week). The current anomaly disadvantages those working six days a week.

**Recommendation:** *The government should consider the idea of granting employees a legal 'right to request' additional paid leave if they have worked for their employer for a period of more than five years.*

*The government should correct the anomaly in holiday entitlements for those working six days a week.*



## References

- 1 The Equality Act 2010 listed nine protected characteristics: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion and belief; sex; sexual orientation.
- 2 Employers Network for Equality & Inclusion *Managing Unconscious Bias at Work* (2014)
- 3 The index measures: the proportion of women in work; the gap between female and male labour force participation; the female unemployment rate; and the proportion of women in full-time employment.
- 4 Female pensioners outnumber males by nearly two to one, but owing to the gender pay gap and women taking time off for childcare there is a wide difference in pension income. According to Prudential, the retirement income gap widened in 2014, with women retiring on an average pension income of £12,200 and men on £18,900 (with the gap even wider in London).
- 5 Slater & Gordon, the employment lawyers, polled 1,036 women in 2013.
- 6 The public-sector equality duty, under section 149 of the Equality Act, requires that public bodies have "due regard" to achieving equality outcomes, such as equal pay.
- 7 See, for example: Unison *Branch Guide to Equalities in Procurement*
- 8 The Equality & Human Rights Commission's latest guide to the public-sector equality duty was published in July 2014.
- 9 The reporting is based on a range of gender equality indicators, such as pay and flexible working, and the data is used to identify areas for improvement, track progress and benchmark performance.
- 10 See: National Institute of Economic & Social Research *Second Survey of Employers' Policies and Practices Relating to Age* (2010)
- 11 TUC *Age Immaterial – Women over 50 in the Workplace* (2014)
- 12 Women & Work Commission *Shaping a Better Future* (2006)
- 13 The full-time gender pay gap narrowed significantly between the early 1980s and the late 2000s. In 1971, for example, the full-time gender pay gap in the UK was around 40 percent, then it fell by 10 percentage points over the course of the 1980s and a further 10 percentage points over the course of the 1990s and 2000s.
- 14 The Chartered Management Institute's report in 2013 showed male managers earned on average bonuses twice as large their female counterparts; HMRC data showed self-employed women also earned around 40 percent less than self-employed men in 2012.
- 15 There is a very significant pay penalty attached to part-time work – a penalty that applies just as much to men working part-time as it does to women.
- 16 See D Ben-Galim's work at the Institute for Public Policy Research
- 17 Lanning, T et al *Great Expectations: Exploring the Promises of Gender Equality* (Institute for Public Policy Research, 2013)
- 18 The Family & Childcare Trust's 2014 Childcare Costs Survey also highlighted that childcare costs have risen by 27 percent since 2009 – meaning parents today are paying on average £1,214 more.
- 19 In Sweden, for example, almost four in every five women with young children are in work. Denmark and the Netherlands achieve comparable results. In the UK the employment rate for women with young children is below three in five (58 percent) – Thompson, S and Ben-Galim, D *Childmind the Gap: Reforming Childcare to Support Mothers into Work* (Institute for Public Policy Research, 2014)
- 20 An investigation by the Equal Opportunities Commission in 2006 found that around 30,000 women a year were being forced out of their work on the grounds of being pregnant or for taking maternity leave.
- 21 Reported in *The Times*, 30 September 2013
- 22 See, for example: Thompson, S and Ben-Galim, D *Childmind the Gap: Reforming Childcare to Support Mothers into Work* (Institute for Public Policy Research, 2014); OECD *Closing the Gender Gap: Act Now* (2012)
- 23 A survey of employees and managers in 2014 by the Institute of Leadership & Management found that a quarter of new fathers took no paternity leave at all, and fewer than one in 10 took more than their two weeks' statutory leave. A similar survey by OctopusPR found a similar pattern: OctopusPR *Dads at Work: A Report into the Paternity Leave Trends and Working Habits of the Modern Working Father* (2014)
- 24 Equality & Human Rights Commission *Working Better* (2009)
- 25 Asher, R *Shattered: Modern Motherhood and the Illusion of Equality* (2011)
- 26 XpertHR's Paternity Pay and Leave Survey, 2014
- 27 ONS Labour Market Statistics for 2014. Calculated as the proportion of those in employment and aged 50+. Those aged 65+ form 4 percent of those in employment.
- 28 Age UK Consultation *Response: Making Work Better* (2014)
- 29 See: Age UK *The Impact of the Age Regulations Five Years On* (2011)
- 30 Survey results presented to the Age & Employment Network conference in 2008
- 31 According to the Resolution Foundation's report *Just the Job or a Working Compromise? The Changing Nature of Self-employment in the UK* (2014), the over-50s now account for 42 percent of the self-employed, compared with 38 percent in 2005.
- 32 See 2009 study by Lancaster University Management School of 400 McDonald's Universities
- 33 A survey by My Family Care in 2011, Working Parents and Carers Flexible Working, showed that almost as many men as women had eldercare responsibilities.
- 34 George, M *It Could Be You – A Report on the Chances of Becoming a Carer* (Carers UK, 2001); Pickard, L *Informal Care for Older People Provided by Their Adult Children: Projections of Supply and Demand to 2041 in England* (2008)
- 35 See Carers UK's 2013 State of Caring Survey
- 36 According to the Chartered Institute of Personnel & Development, about 96 percent of firms already offer some form of flexibility and around 70 percent provide a right to request.
- 37 "Employee Benefits/Towers Watson Flexible Benefits Research 2014", on www.employeebenefits.com website, 31 March 2014
- 38 Allianz Global Assistance and Yecco 2014 survey on attitudes towards caring for an aging population

39 The 2011 census revealed that, at the time of the survey, 5.8 million people in England and Wales provided some level of unpaid care for disabled, sick or elderly relatives.

40 Health secretary Jeremy Hunt called for such parity in 2013, adding that a cultural step change among employers on flexibility was needed.

41 Unemployment rates show that people with a Pakistani background (16 percent unemployment) or a Bangladeshi one (15 percent) also experience severe labour market disadvantage. For prime age workers, the most excluded groups are women from the Pakistani (23 percent unemployment) and Bangladeshi (25 percent) communities.

42 Newton, B and Williams, J *Under-representation by Gender and Race in Apprenticeships: Research Summary* (unionlearn, 2013)

43 "Low Pay by Ethnicity" on The Poverty Site (<http://www.poverty.org.uk/55/index.shtml>)

44 Hudson, M et al *In-work Poverty, Ethnicity and Workplace Cultures* (Joseph Rowntree Foundation, 2013); Hudson, M *The Role of Employer Attitudes and Behaviour*, JRF programme paper on poverty and ethnicity (Joseph Rowntree Foundation, 2011)

45 See, for example, Equality & Human Rights Commission reports in the food industry and the Joseph Rowntree Foundation inquiry into forced labour.

46 See: Chartered Institute of Personnel & Development *The State of Migration – Employing Migrant Workers* (2013)

47 Migration Advisory Committee *Migrants in Low-skilled Work: The Growth of EU and Non-EU Labour in Low-skilled Jobs and Its Impact on the UK* (2014) 48 Morris, J *Rethinking Disability Policy* (Joseph Rowntree Foundation, 2011)

49 Centre for Mental Health *Barriers to Employment: What Works for People with Mental Health Problems* (2013)

50 Black, C and Frost, D *Health at Work – An Independent Review of Sickness Absence*, Cm 8205 (Department for Work & Pensions, 2011)

51 Fishwick, T, Lane, P and Gardiner, L *Future Jobs Fund: An Independent National Evaluation* (Centre for Economic & Social Inclusion, 2011)

52 ICM Research in July 2014 among 501 employers in England revealed that over four in 10 (43 percent) of all surveyed employers feel responsible for developing the next generation of the workforce. Just over a third (35 percent) feel that it is their social responsibility to help young people to develop the skills and experience that will help them into work.

53 See: Taylor, R, Kamerade, D and McKay, S *Reviewing the Literature on Pay and Non-standard Employment Taking a Cross-sector Perspective*, working paper 120 (Third Sector Research Centre, 2014)

54 YouGov/Croner poll on "working through your holidays", 2011

55 The survey by Hilton Hotels in 2013 that found that 4.5 million of us are losing more than six days of annual leave each year through not booking time off.





## 6. Justice at work

Creating an inclusive labour market, in which all those capable of work can find a job at decent wages, with reasonable opportunities for progression in an environment where they will be treated fairly and with respect, inevitably requires some level of regulation – either by statute or through collective agreements. Indeed, no one who was involved with the inquiry advocated a labour market completely free of employment regulation. The debate between employers and employees was about how proportionate and effective employment rights should be. As the BIS employment law review paper put it in 2011:

*A core of fundamental employment protections is needed: to safeguard employees from unscrupulous businesses and to ensure that good employers are competing on a level playing field, not undercut by unscrupulous competitors.<sup>1</sup>*

It was said that in a world where statutory employment rights are ubiquitous and unions often absent, employees often have no choice but to call in the lawyers.<sup>2</sup> The fact that conflict in the workplace has become much more individualised in this way raises challenges for employers and employees, especially those not in full-time employment.

The inquiry acknowledged that there are no easy routes to employment law reform and that problems in the workplace are often related to other corporate issues, such as cost pressures, technological change and management culture. However, several witnesses, including those from the legal profession, commented that part of the answer must be with prevention and better workplace relationships. It was said in this respect that there is a case for stronger voice (and social partnership) at work to help identify systemic problems.

The connections between perceptions of the troubled workplace and the desire for worker representation were considered by the inquiry. It was felt that although workers' perceptions vary and are influenced by a wide range of factors (such as quality of management, individual expectations, unionisation, profitability and ability to pay for improvements), there is a substantial literature showing that poor conditions and injustice at work trigger union organising. According to Bryon and Freeman, such research...

*... tends to underscore the contention of various analysts who have argued that there is a "representation gap" in the sense that there is unmet demand for union representation. This desire has not been assuaged by employer practices which aim to involve employees and manufacture non-union forms of communication.*

### Employment rights are damaging business?

The inquiry was told that the decline of organised labour and the lack of effective alternative forums for conflict resolution in the workplace have led to an increasing reliance on the floor of employment rights.<sup>3</sup> The evidence certainly shows that there has been a growth in UK employment rights over the past half-century, in part driven by EU directives.

On the surface it appears that British workers now have more protection at work than they did at any time in the past. Indeed, the inquiry was made aware that some employers now want to see a watering-down of employment rights, which are sometimes presented as a serious "burden on business".<sup>4</sup> For example, the CBI director-general, John Cridland, stated:

*... the increasingly bureaucratic and prescriptive nature of employment regulation doesn't just impose costs on employers; it is fundamentally at odds with the more individualised, flexible working relationship that we see today.<sup>5</sup>*

### Employment rights

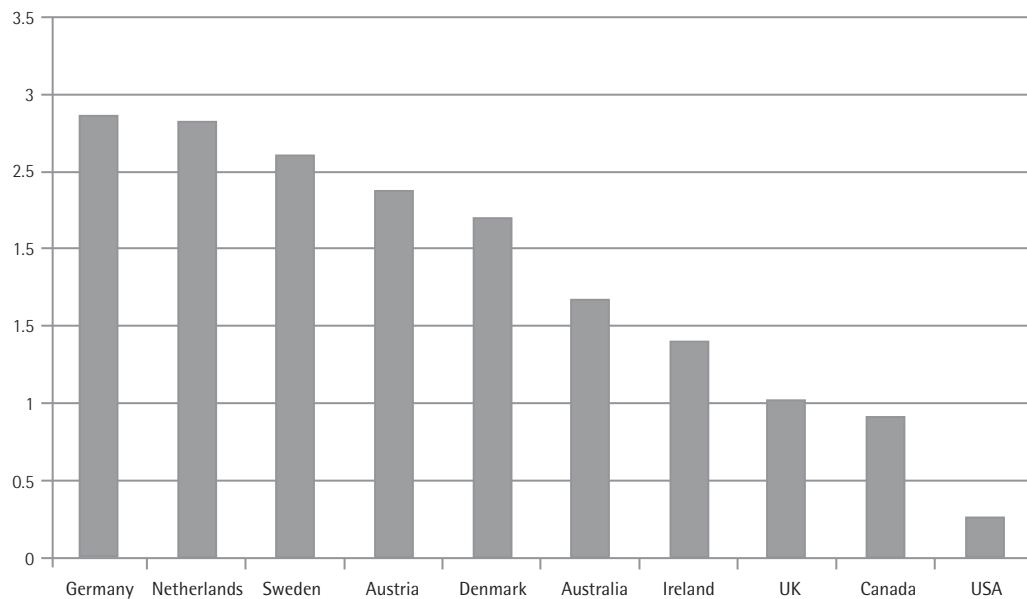
From the 1960s onwards, governments of all parties increasingly intervened in the employment relationship, establishing for example:

- the right to a redundancy payment (1966);
- protection against unfair dismissal (1971);
- equal pay for like work (1970) and then equal pay for work of equal value (1983);
- the comprehensive statutory regulation of health and safety at work (1974);
- non-discrimination in employment on the grounds of race and gender (1975) – supplemented by similar protections on the grounds of disability (1995), sexuality, and faith (2010) ;
- the in-principle right to a limit on maximum working hours (the 48-hour week) (1998);
- the right to four weeks' paid holiday (pro-rata for part-time workers) (1998);
- the national minimum wage (1999);
- a guarantee of equal treatment for part-time workers (2000);
- the right for working parents to request flexible hours of work (2002), extended to carers (2007) and then all workers (2014);
- rights for workers to be informed and consulted about major changes in their workplace (2004);
- equal treatment rights for agency workers (2011);
- rights for shares scheme (2013);
- new employment tribunal rules (2013);
- reform of TUPE Regulations (2014);
- shared parental leave (2015).

However, the inquiry could find little evidence to show that the introduction of employment rights had in fact undermined the nation's employment performance. Indeed, by international rankings the UK still has a very lightly regulated labour market, and even more so since the ease of dismissal was increased following the rise in the qualifying period for protection from one year to two years (in 2012).

*The problem is people are ignorant of their rights; they are not presented to them.*

– Comment at discussion event in Liverpool

**Chart 18: Strength of employment protection legislation in different countries, 2013***Individual and collective dismissals, using the 0-5 scale of the OECD's employment protection legislation indicator*

Source: OECD employment protection legislation indicators, 2013

It should also be noted that several countries have witnessed equally good employment performance over the last six years (such as Denmark, Sweden, the Netherlands, Germany and Austria) and they all offer much stronger protections for employees.<sup>6</sup>

#### Rights for shares?

The inquiry was told that the relative weakness of employment protection legislation probably explains why so few employers have expressed enthusiasm for the new "owner-employee" arrangements allowing employees to waive their employment rights in return for shares.<sup>7</sup> It was said that there are real risks for employees if they waive their right for shares, including no recourse to an employment tribunal should they get into trouble at work. It was also said that any widespread application of the scheme could lead to a two-tier workforce with some employees waiving their rights for shares and others choosing not to do so. The Institute for Fiscal Studies warned that the schemes would "foster a whole new avoidance industry". The inquiry could find no evidence of employer or employee enthusiasm for the scheme.<sup>8</sup>

#### A rising tide of litigation?

The inquiry was made aware of the argument that the expansion of employment rights has fuelled a rising tide of litigation in employment tribunals.<sup>9</sup> It was said by employers that there are many vexatious claims, and that management time could be better spent on running successful businesses than in attending employment tribunal hearings.

These arguments were generally accepted by the government and used to justify major changes to tribunal procedures.<sup>10</sup> Before the reforms were implemented, many commentators suggested that they would act as a disincentive to legitimate as well as vexatious claims. In other words, workers who had genuine grievances would be denied access to justice. The evidence to date suggests that these concerns have been vindicated. In the period from

January to March 2014, the volume of claims was 67 percent lower than in the same period in 2013, before the procedural changes became effective. Moreover, the (37 percent) fall in the number of applications in the final quarter of 2013 (after the changes) explains most of the fall in numbers from 2012.<sup>11</sup>

According to new research by Citizens Advice, seven in 10 potentially successful cases are not pursued by people at employment tribunals; and only 14 percent with valid claims are definitely being taken forward.<sup>12</sup>

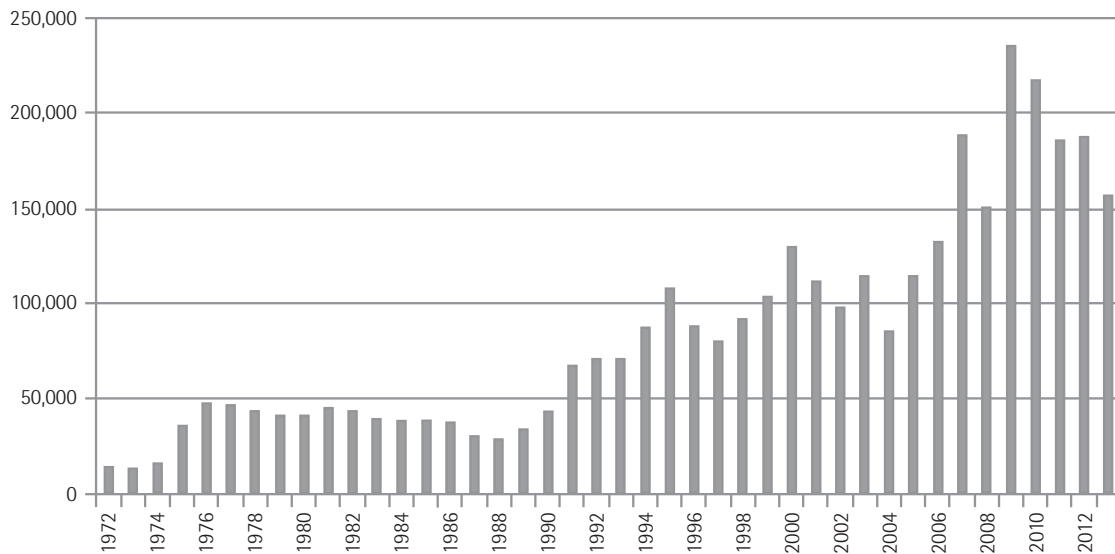
*Workers are now too frightened to take claims.*

– Low-wage worker

Before the recent changes the number of applications was much higher than a decade earlier. In part this can be explained by the submission of multiple claims (a substitute for class actions) relating to working time and equal pay. However, since the 2009 peak, the number of applications has followed a gentle downward trajectory.<sup>13</sup> Moreover, the number of claims was significantly higher from the early 1990s onwards than in the 1970s, when the labour market was notionally much less flexible.

One possible explanation for the increase in tribunal applications is that people are becoming more conscious of their rights and more enthusiastic about challenging bad practice. It may also be due to institutional changes in the world of work. For example, before the state began to intervene it was assumed that union representatives would spend much of their time resolving workplace disputes between individuals (or groups of workers) and their managers. The trends in tribunal application numbers and union membership suggest that this may have been the case. Employment tribunal applications certainly rose as union membership fell.

Chart 19: Applications to employment tribunals, 1972-2013



Source: Employment Tribunals Service

The inquiry was also told that before the changes were made, tribunals already had the power to strike out vexatious claims and, while this power was rarely used, that very fact confirms that abuse of the system was limited.

It was said that parts of the tribunal system were, nevertheless, not working before the introduction of fees. The slow speed of the system caused problems for employers and employees, for example, and effective enforcement has also been a long-standing concern. According to the government's own research, there is an even chance that individuals who receive a monetary award at an employment tribunal will not receive payment of their award without the use of enforcement.<sup>14</sup> While the government's threat to impose higher penalties (of up to £5,000) on employers that do not pay is clearly a step in the right direction, according to Citizens Advice the proposal as drafted (in the Small Business, Enterprise and Employment Bill 2014-15)...

*... does nothing to prevent a situation where an employer pays money to the government to satisfy the penalty but still does not pay the employee the award they are owed.*

It was suggested that one option for reform would be to require both parties to deposit a (low-value) bond with the employment tribunal, with the winning party receiving the full payment at the end of the process. The introduction of a small fee might be enough to deter false claims.

Attention was also drawn to the anomaly whereby in the county courts interest is payable to awards, but in employment tribunals it is not.

Experts on employment law commented that in relation to ongoing claims there is an urgent need for clarity. It was suggested that if a claim is successful to any extent then recovery of the fee should be a requirement, not an option, for the tribunal.

It was said that the near-abolition of legal aid in employment

cases was a serious cause of concern, and would merely increase the number of cases that end up at an employment tribunal. Citizens Advice also comments that cuts in legal aid are poor value for money. Their research shows that every £1 of legal aid expenditure on employment advice will potentially save the state £7.13.<sup>15</sup>

Unite drew attention to the impact of the Jackson reforms (2013) and the introduction of the portal and fixed fees.<sup>16</sup> The union said that claimants could lose up to 25 percent of their damages, and that if claims are not being pursued there may be adverse impacts on health and safety in workplaces. It was further said that claims pursued by unions have led to important court decisions and better health and safety standards for all workers. If these types of actions are deterred by the new regime, it could have a negative effect on all workplaces.

**Recommendation:** *The government should urgently reform the employment tribunal system to ensure affordability is not a barrier to justice. One option would be to require both parties to deposit a (low-value) bond with the tribunal, with the winning party receiving the full payment at the end of the process.*

#### Unfair dismissal

Mention was made of the increase in the unfair-dismissal qualifying period to two years, which it was said may affect only a small number of people but is still a denial of justice. Historically, the increase in the qualifying period has been justified as an employment-promoting measure, but the inquiry could find little evidence to support this. It was also said that a modest change of this kind cannot counteract much wider developments in the economy.<sup>17</sup>

**Recommendation:** *The government should consider reducing the qualifying period for unfair dismissal protection to one year.*

#### Blacklisting

The exposure in 2009 of widespread blacklisting (the practice



of denying employment on the basis of being in a union and/or being an “undesirable worker”) in the construction industry was a national scandal.<sup>18</sup> Construction union UCATT told the inquiry that blacklisting (run and financed by major construction companies over many years) has destroyed people’s lives.<sup>19</sup> Many of those affected had no idea that they had been blacklisted. In addition, the union commented that under the proposed compensation scheme victims would have to drop all other legal claims and there would be no admission of liability by the companies involved.

The inquiry was told that there are concerns about the manner in which the government is reviewing blacklisting. In particular, it was said that any investigation into blacklisting should ensure that those affected have full rights to compensation. The TUC has also called for blacklisting to be criminalised.

**Recommendation:** *The government needs to ensure blacklisting is prevented and that those affected have full rights to compensation.*

### Worker or employee?

The terms “worker” and “employee” are used interchangeably in this report. For the purposes of employment law, however, a worker and an employee have clear and distinct legal status.<sup>20</sup> They are subject to different forms of regulation and have different rights. Employees benefit from all the rights that apply to workers. Workers benefit from none of the rights guaranteed only to employees.

The inquiry identified three significant problems with this position. First, it assumes an equality of bargaining power between the parties, which is more myth than reality. Employers do not offer people a choice between being an employee or a worker. Second, the fact that “workers” and “employees” have different legal rights is a source of confusion and litigation. Only employees have the right not to be unfairly dismissed, which may lead some people to assert that they have this status when their employer asserts the contrary. Third, the different treatment of employees and workers inevitably creates a two-tier workforce (with agency workers, homeworkers and casual workers denied employment protection offered to others).<sup>21</sup>

*There needs to be greater clarity on employment rights and the difference between employee and worker.*

– Evidence from employment lawyer

Neither workers nor employers benefit from the confusion, and the need to go to law to secure a resolution of a definitional problem can be uncertain, costly and time-consuming. Courts and tribunals have developed tests<sup>22</sup> to determine how employment status can be judged, but the outcomes remain ambiguous (especially for irregular forms of employment –with permanent employees protected whereas those in temporary or irregular jobs are not). It was said that other EU countries have much better legal protection, and on the continent the onus is on the employer to prove that a worker is not entitled to statutory protection.<sup>23</sup>

### Your rights at work: worker or employee?

Employment status can be: “employee”, “worker”, or “self-employed”. The law provides no clear guidance on who qualifies for which rights.<sup>24</sup>

<i>Employees’ rights</i>	<i>Workers’ rights</i>
Written statement of terms and conditions of employment	The national minimum wage
Itemised pay statement	Four weeks’ paid annual leave
Entitlement to statutory notice before the termination of employment	The in-principle limit of 48 hours on the maximum average working week (measured over a reference period of three, six or 12 months)
Maternity, paternity and adoption leave	Equal treatment for part-time workers
The right to request flexible working	The right to be accompanied by a trade union or other representative in grievance and disciplinary proceedings
Protection against unfair dismissal	The guarantee of equal treatment for agency workers
The right to a redundancy payment	Protection against discrimination under the Equality Act 2010
The right to elect representatives for the purposes of information and consultation on changes in the workplace	
The right for a trade union to establish collective bargaining where that is supported by a majority of the workforce	
The protection of people with fixed-term contracts	
The encouragement of informal procedures to resolve individual disputes in the workplace (early conciliation)	

The evidence to the inquiry suggested that the law is in a state of confusion; that the allocation of rights between employees and workers is arbitrary and that some urgent clarification is needed. However, the issues are complex, technical and have implications beyond the limits of employment law. There are also implications for the tax and social security systems, where the definitions of

employment and self-employment are particularly important.

**Recommendation:** *The government should review and clarify the question of employment status and the application of employment rights.*

### The 'troubled workplace'

Employment rights are by definition limited, and they protect people against only the worst of bad practice. The right not to be unfairly dismissed, for example, encompasses the possibility of constructive dismissal, a state of affairs that renders the workplace so intolerable that an employee is justified in resigning from their job and claiming compensation in an employment tribunal.

Recent research has revealed that many workplaces are characterised by poor management practice and unfair treatment *beyond* the limits of statutory employment rights.<sup>25</sup> It was said that managers often behave at work in ways they would not outside the workplace, and that many people are experiencing trouble at work and have nowhere to turn for help. Ralph Fevre and his colleagues, in their analysis of unreasonable treatment at work, noted:

*In the troubled workplace people do not know that it is wrong to humiliate or ridicule people in connection with their work, treat them in a disrespectful way, shout at them and intimidate them. They do not get sanctioned for it and may even be... encouraged to behave like this.*<sup>26</sup>

Furthermore, it was commented that this is not a problem experienced only by those in low-paid or low-skilled employment. Those in relatively well-paid jobs are just as likely to experience unfair treatment, if not more so.

The Fair Treatment at Work Survey (2008) and the British Workplace Behaviour Survey (2008) investigate the incidence of unfair treatment. The latter draws a distinction between three different forms of trouble at work: unreasonable treatment (affecting 50 percent of those surveyed), incivility and disrespect (40 percent) and violence at work (6 percent). The research highlights the difficulties experienced by many people at work, the majority of whom are neither low-skilled nor low-paid. For instance:

- Half the workforce have experienced some form of unreasonable treatment.
- Close to one in three (30 percent) report that they are being given an unmanageable workload with impossible deadlines.
- More than one in four (27 percent) report that their views and opinions are consistently ignored.
- One in four employees have experienced at least three or more kinds of unreasonable treatment. One in 10 have experienced five or more kinds of unreasonable treatment.
- Two in five employees have experienced incivility or disrespect at work.
- More than one in 10 have experienced five or more kinds of incivility or disrespect.

### Measures of trouble at work

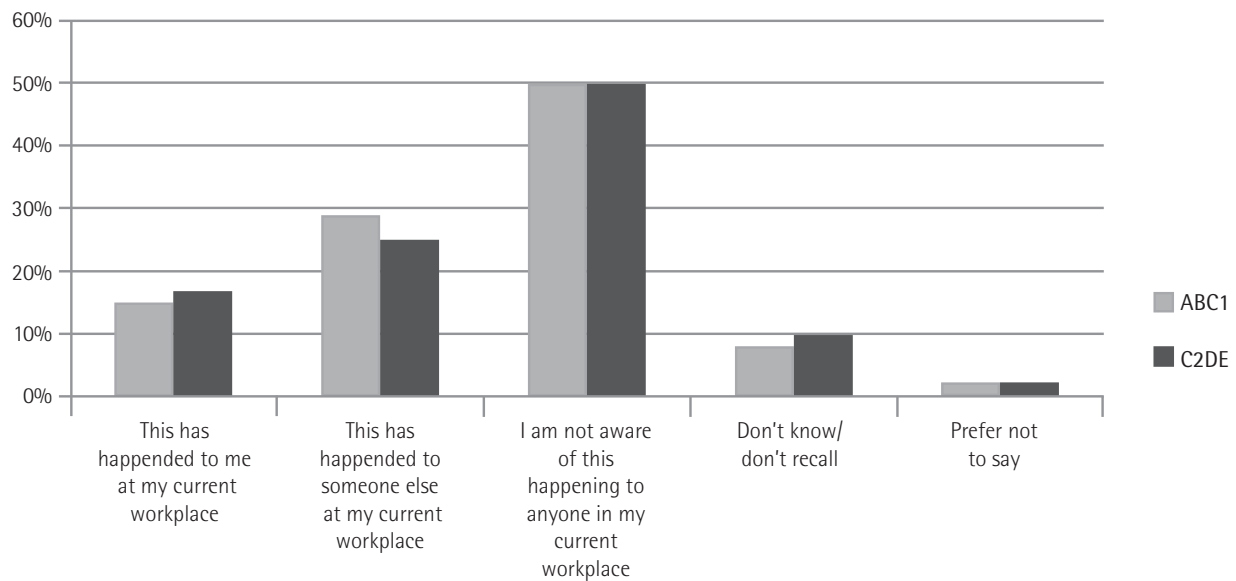
<i>Unreasonable treatment</i> Someone withholding information that affects your performance	<i>Incivility and disrespect</i> Being humiliated or ridiculed in connection with your work
Pressure from someone else to do work below your level of competence	Gossip or rumours being spread about you or having allegations made against you
Having your views or opinions ignored	Being insulted or having offensive remarks made about you
Someone continually checking up on you and your work when it is not necessary	Being treated in a disrespectful or rude way
Pressure from someone else not to claim something to which you are entitled by right	People excluding you from their group
Being given an unmanageable workload	Hints and signals from others that you should quit your job
Being treated unfairly compared with others in the workplace	Persistent and unfair criticism of your work
	Teasing, mocking, sarcasm and jokes that go too far Being shouted at or someone losing their temper with you
	Intimidating behaviour from people at work
	Feeling threatened in any way while at work

Source: Fevre, R et al *Trouble at Work* (Bloomsbury, 2012)

This notion of the "troubled workplace" appears to be highly concentrated. It is not that individuals are experiencing unfairness in a uniform way across all workplaces but that those employees reporting multiple sources of unfairness are located in the same workplaces. If we take the proportion of employees experiencing three or more kinds of unreasonable treatment as a benchmark then one in four employees is employed in a workplace that is in some sense "troubled".

Employees reported to the inquiry that unreasonable treatment is a much more serious problem than incivility, and that managers are generally responsible for this behaviour. It was said that troubled organisations are often undergoing a degree of upheaval in response to external pressures. This can be as a consequence of a merger or acquisition, the introduction of new technologies, processes or systems or a general drive to reduce costs and hit efficiency targets. However, it was also remarked that it is perfectly possible to achieve change and manage people fairly and effectively.

**Chart 20: Bullying or harassment by management or fellow workers**  
 Survey results on direct or indirect experience of bullying/harassment at work



Source: YouGov poll for TUC/Smith Institute

Notes: Total sample size was 4,555 adults, of which, 2,355 were employees. Fieldwork was undertaken on 5-7 August 2014. Survey was carried out online. Figures have been weighted and are representative of all GB adults (aged 18+).

### Employment reporting

One of the frustrations that emerged from the inquiry's discussions with employees was the lack of information about their workplace. While there is plenty of data on labour market trends and useful official national workplace surveys, such as the Workplace Employment Relations Study, easily accessible information on how good an individual employer is and how they compare is less readily available. It was said on several occasions to the inquiry that most employees know very little about their employer.

The inquiry was struck by how underdeveloped company reporting of employment practices (such as employee engagement, job satisfaction and autonomy, staff turnover, pay rates and ratios, skills training, and health and safety) is compared with financial reporting. There has been a growth in employment measuring schemes, such as Investors in People, Best Companies and Engage for Success, but as yet no widely accepted form of "good employer" index or system of accreditation.

*Reporting is important – investors want to know.*

– Labour market expert

The Task Force on Human Capital Management, chaired by Baroness Kingsmill, presented a powerful case for greater transparency on how value is created through effective people policies and management. It offered practical guidance on how to analyse, measure and report on people management in financial statements. Although the report perhaps had less of an influence on the finance and accounting profession than some had hoped, it did raise awareness of employment reporting. It was said that the government should revisit the report and review the barriers to taking forward people management as a core strategic issue,

rather than as an operational concern unrelated to increasing performance.

This could in part be explained by the newness and complexities of measuring "good work" and by the fact that employment practices are notably absent from the balance sheet. Matthew Taylor, the RSA's chief executive and a strong proponent of spreading high-quality employee engagement, told the inquiry:

*We could over time seek to make "good employer" status (through a robust and transparent measure of individual employee experience, engagement and well-being, and the provision of collective representation, information and consultation) something which, although entirely voluntary, would be seen as vital to a company's social licence to operate and that would influence the choices of consumers and investors.*

Taylor suggested that such a scheme would be welcomed by employees and civic society, and that unions could themselves bid to run the evaluation audits.

It was said that investors are seeking greater transparency from companies they engage with. However, even those firms at the forefront of company reporting provide only the minimum of data on employee relations. Business in the Community's latest FTSE 100 public reporting report noted:

*Investors are provided with very little in the way of quantifiable and useful information to help them assess how employee matters are addressed at operational level.*

However, the inquiry found that benchmarking on employee relations and well-being at work is still in its infancy.

### Why should human capital management be reported?

Human capital management should not be regarded solely as an internal matter for management. For most organisations, policies and practices on human capital management are sufficiently central to performance as to be a material factor whose disclosure might reasonably be expected to influence assessments of a company's value and its effective stewardship by management. In such cases, disclosure increases the value of financial reports and will be important for the effective operation of capital markets. In the public and voluntary sectors slightly different considerations apply: neither parliament nor taxpayers, grant-givers nor sponsors, are as a general rule looking for a financial return on their investment. But they are looking for performance and value for money, and seek assurance that their investment is being used to best possible effect. More generally, people are increasingly looking for reports that demonstrate to other stakeholders (such as customers, suppliers, employees and regulators) that the organisation is focusing on all the drivers of value.

Organisations, their shareholders, taxpayers, workers and the societies in which they operate all stand to benefit from making more transparent the ways in which organisations create value through the way in which they manage people:

- Reporting on human capital management helps employees and prospective employees to understand how they contribute to overall performance and are valued, improving organisations' ability to attract, motivate and retain the people they need.
- By causing organisations to focus clearly on their key drivers of value in people management, through strategic analysis and measurement, reporting helps organisations to evaluate the contribution that workforce policies and practices make to performance, as well as to make informed and effective decisions on investment in workforce development.
- Workers benefit more generally, as a result of their improved ability to manage their own future employability and prospects. A better match between workers' skills and organisational needs would create wider economic benefits.
- Shareholders benefit from the demonstration of sound management and a greater understanding of the factors that influence future performance.

Source: *Accounting for People*, report by Task Force on Human Capital Management (2003)

The inquiry was made aware of the advances in employment reporting by organisations such as Pensions & Investment Research Consultants and the Local Authority Pension Fund Forum, which believes companies should also be measured by how they value employees. The Forum has developed a set of survey questions that enable pension fund trustees and asset managers to "distinguish between companies with compelling employee value propositions and those with weak value propositions". Its guide to shareholders says that staff in companies with "compelling employee value propositions" are less likely to leave, are more productive, deliver better outcomes, and have a better stock price performance.<sup>27</sup>

### Keeping employees informed

Committed investors need to know a great deal more about how the workforce is being managed. Public companies could be required to publish more information about the world of work in their annual reports, including:

- the results of the most recent staff survey and a narrative account of management action taken to address any problems identified;
- data about health and safety performance, including the number of workplace accidents and any enforcement action taken by the Health & Safety Executive;
- the number of working days lost to sickness absence as a percentage of total working days;
- the number of grievances taken against managers in the previous year, expressed as a percentage of the workforce;
- the number of employees disciplined in the previous year, expressed as a percentage of the workforce; and
- the number of successful employment tribunal claims taken against the employer in the past year.

Local authorities are also starting to develop similar ideas, and councils such as Salford and Oldham have published employment charters and charter marks that seek to raise local employment standards. These schemes, which can be used in public procurement, by their very nature demand some degree of evaluation as to what makes for "good employment".

### Salford city mayor's employment standards charter

Salford city mayor's Charter for Employment Standards, launched in November 2013, is designed to help raise employment standards for employees and businesses across the city. Employers commit to:

- paying staff at or working towards the Salford living wage (£7.65 per hour);
- encouraging a healthy workplace and a good work-life balance, and fostering positive management-staff relations through regular dialogue, for example with recognised unions;
- opposing the use of zero-hours contracts, which undermine decent working conditions for employees;
- the eradication of illegal blacklisting;
- seeking to create training and employment opportunities for Salford people; and
- encouraging local Salford-based subcontractors to become charter mark employers too.

Employers working in the city can voluntarily commit to or be working towards the pledges in the charter. Full accreditation demonstrates that an employer is committed to the highest employment standards in the city. Applications are considered by an independent panel that meets three times a year.

While there was interest in and support for expanding "good employer" charters and kite marks, it was commented on several occasions that the very voluntaristic nature of the schemes means they are "hit and miss" with no pressure on bad employers to sign up. It was argued that the kite marks must be used at scale and adopted by a wide enough range of employers in order

to have any significant impact. One option would be to make the schemes mandatory.

There were mixed views on the idea of enforced disclosure of employment information, however. The inquiry found support for mandatory disclosure of top pay for chief executives of public companies along the lines of the Dodd-Frank Act in the USA<sup>28</sup> and for transparency on the living wage, but less so for other issues at work.

#### **The Dodd-Frank Act**

Section 953(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 introduced new reporting requirements for publicly traded US companies to disclose the median of the annual total compensation of all employees (except the CEO) and the ratio of CEO compensation to median employee compensation. By requiring that companies disclose CEO-to-worker ratios, the act is intended to encourage boards of directors to consider the relationship between top pay and rewards to other employees. It is also intended to help investors evaluate and compare employee compensation packages between employers.

The inquiry was told that the government's Pay and Work Rights Helpline (which provides information and advice as well as receiving complaints and is a gateway to other work-related agencies) and the Employment Agency Standards Inspectorate (which works with employment agencies and employers to raise standards and ensure compliance with employment rights) are

doing a good job in difficult circumstances. It was said that it is important to ensure that these organisations are properly resourced and that more effort is made to raise the profile of each, especially among vulnerable workers.

#### **The German good work index**

The Index Gute Arbeit or Good Work Index is a nationwide survey tool, designed by the Confederation of German Trade Unions, for measuring job quality based on employees' judgments. As a human yardstick for work, the index covers 39 workplace issues, including management quality, work intensity, information flows, meaningful work, job security, income and promotion opportunities. Employees are asked how these issues affect them and what action is being taken. The index, which has been run annually since 2008, provides a baseline by which employees, businesses and contractors can judge job quality.

The Unions<sup>21</sup> Fair Work Commission has also called for a monthly "fair work Index", which could bring together a range of indicators from statistics on job quality, wages, skills and other factors influencing the world of work (drawing from the example of the OECD's Better Life Index).<sup>29</sup>

**Recommendation:** *The government should support the development of employment reporting and employment codes of practice. It should consider the case for a national employment kite mark scheme. Employers and unions should also consider how they can collaborate on ways of progressing the idea of a national scheme.*



## References

- 1 The BIS paper went on to endorse the business view that the "pendulum has swung too far in favour of employees" and states that employment protection "should be limited to the minimum necessary".
- 2 A similar point can be made about the number of working days lost to strikes and other industrial action: the disempowerment of unions led to a dramatic fall in the number of days lost at the same time as the number of employment tribunal applications rose.
- 3 A "voluntarist" system is one that leaves the regulation of the employment relationship to collective bargaining and the normal law of contract. Otto Kahn-Freund described the UK as an example of "collective laissez-faire" where the state was happy to absent itself from the regulation of workplace relationships. For a longer discussion, see: Coats, D *Time to Cut the Gordian Knot* (Smith Institute, 2010)
- 4 This is certainly the view on some of the new EU employment regulation of the Institute of Directors, the British chambers of commerce, and the Federation of Small Businesses, although as shown in a 2012 report from the Centre for Regional Economic Development and the University of Cumbria (*Business Perceptions of Regulatory Burdens*), a lot of the wilder claims emanate from highly spun media stories in the tabloid press.
- 5 In his foreword to *Navigating Choppy Waters – CBI/Harvey Nash Employment Trends Survey* (2011)
- 6 There are other measures of employment regulation too, but the OECD's analysis confirms that the UK regulates temporary contracts less than almost all other countries except the USA and Canada – OECD *Employment Outlook* (2013).
- 7 The scheme enables employees to give up some employment rights in return for at least £2,000 worth of tax-free shares (under section 31 of the Growth and Infrastructure Act 2013).
- 8 Employment lawyers at Irwin Mitchell, Mayer Brown and Payne Hicks Beach commented that the scheme was unpopular. The BBC reported in September 2013 that "there are signs of a lack of interest from businesses and employees".
- 9 The Institute of Directors, for example, welcomed the employment tribunal reforms, saying in 2011 that the proposals were "a vital step to ending the 'no win, no fee' employment law culture that has frightened so many businesses into recruitment inertia".
- 10 The reforms introduced in 2013 require all applicants to inform ACAS that they plan to make a tribunal application; ACAS has to offer early conciliation as an alternative method of dispute resolution; and if early conciliation fails or is not used then applicants will be required to pay a tribunal fee of either £160 (for disputes on unpaid wages, pay in lieu of notice or a redundancy payment) or £250 (for disputes on unfair dismissal, discrimination or whistle-blowing) before their application can be considered.
- 11 It would be wrong to attribute these significant declines to the success of ACAS early conciliation.
- 12 These findings are from an analysis by Citizens Advice of 182 employment cases brought to bureaux between June and July 2014.
- 13 It is important to note also that most claims are settled before the date of the tribunal hearing.
- 14 See: BIS *Payment of Tribunals Awards* (2013)
- 15 Citizens Advice *Towards a Business Case for Legal Aid*, paper to the Legal Services Research Centre's eighth international research conference, 2010
- 16 The Jackson reforms, which came into force in 2013, are mainly concerned with personal injury litigation and litigation costs.
- 17 It can be argued that high unemployment in the UK over the past three recessions has been a consequence of deficient demand, not a result of labour market regulation. For example, unemployment was higher in the 1980s when the qualifying period was fixed at two years. Unemployment fell when the Labour government reduced the qualifying period to one year.
- 18 See: House of Commons *Scottish Affairs Committee Blacklisting in Employment: Interim Report* (2013)
- 19 See: UCATT *Ruined Lives: Blacklisting in the Construction Industry* (2009)
- 20 It should be noted that there are several types of employment status: worker, employee, self-employed, contractor, director and office holder (a person who has been appointed to a position by a company or organisation but does not have a contract or receive regular payment).
- 21 It was pointed out that the unfairness of this position is the argument of principle against the use of the Swedish derogation in the Temporary Agency Work Regulations, and it applies with even greater force to this question of employment status.
- 22 An example of these tests is the "mutuality of obligation", which refers to the obligation of an employer to provide work and pay for it and for the individual to do the work.
- 23 In the UK the burden of proof rests with the employee.
- 24 The summary does less than justice to the complexity of the issue, notably because those who are self-employed are treated differently again and all of these definitions are used somewhat differently in the social security system.
- 25 Fevre, R et al *Trouble at Work* (Bloomsbury, 2012)
- 26 Ibid
- 27 Local Authority Pension Fund Forum *People and Investment Value: Appraising Employee Propositions to Distinguish Corporate Performance* (2012)
- 28 The Dodd-Frank Wall Street Reform and Consumer Protection Act 2010 requires public companies to disclose the ratio of the compensation of its chief executive officer to the median compensation of its employees. See chapter five on pay at work.
- 29 Unions21 and Fair Work Commission *Whose Recovery?* (2013)





## 7. Voice at work

Rights to voice at work have long been enshrined,<sup>1</sup> and there is a wealth of literature demonstrating how voice and engagement are good for business. However, as the inquiry discovered, too many employees do not have the wherewithal to make use of these rights in practice.

The inquiry noted that workers now have more statutory rights to establish varying forms of worker participation than at any time in the past. Such rights (listed in the annex) not only protect and empower workers, but also play an important role in conflict prevention and dispute resolution. However, it was said that while these rights may look extensive they fall short of the rights guaranteed to works councils in continental Europe. Moreover, it was said that the rights for non-union representatives are piecemeal. In principle, a non-union employer could have a multiplicity of representatives, dealing variously with TUPE, redundancy, information and consultation under the Information and Consultation of Employees (ICE) Regulations, the flexible implementation of the Working Time Regulations and the management of health and safety. The inquiry was told that this approach is too fragmented and therefore ineffective and inefficient.

The other significant weakness in present provision for worker voice mentioned to the inquiry is the assumption that consultation is episodic. If no representatives are elected under the ICE Regulations, employers are still obliged to offer employees the opportunity to elect representatives for the purposes of TUPE or redundancy consultation, for example. However, witnesses to the inquiry questioned whether this consultative process can be meaningful. After all, the representatives will have just been elected, will have no experience and will therefore find it difficult to offer a sophisticated and constructive challenge to the employer's plans. These rights remain largely unused, in part because, as the inquiry heard several times, employees are generally unaware of their existence.

The evidence to the inquiry suggests that voice is nevertheless the key enabler of employee engagement. Workplace polling by Ipsos Mori for the Chartered Institute of Personnel & Development, for example, shows that the two drivers of engagement are the ability of employees to feed views upward and feeling informed about what is happening in their organisation.<sup>2</sup> Research for BIS found that engaged employees are more committed to their organisation, more productive, less likely to take sick leave, more likely to think they understand customers' needs, less likely to leave their organisation, and more likely to be an advocate of their organisation.<sup>3</sup>

Various studies have shown that high productivity appears to run hand in hand with good industrial relations and voice at work.<sup>4</sup> It was said by the inquiry's labour market experts that the most important factor seems to be managerial responsiveness to the wishes and ideas of their employees. Some of the union representatives we spoke to stressed that they can make demands on employers (who have to listen) for more effective professional management.

The HR professionals claim that their approaches towards strengthening employee voice and engagement are a critical element in improving an organisation's productivity.<sup>5</sup> According to a recent survey of 8,000 employees by Gallup, so-called "engagement-focused managers" increase productivity by creating an environment that motivates people. Their survey showed that work groups with high levels of employee engagement experience 21 percent higher productivity than work groups with low levels of engagement.<sup>6</sup>

An EU-wide study of worker participation in the EU by the European Foundation for the Improvement of Living & Working Conditions found that the involvement of workers' representatives in critical employer decisions could be productivity enhancing:

*Far from being a barrier to progress, it seems, employee representatives are the agents of change. The greater their involvement, in terms of both form and extent (and this applies particularly to negotiation and joint decision making) the more the indicators of the effects were positive.*<sup>7</sup>

More recently, a comprehensive study of the productivity effects of employee share ownership in the USA found that share schemes have a sustained positive impact on productivity only if they are accompanied by representative forms of employee participation.<sup>8</sup>

The literature dealing with Germany's superior productivity performance also attaches great significance to the role of voice and worker representation in fostering an environment where workers enthusiastically contribute to the process of incremental innovation.<sup>9</sup>

*Voice alone could become like a radio with employers able to turn the volume down if they didn't like what they heard.*

– Comment at inquiry event in Leeds

### Imbalance in employment relations

What stood out from many of the discussions and interviews conducted by the inquiry is the widening imbalance of power in the workplace between the employer and employee. This seems most evident in the lack of opportunities for employees to influence the decisions that affect their working lives. The emergence of a power imbalance may, as some witnesses<sup>10</sup> pointed out, be largely due to the individualisation of work, which has diminished the capacity for employee engagement or collective action and weakened employment rights.<sup>11</sup> It is also possibly because of the growth of smaller firms, the decline in union power and (arguably) the absence of any institutions that guarantee workers and their representatives the opportunity to influence a wide range of employer strategies in the way that works councils do in continental Europe. The growth in outsourcing and zero-hours contracting have also played a part.

*There's an imbalance of power at work, which is largely due to the erosion of workplace institutions.*

– Comment at Community event in Coalville

Whatever the reasons, the inquiry was conscious of the differences of opinion (and sometimes philosophy) between employers' bodies on the one hand and unions and worker (and civic society) organisations on the other. However, the inquiry acknowledged the willingness of employers' organisations and the TUC to improve the employment relations system. It was said that a dysfunctional employment relations system hurts all parties and threatens to damage the economy. The inquiry was told that although there are many areas of policy disagreement, the social partners have a history of collaboration and joint working in respect of skills training, health and safety, employee engagement and equal opportunities.

### Trade unions today

Trade union membership today (6.4 million) is six times greater than all the political parties combined, and the union movement is still by far the UK's largest voluntary organisation – with over 200,000 workplace representatives and activists. Over half the workers in the public sector are union members and almost two-thirds are covered by a collective agreement. Membership is higher among women, older workers and those in full-time jobs. Unions also have a strong presence in many of the UK's successful companies, with membership highest in firms with 50 or more employees. Unions not only represent their members at work, but also provide a wide range of services, such as low-priced insurance, healthcare, debt advice and legal services. However, union membership today is half what it was 30 years ago. Only one in seven workers in the private sector was a union member in 2013 and just over one in six was covered by a collective agreement.<sup>12</sup> Even in manufacturing, which has historically been a well-organised sector, fewer than one in five workers are in a union. The largest unions are: Unison, with 1.3 million members; Unite, with 1.3 million; the GMB, with 600,000; USDAW, with 400,000; the Public & Commercial Services Union, with 300,000; and the National Union of Teachers, with 300,000.

### Employee engagement

The Chartered Institute of Personnel & Development presented evidence on a range of strategies and schemes to boost employee engagement. While many of them have proved popular and successful, overall they have yet to reverse the trend on engagement levels. According to the institute's most recent survey, just over one in three employees (35 percent) are engaged<sup>13</sup> – and the number of engaged employees has fallen in the last year.<sup>14</sup> Almost two-thirds (61 percent) are neutral and fewer than one in 20 (4 percent) is disengaged. It was suggested to the inquiry that these figures partly reflect the declining trust in senior managers.

The inquiry was told that the lack of engagement was largely down to the fact that managers are generally poor at involving employees in key decisions or listening to their views. According to the Workplace Employment Relations Survey (2011), only around one in three employees said that employers were either good or very good at allowing them to influence decisions. More recent surveys indicate that around 60 percent of the workforce are dissatisfied with their involvement in workplace decision making.<sup>15</sup>

### TUI Travel: innovation through voice

TUI, the UK's largest tour operator, sees employee voice as a means of meeting its strategic objectives. Given the size of the organisation, with staff located across the country, accessing voice can be challenging. This has, however, been overcome by various channels, including online platforms. TUI has a well-established staff forum, "Be Involved", to channel voice upwards and help ensure participation. It also has individual channels such as one-to-one meetings and company-wide forums. The company provides information to employees on its strategy and long-term vision. To help with this, TUI holds "big conversation" meetings that help create an open and involving culture. In its annual report, TUI explains: "We believe that engaged and happy colleagues are key to both superior customer service and the Group's continued success and profitability."

Source: IPA/Tomorrow's Company *Releasing Voice for Sustainable Business Success* (2012)

### The view from the HR department

Human resource management professionals have long stressed the link between employee engagement and performance. A 2014 report by Smith & Henderson and HRZone.com, *The State of Employee Engagement*,<sup>16</sup> for example, revealed the following:

- Four out of five organisations are committed to improving employee engagement, mainly to motivate employees and retain talented employees and improve morale.
- Although 78 percent are actively running employee engagement activities, a smaller number (57 percent) of these are satisfied with the results.
- Companies that are highly satisfied with their engagement programmes have high levels of buy-in from senior leaders and line managers.
- Insufficient buy-in from senior management is the primary reason why other organisations do not focus on improving employee engagement.
- Fewer than one in five companies have a defined business case that describes the benefits of improving employee engagement for their organisation, and only a third of businesses have a strategy or plan for improving engagement.
- The top three priorities for engagement activities are: improving communication, employee development, and performance management.
- Some 81 percent of organisations focused on improving employee engagement conduct an employee survey, with most doing so annually.
- The top four areas they focus on improving are: communication (33 percent), employee development (26 percent), performance management (19 percent) and career development (18 percent).
- Some 24 percent of businesses claim budget constraints are their biggest barrier to improving engagement, with 23 percent highlighting infrastructure and process constraints and 21 percent a lack of buy-in from senior management.

**The 'representation' gap**

The decline in union membership and collective bargaining coverage (especially in the private sector, and among SMEs) means that workers today have fewer practical opportunities to influence company decision making. Studies by ACAS and others show that employees want some form of "voice" at work and more co-operative styles of engagement with management. As the labour market experts at Warwick University's business school observe:

*This search for "voice" is not just to meet the needs of employees, important though that is. We know that the experience of involvement is closely associated with positive employee evaluations of management responsiveness (Bryson, Charlwood and Forth 2006). This feeds through into productivity. The more extensive the range of voice systems used in organisations the more likely it was that managers reported benefits from increased output to declining absenteeism (Sisson 2000). Voice systems which combine "embedded" direct forms of involvement with indirect voice via representative bodies are strongly associated with higher levels of organisational commitment (Purcell and Georgiades 2007).<sup>17</sup>*

According to the European Participation Index, only Lithuania performs worse than the UK on the measure of worker involvement in the governance of the workplace.<sup>18</sup> The phenomenon of union membership decline is not, though, unique to the UK. Even in the Nordic countries, where membership and collective bargaining coverage remain high, the effects of industrial restructuring and technological change have reduced the influence of organised labour. However, employers in northern Europe have generally continued to observe the terms of collective agreements. Moreover, the statutory guarantees of worker participation through works councils have sustained a high level of worker participation, despite union membership decline.<sup>19</sup>

Evidence to the inquiry suggests that the cumulative effect of union decline has been to create a "representation gap".<sup>20</sup> It was

remarked that in much of the private sector many workers were completely unaware of unions. However, the inquiry was told that unions may have disappeared from much of the private sector but no institutions have grown up to substitute for them. As mentioned in the previous chapter on justice at work, this union absence has driven an increased reliance on costly and slow legal redress through the employment tribunal system, rather than through early dispute resolution.

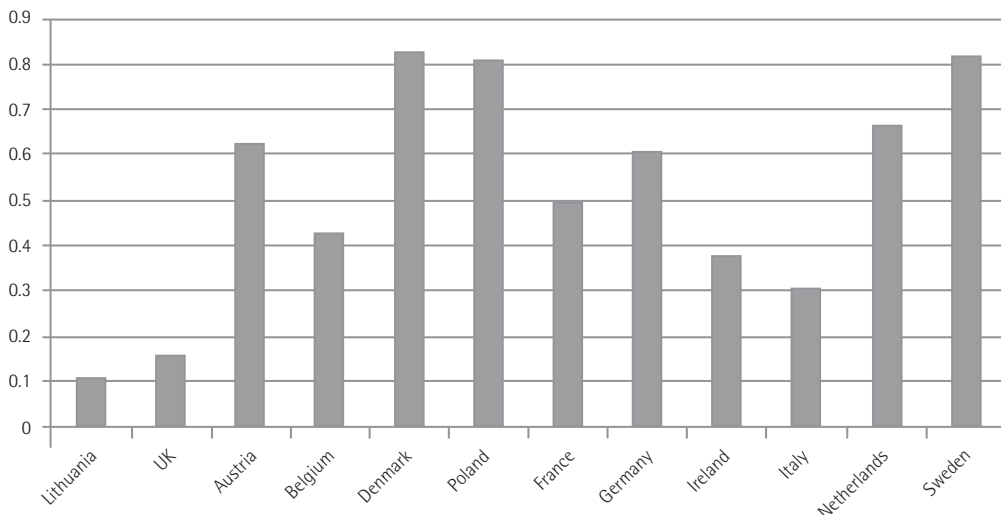
It was also said that although union density is low in many trade sectors, there are examples of good practice where union representation has enabled effective collaboration between employees and employers. For example, the inquiry heard about the agreement between Jaguar Land Rover and Unite and GMB on a shorter working week during the recession.

**Employers and unions working together: Jaguar Land Rover, Unite and GMB**

Shortly after the financial crash, Jaguar Land Rover proposed job losses in order to cope with the fall in demand. Rather than large-scale compulsory redundancies, the company and Unite and GMB agreed to a one-year pay freeze and a four-day week. Some 70 percent of balloted Unite and GMB members agreed to the cost-saving measures. This example of collaboration between the employer and employees, working for their mutual benefit, not only saved jobs but also meant that vital skills were not lost. As a joint statement from Unite and GMB stated: "The management agreed with our view that, when this unprecedented recession ends, the retention of a skilled and loyal workforce is an integral part to the ongoing success of this business."

From the perspective of the employer, it was pleased about having been able to work together with employees and unions. Jaguar Land Rover's chief executive, David Smith, stated: "It also confirms our determination as a team to steer Jaguar Land Rover through these extraordinary and challenging times, so that our business is ready to take advantage when the downturn finally ends."<sup>21</sup>

**Chart 21: Benchmarking worker voice in the EU**  
European Participation Index, scale of 0-1



Source: European Trade Union Institute European Participation Index 2010

The inquiry observed that under the previous government a number of schemes were introduced to promote closer collaboration between employers and unions, such as the Partnership at Work Fund (BIS), the Workers' Safety Adviser Challenge Fund (HSE) and the Union Modernisation Fund (BIS).

The inquiry found the results of these initiatives encouraging, with the Safety Challenge Fund receiving a particularly strong evaluation for supporting greater worker participation in health and safety among SMEs. The Partnership at Work Fund also received a favourable evaluation; it encouraged employers and unions to collaborate on projects to boost productivity and improve the quality of work. Meanwhile the Union Modernisation Fund helped encourage unions to adapt to the changing world of work. All these funds were abandoned by the Coalition government.

It was stressed to the inquiry that effective voice on a wider range of workplace issues is contingent on the provision of capable and properly resourced support structures. The union voice, for example, is much more extensive than worker voice in non-union workplaces, where activity is often confined to consultation. The role and responsibilities of union representatives can nevertheless vary quite considerably between types of workplaces and between the different types of representatives. However, as ACAS' advice on voice at work shows, union representation can cover a wide range of areas, including collective bargaining, skills training, environmental matters, health and safety issues, equality, individual grievance and disciplinary matters, consultation and negotiation such as on TUPE and pensions.

To undertake these tasks, union representatives need to be trained and able to communicate with their members and employers. This in turn requires resources and access to facilities and facility time.<sup>22</sup>

### Role of union representation

Where a union has collective bargaining rights, it often undertakes a wide range of activities and duties. According to ACAS, the matters relevant to collective bargaining are listed as those concerned with one or more of:

- terms and conditions of employment and physical conditions of work;
- engagement or non-engagement, or termination or suspension of employment or the duties of employment, of one or more workers;
- allocation of work or the duties of employment between workers or groups of workers;
- matters of discipline;
- a worker's membership or non-membership of a union;
- facilities for union officials; and/or
- machinery for negotiation or consultation, and other procedures (such as grievance procedures) including recognition of the right of a trade union to represent workers in such negotiation or consultation.

Union learning representatives also have rights to time off for a range of learning or training needs.

The inquiry was told that despite government advice to local authorities to cut union facility time in order to save money, there seemed little employer enthusiasm for renegotiating facility time agreements. The former head of the CBI, Richard Lambert, noted that "union reps constitute a major resource".<sup>23</sup>

The Unite union pointed out that previous reports from BIS have in fact highlighted the business benefits of facility time, not least in reducing the number of employment tribunal cases. A 2007 DBERR report estimated that...

*... workplace representatives bring an identifiable range of benefits worth £476 million-£1,133 million annually, in addition to which there may be significant other gains from increased productivity. The costs to their employers of providing paid time off and facilities ranges between an estimated £407 million to £430 million annually.*<sup>24</sup>

Given the evidence on the benefits of having union representatives to both businesses and employees, the inquiry could find no justification for curtailing the facility time or facilities of unions.

**Recommendation:** *The government should support the establishment of new 'partnership funds' to encourage collaboration and a culture of consultation between employers and unions. Funding could be made available through the local enterprise partnerships.*

### Union recognition

Alex Bryson, a leading labour market expert at the National Institute of Economic & Social Research, told the inquiry that alongside the "sword of justice" effects of unionisation (discussed in the chapter on pay at work) there is a strong, statistically significant correlation between unionisation and overall job satisfaction. He commented:

*In contrast to the previous literature we find that once one accounts for fixed unobservable differences between covered and uncovered employees, union coverage is positively and significantly associated with satisfaction with pay and hours of work. Failure to account for fixed unobservable differences between covered and uncovered employees leads to a systematic underestimate of the positive effects of coverage on job satisfaction for both union members and non-members. It seems union coverage has a positive impact on job satisfaction that is plausibly causal.*<sup>25</sup>

Mike Clancy, general secretary of Prospect, told the inquiry that if we continue as at present the majority of the private-sector workforce in the UK will be denied the kind of voice that is common across Europe. He also added that effective and capable, independent voice is needed because all too often "middle managers are too remote from the board, and they are often both victims and perpetrators".

It was said that the challenge for unions was how to extend their membership across the private sector. One route suggested to the inquiry would be to amend the Employment Relations Act 1999 provisions concerning the "statutory right to union recognition",

which allows unions to establish collective bargaining on pay, hours and holidays where this is supported by a majority of the workforce.

However, it was said that the provisions of the act appear to have had little effect on either union membership or collective bargaining coverage. Some argued that this was because the design of the act was flawed from the start. It was said that employees are reluctant to join a union unless there are some clear benefits to so doing; but the benefits of collective bargaining depend on enough employees joining the union in the first place.

The inquiry was told that demonstrating the union has the support of at least 40 percent of the workforce before the application for recognition is accepted is too high (to be successful the union must win more than 50 percent of the vote and secure the support of at least 40 percent of those entitled to vote in the ballot). It was said that it is unfair to demand that the union achieves a double mandate in a ballot for recognition. Union representatives we spoke to also pointed out that around one in five workers are not covered by the statutory procedure because they are employed in small firms with 20 or fewer employees, which are excluded from the scope of the legislation.

### ICE Regulations

Part of the inquiry discussions on voice at work centred on amending the Information and Consultation of Employees Regulations (ICE Regulations), which were introduced in 2004 and apply to organisations of more than 50 people. The regulations give employees the right to request that their employers set up or change arrangements to inform and consult them about issues in their organisation. Workplace forums such as these can play an important role in supporting decision making, encouraging productive employment relations, preventing workplace conflict and resolving disputes early.

However, the inquiry was told that the regulations have a number of weaknesses, including an excessive "flexibility" that makes it difficult, if not impossible, to use them effectively.<sup>26</sup> It was also stated that the regulations have a high entry bar; that there was a failure to prescribe some minimum conditions for an acceptable level of information and consultation; and that the compliance rules were very weak.

Most countries in the rest of the EU require a certain number of workers to trigger the request to elect representatives. Germany, for example, requires at least five workers in an undertaking or a request from a union to initiate the process of setting up a works council. Other countries mandate the application of full works council rights only once a business has reached a certain size threshold (100 employees in Belgium and 150 in Luxembourg), although the more modest rights contained in the EU directive must be observed for those workplaces employing more than 50 workers. The inquiry was told that no other country has imposed a requirement comparable to the support of 10 percent of the workforce required in the UK before the process can be initiated.

In many other countries, statutory works councils provide an opportunity for employees to influence the decisions around

company strategy, training and productivity that affect their working lives, and are seen as core to supporting long-term company success. In some countries (notably Germany) works councils are prohibited from negotiating pay or organising strikes, activities that are completely within the preserve of unions.

The inquiry looked at the case for amending the ICE Regulations, mindful that it would affect employees, unions and employers. Among the issues discussed were:

- reducing the threshold needed (the number of workers who must express support for information and consultation) before a valid request can be made to activate the ICE Regulations – this could include consultation on whether to adopt a lower threshold in line with that of Germany, where five workers can initiate the process;
- whether to allow unions to initiate the process of activating the ICE Regulations (also a common practice in Continental Europe);
- whether ICE agreements should meet the requirements of the "default" provisions specified in the regulations – information about business policy and strategy, information and consultation about medium-term workforce planning including any threats to employment, information and consultation with a view to reaching an agreement on significant changes to work organisation or contractual relations;
- whether to limit the scope for employers to pray in aid "pre-existing agreements" (PEAs) to defeat the activation of the ICE obligations – PEAs must at least meet the requirements of the default provisions specified in the directive if they are to be considered as valid;
- whether to remove the possibility that "direct" methods of participation can be used as a suitable alternative to the representative participation – the current ICE Regulations are almost certainly not in compliance with the requirements of the EU directive;
- whether to ensure that workers' representatives have access to the resources they need to undertake their duties and activities – including access to expert advice, which must be funded by the employer;
- whether to give workers' representatives proper rights to time off for training and ensure that these programmes are properly funded – this could include consultation on whether employers should be required to make a contribution to the training of representatives (an obligation that is reinforced by the proposals for the consolidation of participation rights set out below);
- whether to impose sanctions with a genuine deterrent effect on employers who prove to be recalcitrant.

It was noted that if the regulations are to be changed then it will be important to ensure that they do not destabilise existing collective bargaining arrangements. It was said that where unions are recognised, employers should not be required to establish new, parallel structures for information and consultation.

These rationalised structures would not be negotiating pay and conditions of employment. They would principally be institutions



to ensure that workers have the opportunity to influence and inform critical employer decisions about company strategy and changes in processes, and systems that affect employees and the long-term success of the company, such as decisions around training, recruitment and work organisation. This could be achieved by providing unions with the right to nominate candidates for ICE representation – or to stand for election under ICE requirements, and thus build up legitimacy.

It was said that increasing voice through regular engagement between employee representatives and senior managers should establish an early warning system so that problems can be resolved before they become crises. Unreasonable treatment, for example, could be dealt with through an improvement in management practice and a more measured approach to the management of change.<sup>27</sup>

**Recommendations:** *The government should simplify and amend the existing ICE Regulations to give employees a stronger collective voice and bring the UK more in line with other EU countries.*

*Reform of the ICE Regulations could in the longer term help improve employment relations and boost pay and productivity.*

### Workers on the board?

One way suggested to the inquiry of providing greater voice was to give employee representatives the legal right to sit on the boards of public companies. It was said that workers at a board level could help ensure employees had a say in decisions that affect them and could foster greater co-operation and innovation. According to the TUC, which is drawing up detailed policies in relation to how workers' representation in corporate governance could work in practice, "giving workers a voice in company decision making would be one important step toward creating the long-term corporate culture we desperately need if a stronger and fairer economy is to be a reality". It also points out that 14 of the EU member states plus Norway have significant rights for workers to be represented on company boards.<sup>28</sup>

It was said that those countries making provision for worker representation at board level also have strong legal rights guaranteeing people voice in the workplace – and may also have high levels of collective bargaining coverage. Most systems make provision for the election of workers' directors, and in general these individuals will have had extensive experience of workplace representation – most will have been members of the works council (for instance in Germany, where in the largest companies half the members of the supervisory board are elected by the workers). Moreover, if the objective is to encourage a more informed dialogue, consistent with the principles of workplace citizenship, then board-level representation and effective worker voice in the workplace and at organisational level must be viewed as reinforcing policies. It was commented that the problem in the UK is not simply one of an absence of workplace voice but the "closed circle" found in most British boardrooms and the pressures for short-term performance.

The inquiry identified growing public and union member support

for workforce representation on company boards<sup>29</sup> and some signs of growing interest among corporate leaders for employee representatives and employee directors (with John Lewis and FirstGroup the two most well known). However, there seemed little consensus on the way forward, with employers' bodies broadly hostile to the idea of employees on remuneration committees and to proposals for the development of a distinctively British works council model.<sup>30</sup>

The TUC told the inquiry that there is a substantial commitment across the trade union movement for workers' voice to be introduced into the UK's corporate governance system.<sup>31</sup> However, not all union representatives we spoke to seemed convinced. Those unions organising in previously nationalised industries, for example, pointed out that a sprinkling of worker directors made little difference to the boardroom conversation.

The view from the inquiry's experts was that any board-level representation along the lines of the continental model needed to be linked to rebuilding the voice architecture at all levels, including corporate governance reforms. According to Andrew Harrop, director of the Fabians, the current system is not working and is too transactional, but "there are so many models on offer we don't need to blindly copy Germany".<sup>32</sup>

Professor Michael Gold, at the School of Management, Royal Holloway University of London, believes that worker representation on boards should be part of a vision for a fair and accountable company for the 21st century, but argues that implementation of the policy...

*... requires much further debate, particularly with regard to the size of eligible companies, the optimal number of employee representatives and their relationship with the unions, voting mechanisms and the kind of legislation required.*<sup>33</sup>

Nita Clarke, director of workplace engagement organisation IPA, commented that 37 years on from the publication of the Bullock report into industrial democracy, it is about time there was another national conversation on effective employee voice and the role of employees in company decision making, perhaps led by a non-partisan commission. She stated:

*If you believe that employees are an organisation's key asset, then surely the primary approach has to be to make the case for employee representatives on the key strategic decision-making body – the board.*

### FirstGroup's employee director

FirstGroup, the UK-based transport firm, has had an employee director since the company was created in 1989. Workers in each division at FirstGroup elect their own employee director, and this group elects the employee director for the main board from their ranks. The employee director (who is a union member) also sits as an observer on the remuneration committee. Martin Gilbert, outgoing chair of FirstGroup, has said that "the presence of employee directors on the FirstGroup board is invaluable".

**Recommendation:** *The government should establish a non-partisan commission involving all the key stakeholders to examine in detail the case for fundamental changes to the composition of British boards of directors. This review should consider the wider problems of short-termism in business decision making, the relationship between corporations and capital markets and the case for worker representation at board level.*

### Works councils in Germany

The inquiry met with the German Federal Ministry of Labour & Social Affairs and the Friedrich-Ebert-Stiftung to discuss industrial relations in Germany and the role of works councils. The inquiry heard that following the recession employers (and unions) recognised the important role that social partnership played in coping with the economic downturn.

The German government official said that German employers were working closely with the German unions on ways of making work better, which involved collaboration on skills and pay – including introducing a minimum wage in Germany. It was said that social partnership was an essential part of the German success story and that the government supported workplace voice organisations such as works councils.

*During the financial crisis business learnt the worth of social partnership. They could reach agreements to keep workers employed albeit on shorter hours.*

– German official from the Federal Ministry of Labour & Social Affairs

The inquiry was told that the German works council model is effective because there is strong union support. It was said that the candidates for such councils are often members of a union, and that the whole process was not designed to undermine existing collective agreements. It was also noted that it might be easier to organise and gain support during elections for a works council than it is using the Central Arbitration Committee machinery.

Although union representatives we spoke to held different views on works councils, it was said that demonstrating effective engagement with employers through such councils could help to overcome negative stereotypes of union militancy and develop a range of activities that appeal to a more qualified workforce. However, others commented that the German experience may not be easily transferable to the UK.

The recent TUC report *Democracy in the Workplace – Strengthening Information and Consultation* showed that works councils in Sweden and France are different from those in Germany and that...

*... unions in the UK would agree with a flexible approach, so long as there was enough law to ensure that companies engage constructively. The UK needs a regulatory environment that will bring companies to the table. Encouraging best practice alone, as attempted by, for example, the MacLeod review (2009), will not provide the step-change required.<sup>34</sup>*

### Works councils in Germany

- *Structure*  
Works councils can be established in all enterprises with more than five employees, or fewer for those that are trade-union-recognised. Non-executive employees have the right to vote in the election of the works council. Works councils are elected for a term of four years and meetings with the employer must take place at least monthly.
- *Rights and responsibilities*  
The employer and the works council are subject to a legal obligation to co-operate in a spirit of mutual trust. The works council cannot organise industrial action and cannot deal with matters determined through collective agreements. In certain matters the employer cannot proceed to implement a decision without the works council's consent.
- *The scope of co-determination*  
Employers must seek to consult works councils on particular matters including the proper running of the firm (for example, the use of security passes, and smoking policies), temporary reduction of working hours, operation of leave policies, the management of health and safety and remuneration policies.
- *Participation and co-determination in staff matters*  
Works councils have to be consulted on workforce planning. This includes issues related to future and present staffing needs, guidelines for recruitment and selection and vocational training, and provision is made for resolving disputes between the works council and the employer regarding grading, regrading and redeployment. In larger firms the works council has the right to be informed about the company's economic situation.

### Voice in smaller firms

The recommendations in this chapter have dealt largely with larger firms, whose employees are often more distant from senior managers. However, there are issues around voice and workplace citizenship that affect workers in small firms. While there is sometimes the assumption that working for a smaller firm means employees feel involved and have a voice, this is not always the case. For example, one poll suggested that less than half of employees working for firms employing fewer than 100 people feel involved in their organisation.<sup>35</sup> The inquiry was also told that a disproportionate number of claims to employment tribunals are from small firms.

However, unions are largely absent from SMEs and most are not covered by the ICE Regulations. Various studies<sup>36</sup> suggest that employee involvement practices can work for small firms, but they are very different (and usually less complex and costly) from those that work for large firms.

It was also said that the potential is there for unions to develop multi-employer collective agreements, although this is made difficult by the fact that union recognition laws exempt



workplaces employing 21 people or less.

It was said that it was important not to generalise about the attitude of small firms to unions and employee involvement. Many SMEs, for example, were working with local councils and unions to raise employment standards in order to create a level playing field for local supply chains. It was also noted that small firms were often in need of clear guidance on workplace issues, such as clarity around employment status and employment rights.<sup>37</sup>

*The government could do more to promote employee voice in small firms, including helping representative bodies, like chambers of commerce, the CBI, the Federation of Small Businesses and the TUC, to spread best practice.*

### Making government work

Government has much to care about when it comes to work, and the report sets out what can be done in policy terms. However, the inquiry heard that making these changes might be difficult, given the way government is structured. Responsibility for the world of work is widely dispersed across Whitehall, and no Cabinet minister has real responsibility for the agenda. Indeed, the UK is now the only OECD country without a ministry of labour.<sup>38</sup>

While there is a Department for Work & Pensions (DWP), it has no significant role in labour market regulation beyond health and safety at work. Responsibility for the regulation of the labour market now resides with the employment relations directorate of the Department for Business, Innovation & Skills (BIS). Unemployment may fall within the remit of the DWP and BIS may be responsible for employment relations, but others have an interest too.

It was put to the inquiry that experience shows implementing policy can be hampered because there is no department with sole responsibility for work. A brief look at tackling low pay shows that it is split between three departments and co-ordination is often lacking between them: BIS (focused on the NMW); the DWP (focused on getting people back to work with little focus on the quality of entry jobs); and the Treasury (focused on the tax credits system).

The Institution of Employment Rights calls for a Ministry of Labour to be established to...

*... give working people a voice in government to counteract the voice of powerful corporate interests. One of the duties of the new department will be to promote collective bargaining.<sup>39</sup>*

While the case for creating a new, unified department of employment attracted some support, the inquiry heard views from parliamentarians and policy makers who cautioned against any major restructuring of Whitehall. It was said that such a course of action would be a major distraction for any new government focused on making work better (it was remarked, for example, that it would take between 18 months and two years before a new department would be fully operational). The inquiry

**Table 3: The responsibility for 'work' across Whitehall**

Department	Areas of responsibility (and associated non-departmental bodies)
Department for Work & Pensions	<ul style="list-style-type: none"> <li>• Unemployment and active labour market programmes</li> <li>• Benefits for the disabled</li> <li>• Other out-of-work benefits (including job seeker's allowance)</li> <li>• Health and safety at work – including enforcement and the impact of work on the health of the working-age population (Health &amp; Safety Executive)</li> </ul>
Department for Business, Innovation & Skills	<ul style="list-style-type: none"> <li>• Skills policy, including in principle skills utilisation as well as skills supply (UK Commission for Employment &amp; Skills)</li> <li>• Productivity and organisational performance</li> <li>• The regulation of the labour market – including workplace citizenship, individual employment rights and dispute resolution (ACAS and the Central Arbitration Committee)</li> <li>• The national minimum wage (Low Pay Commission)</li> <li>• Promoting good practice – including healthy workplaces (Investors in People)</li> <li>• Corporate governance and reporting</li> <li>• Equality in the workplace – equal pay, rights against discrimination on the grounds of gender, race, sexuality, disability, faith and age (Equality &amp; Human Rights Commission)</li> </ul>
HM Treasury	<ul style="list-style-type: none"> <li>• Productivity and economic performance</li> <li>• Enforcement of the national minimum wage (Treasury)</li> <li>• Public-sector pay</li> <li>• Sickness absence in the public sector</li> <li>• Support for low-income households in work – tax credits</li> </ul>
Department of Health	<ul style="list-style-type: none"> <li>• Health in the workplace – and the quality of employment</li> <li>• Health promotion</li> </ul>
Cabinet Office	<ul style="list-style-type: none"> <li>• Public-sector productivity</li> <li>• Public-sector pay</li> <li>• Good practice in public-sector employment</li> </ul>
Ministry of Justice	<ul style="list-style-type: none"> <li>• Employment tribunals and the Employment Appeal Tribunal<sup>40</sup></li> </ul>

also noted concerns that such a change could easily be reversed following a change in government.

*If you change [the machinery of government] then you have paralysis. You are in a rush on day one to change policies. Instead there will be 18 months of relative inaction.*

– Parliamentarian

Whether or not creating a new government department for work is desirable or feasible in the short term, the argument was put to the inquiry that there should be much greater interdepartmental working (and collaboration between non-departmental public bodies<sup>41</sup>) on world-of-work issues. It was said that government needs to develop a much more assertive employment strategy aimed at securing full employment and making work better. The machinery of government needs to be fit for purpose to deliver such a strategy.

It was also suggested that the government should develop the concept of workplace citizenship and engage in a national conversation with employees, employers and unions on what good work means in modern Britain and how collectively we can tackle the long tail of underperforming, poor employers.

The inquiry discussed the idea of a charter for workplace citizenship, which could be one way of raising awareness of employment rights and engaging with people at work. It was said that the case for greater workplace citizenship is based on the idea that people should not surrender their rights as citizens at the point they cross their employer's threshold; that democratic principles are just as important in the world of work as in society as a whole. Greater workplace citizenship does not rest on the notion that all workers have to be consulted about everything – rather, that employees have a legitimate expectation that their voices will be heard and that their employer's decisions are justified and legitimised.

**Recommendation:** *The government should develop a long-term employment strategy with the social partners and civic society for making work better.*

*Over the medium- to long-term the government should consider the case for a new department focused on the world of work.*

#### **A charter for workplace citizenship**

A charter for workplace citizenship might include the following:

- All citizens have the right to work and to free choice of employment.
- All citizens at work should have a commitment and responsibility to the success of their organisation.
- All citizens at work have the right to be rewarded fairly and to share in the success of the organisation for which they work.
- All citizens at work have the right to employment in a healthy and safe workplace free from discrimination on the grounds of gender, ethnicity, disability, sexuality or belief.
- All citizens at work have the right to paid leave (including for time for family care) and to flexible working.
- All citizens at work have the right and responsibility to be treated, and to treat others, with respect and dignity.
- All citizens at work have a responsibility to fulfil their potential and a right of access to skills development throughout their working lives.
- All citizens at work should have effective access to justice and fair means of resolving dispute and grievances.
- All citizens at work have the right to voice at work and a right to express their views to their employers, both individually and collectively.
- All citizens at work have the right to join trade unions, which should be recognised by employers for collective bargaining where the majority of the workforce agree.

## References

- For example: UN Declaration of Human Rights (Article 20), European Convention of Human Rights (Article 11), and International Labour Organization Conventions 87 and 98
- 2 Quoted in: IPA/Tomorrow's Company *Releasing Voice for Sustainable Business Success* (2012)
- 3 MacLeod, D and Clarke, N *Engaging for Success: Enhancing Performance through Employee Engagement* (BIS, 2009)
- 4 See: Freeman, R and Medoff, J *What Do Unions Do?* (Basic Books, 1984); Bryson, A, Charlwood, A and Forth, J "Worker Voice, Managerial Response and Labour Productivity: An Empirical Investigation" in *Industrial Relations Journal* (2006); Metcalf, D *Unions and Productivity, Financial Performance and Investment: International Evidence* (LSE, 2002)
- 5 Chartered Institute of Personnel & Development *Smart Work: People, Productivity and Performance* (2006)
- 6 "Should Managers Focus on Performance or Engagement?" in *Gallup Business Journal* (2014)
- 7 Sisson, K et al *New Forms of Work Organisation: Can Europe Realise its Potential?* (European Foundation for the Improvement of Living & Working Conditions, 1997)
- 8 Kruse, D et al *Shared Capitalism at Work* (University of Chicago Press, 2010)
- 9 Hall, P and Soskice, D (eds) *Varieties of Capitalism: The Institutional Foundations of Comparative Advantage* (Oxford University Press, 2001)
- 10 Notably Professor Ralph Fevre of Cardiff University
- 11 The individualisation of workplace conflict has also, arguably, led to an unnecessary degree of formality and bureaucracy in dispute resolution processes.
- 12 BIS *Trade Union Statistics 2013* (2014)
- 13 The Chartered Institute of Personnel & Development defined employee engagement as "being positively present during the performance of work by willingly contributing intellectual effort, experiencing positive emotions and meaningful connections to other". This definition gives three dimensions to employee engagement: intellectual engagement – thinking hard about the job and how to do it better; affective engagement – feeling positively about doing a good job; social engagement – actively taking opportunities to discuss work-related improvements with others at work.
- 14 Chartered Institute of Personnel & Development *Employee Outlook: Spring 2014* (2014)
- 15 van Wanrooy, B et al *Employment Relations in the Shadow of Recession* (Palgrave Macmillan, 2013)
- 16 The report was based on a survey of 578 HR professionals from 379 different organisations. Three-quarters were based in the UK – the rest worked mainly for multinational companies headquartered in the UK.
- 17 Purcell, J and Hall, M *Voice and Participation in the Modern Workplace: Challenges and Prospects*, discussion paper (Advisory, Conciliation & Arbitration Service, 2012)
- 18 The index was compiled in 2010 and it includes standard measures of worker voice, including participation in board-level decision making, the presence of works councils and the extensiveness of their rights, the level of union membership and the coverage of collective agreements. In addition, the index uses a large survey of European employers to capture an array of "informal" participation practices, which supplement the formal institutional processes.
- 19 Coats, D *Just Deserts?* (Smith Institute, 2013)
- 20 Towers, B *The Representation Gap: Change and Reform in the British and American Workplace* (Oxford University Press, 1997)
- 21 "Jaguar Staff Opt for Shorter Week" on BBC News, 5th March 2009
- 22 Trade union facility time and facilities are the time and resources (access to ICT and accommodation etc) that unions negotiate from employers so that they are able to represent members both individually and collectively in negotiations with managers. Union representatives have had a statutory right to reasonable paid time off to carry out trade union duties since 1975, and most of the current provisions come under the Trade Unions and Labour Relations (Consolidation) Act 1992, set out in the ACAS Code of Practice 2009. According to BIS, the average time taken by a senior union representative is around 10 hours per week.
- 23 Reps in Action: How Workplaces Can Gain from Modern Union Representation (DBERR/TUC/CBI, 2009)
- 24 Workplace Representatives: A Review of Their Facilities and Facility Time, consultation document (DBERR, 2007). Also see: TUC Facility Time for Union Reps – Separating Fact from Fiction (2012)
- 25 Bryson, A *Not So Dissatisfied After All?: The Impact of Union Coverage on Job Satisfaction* (National Institute of Economic & Social Research/Centre for Economic Performance, 2013)
- 26 Hall, M and Purcell, J *Consultation at Work: Regulation and Practice* (Oxford University Press, 2012)
- 27 If workplace forums were introduced, they would act as the first port of call when an individual had a problem. Elected employee representatives would then be able to represent them in any grievance and disciplinary proceedings and work towards an amicable resolution of the dispute without recourse to the employment tribunal process so disliked by employers. Workplace disputes that are currently represented as individual complaints are often (but not always) a consequence of some underlying systemic problem. Representative forums that identify and resolve workplace problems are in the interests of both employers and workers.
- 28 These countries are: Austria, Croatia, the Czech Republic, Germany, Denmark, Finland, France, Hungary, Luxembourg, the Netherlands, Norway, Sweden, Slovenia and Slovakia. It should be noted that the form and operation of board representation varies from country to country.
- 29 A Survey poll in 2013 revealed 76 percent of UK employees and 89 percent of union members were in favour of workforce representatives on company boards of directors.
- 30 Around two-thirds of those who responded to the 2012 BIS consultation on executive remuneration said that they did not think there would be benefits in having employee representatives on remuneration committees. The CBI has stated: "Independents or employee representatives... would add little to the process by comparison with a non-exec who has the advantage of being an elected shareholder representative."
- 31 See: TUC *Workers on Board: The Case for Workers' Voice in Corporate Governance* (2013)

32 Williamson, J et al *Beyond Shareholder Value: The Reasons and Choices for Corporate Governance Reform* (New Policy Institute/TUC/SOAS, 2014)

33 Ibid

34 TUC *Democracy in the Workplace: Strengthening Information and Consultation* (2014)

35 MacLeod, D and Clarke, N *Engaging for Success: Enhancing Performance through Employee Engagement* (BIS, 2009)

36 Such as: work by Alex Bryson at the National Institute of Economic & Social Research on the impact of employee involvement on small firms' financial performance; ACAS discussion papers; European Trade Union Confederation *Improving Employee Involvement in SMEs*, European project (2012)

37 See: *An Enterprising Nation*, Small Business Taskforce report (2013)

38 This has not always been the case. The Ministry of Labour was established in the UK in 1916 and continued in existence in various forms until 1995, when the Department of Employment was abolished.

39 BIS has responsibility for employment tribunals while the Ministry of Justice has responsibility for their administration and judicial aspects.

40 Institution of Employment Rights *Manifesto for Collective Bargaining* (2014)

41 Greater collaboration could also be possible between non-departmental public bodies which regulate the labour market. For example, greater joint working between the HSE and ACAS may help with the identification of bad practice (especially non-compliance hotspots) and the prioritisation of inspection and enforcement activity. Another option would be to merge the functions of non-departmental bodies. For example, ACAS, the Central Arbitration Committee, the Certification Office, the Low Pay Commission and the HSE, however, this again would require significant reconstruction, not least given their activities, powers and duties. For example, ACAS does not enforce employment rights but the HSE does enforce health and safety law. The Central Arbitration Committee acts judicially, whereas the Certification Office operates administratively, receiving information from trade unions required by statute and taking action if that information is not supplied



## Annex 1: Terms of reference

The inquiry was established in February 2014 under the auspices of the Smith Institute and led by Ed Sweeney, the former chair of the conciliation service, ACAS. Its primary purpose was to identify the main problems and opportunities in the world of work today, and on the basis of the evidence to present an agenda backed up by set of practical recommendations for government to help *make work better*.

By way of evidence taking, interviews, opinion polling, group discussions, public events, desk research and analysis, the inquiry sought to offer an independent and comprehensive perspective on what is happening to people in work and what are the main concerns of employers, employees and unions. The focus was on the entire range of people in work, including managers, the low-paid, the high-paid, skilled, unskilled, part-time, full-time, and the majority of employees who are on average earnings. Although some reference is made to those seeking work and to issues that relate to people's working lives, such as access to work pensions, the spotlight is mostly on what is happening in the labour market and to those in work.

The inquiry has tried to address a number of related challenges and policy questions, including what government in all its forms – from Whitehall to the town hall, from public agencies to non-departmental bodies – can do to improve both the quality of work and the nation's poor productivity performance. Within that framework, discussions with a wide variety of employers and employees and other stakeholders centred on the following:

- *What makes a good job?* What are the characteristics of good work in a modern economy, such as reward, security, status, opportunity and progression, training, autonomy, employee voice, the strength of workplace relationships, and the balance between work and family/social life? How is the world of work changing? Is insecurity at work a problem and, if so, what can government do to combat it? How does the UK compare with other countries?
- *Productivity and performance:* How can government help create a high-skilled, high-productivity economy? Which workplace practices are associated with high productivity? To what extent is productivity related to voice and workplace citizenship? What can be done to ensure that employers fully utilise the skills of all their staff and support lifelong learning? What can be done to tackle poor management and a race to the bottom in employment pay and conditions?

- *Making a living:* Can we return to real wage growth and reduce widening wage inequalities? Can the national minimum wage be strengthened? Should government seek to extend the living wage and, if so, how? Where next for collective bargaining and share ownership? What should happen to public-sector pay and how can government help close the gender pay gap? What should be done about problems with agency working and zero-hours contracts?
- *Flexibility and equality:* What more can be done to promote equal opportunities at work, such as equal pay audits? How can we ensure that men and women share paid and unpaid work more equitably? How can we achieve a better work-life balance? What can be done to improve childcare and eldercare? What actions can government take to support older workers?
- *Voice and justice at work:* Are our employment rights fit for purpose and effective? How can we best tackle discrimination at work? Do employees want more voice and how can this be realised? Where do unions fit in and should government do more to support social partnership? Is there a case for developing a works council system, or something similar? Is there an appetite for employee directors on company boards? What can be done to reduce reliance on litigation in employment tribunals to nip problems in the bud?
- *Raising employment standards:* Is there a need for more transparency about employment practices and pay levels? How can government help progress employment reporting and benchmarking? Is there more that can be done with labour clauses in public and private contracts? Can employment issues become more central to the debate about corporate governance reform? What can be done to raise the quality of employment in small firms and in the voluntary sector?

The inquiry, which took six months to complete, was guided by an advisory committee of employers, union representatives, policy makers, labour market experts, and former government advisers. More information on the evidence received, public meetings, interviews and the advisory committee can be found in annex two.

## Annex 2: The world of work – key facts

- There are around 30 million people in work in Britain, of whom 25.6 million are employees and 4.4 million are self-employed.<sup>1</sup> The employment rate is 72 percent.<sup>2</sup> Some 5.7 million people (19 percent) are employed in the public sector and 24.4 million (81 percent) in the private sector.<sup>3</sup>
- Women make up nearly half of the workforce,<sup>4</sup> but there is a gender divide in employment rates: 77 percent for men and 67 percent for women.<sup>5</sup> The employment rate for those over working age (those over 65) is 10 percent.<sup>6</sup>
- Unemployment is currently around 7 percent. This varies between age groups (it is around 33 percent for 16- to 17-year-olds) as well as regionally (ranging from 10 percent in the North East to 5 percent in the South East)<sup>7</sup> and is higher among ethnic minority groups (around 17 percent for some).<sup>8</sup> Disabled people also remain significantly less likely to be employed.
- Around 80 percent of the workforce have permanent contracts and 5 percent are on temporary contracts.<sup>9</sup> Some 1.4 million workers are on zero-hours contracts.<sup>10</sup>
- Some 27 percent of the workforce work part-time and 14 percent are self-employed.<sup>11</sup>
- The biggest employers are retail (15 percent); health and social work (13 percent); and education (9 percent).<sup>12</sup>
- Managers and senior officials form around 16 percent of the workforce, associate professionals 15 percent, professionals 14 percent, elementary (such as cleaners, kitchen and catering assistants) 11 percent, administrative and secretarial workers 10 percent; those in personal services 9 percent; sales and customer services workers 7 percent; process, plant and machine operatives 6 percent.<sup>13</sup>
- Just over half of employees work for large employers and around a third work for firms with fewer than 50 workers, while just under 10 percent work for medium-sized enterprises (with between 50 and 249 employees).<sup>14</sup>
- Employer size differs in the public and private sectors: 42 percent of employees in the whole economy work for small and medium-enterprises (SMEs), but 51 percent of employees and 60 percent of the workforce (including employees and self-employed) work for SMEs in the private sector.<sup>15</sup>
- Some 35 percent of the British workforce have a degree-level qualification.<sup>16</sup> However, one in 10 have no qualifications and around 12 percent have low-level qualifications (NVQ1).<sup>17</sup>
- Over a third of all jobs are in low-productivity sectors. Eighty percent of the new jobs created since 2008 are in the low-productivity rather than the high-productivity category.<sup>18</sup>
- Since 2004 average real wages for a full-time worker have fallen by around 9 percent. This is equivalent to a loss of £2,600 per year.<sup>19</sup>
- Wages in the public sector have been disproportionately squeezed since 2008.<sup>20</sup>
- The average FTSE 100 chief executive earns £4.8 million – around 185 times the average salary.<sup>21</sup> The top 1 percent of earners are paid 13 percent of all earnings.<sup>22</sup>
- The gender pay difference for all employees (median hourly earnings excluding overtime) is around 20 percent.<sup>23</sup>
- There is a large “pay penalty” for working part-time (regardless of gender).<sup>24</sup>
- Over 21 percent of the workforce are in low-paid work (£7.71 per hour).<sup>25</sup>
- Around 5 million employees are paid below the living wage (£8.80 in London and £7.65 for the rest of the UK).<sup>26</sup> Today more than half of all households in poverty (those with an income of less than 60 percent of the median) have at least one person in work.<sup>27</sup>
- Sixty percent of employees feel their job is secure<sup>28</sup> (and 47 percent in the public sector).<sup>29</sup> A third say they are engaged with their employer’s business<sup>30</sup> and 56 percent feel tense at work while 25 percent feel “uneasy”.<sup>31</sup> Eleven percent of employees work more than 48 hours a week.<sup>32</sup>
- Trade union density is 26 percent (proportion of employees who are a member of a trade union)<sup>33</sup> and collective bargaining covers around 30 percent of employees.<sup>34</sup>



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### Annex 3. Workers' rights supporting workplace democracy

The following are some of the main workers' rights currently offered to employees and unions in the UK.

- There is a right for a union to be recognised for collective bargaining on pay hours and holidays where this is supported by a majority of the workforce in the bargaining unit.
- In companies with more than 50 employees, workers have a right to elect representatives for the purposes of information and consultation under the ICE Regulations 2004. In principle, employers must:
  - inform representatives about the strategic plans for the business;
  - inform and consult about workforce planning, including potential threats to employment and any "anticipatory" action that might be taken; and
  - inform and consult *with a view to reaching an agreement* on significant changes to work organisation and contractual relations.

These provisions implement the EU directive on the Information and Consultation of Employees (2002).

- Workers have the right to elect representatives who can negotiate the flexible implementation of the provisions of the Working Time Regulations 1998. Where unions are recognised, they have the exclusive right to negotiate flexible implementation. These provisions implement the EU Working Time Directive (initially adopted in 1993 and amended in 2003).
- If a business is to be transferred from one owner to another under the TUPE Regulations, then recognised unions must

be consulted about the process. Where no trade union is recognised for collective bargaining, workers have the option of electing representatives to be informed and consulted about the transfer. These provisions implement the EU Acquired Rights Directive (initially adopted in 1977 and amended in 1998, with the provisions consolidated in 2001).

- Where collective redundancies are being planned, unions have the right to be informed and consulted by the employer with a view to reaching an agreement on measures to:
  - avoid the redundancies completely;
  - reduce the numbers affected; and/or
  - minimise the impact on those who are made redundant.

If no trade union is recognised for collective bargaining then workers can elect representatives for the specific purpose of redundancy consultation.

- In workplaces where they are recognised for collective bargaining, unions have the right to elect health and safety representatives jointly to manage the safety of the workplace with the employer. Where there is no recognised trade union, employees can elect non-union representatives ("representatives of employee safety") for the same purpose. Union representatives are appointed under the provisions of the Health and Safety at Work Act 1974. Representatives of employee safety are elected under the Health and Safety (Consultation with Employees) Regulations 1996. EU health and safety directives assume a structure for worker participation in all workplaces, which is why the 1996 regulations were introduced.

## Annex 4: Written and oral evidence to the inquiry

We would like to thank everyone who submitted evidence to the inquiry; those who gave up their time to be interviewed; and those who attended the inquiry events. In particular, we would like to thank the members of the inquiry's advisory group. The interpretation and recommendations in this report are, of course, solely those of the author, Ed Sweeney, and cannot be accredited to the views of members of the advisory group.

### Interviews

- Sir George Cox, pro-chancellor and chair of council of Warwick University and former director-general of the Institute of Directors
- Matthew Taylor, chief executive of the RSA
- John Hannett, general secretary of USDAW
- Brendan Barber, chair of ACAS
- Chris Goulden, head of poverty at the Joseph Rowntree Foundation (and colleagues)
- Frank Doran MP and trade union group of sponsored MPs
- Victoria Phillips, head of employment rights at Robin Thompsons Solicitors (and colleagues)
- Professor David Guile, Institute of Education
- Mike Clancy, general secretary of Prospect
- Roy Rickhuss, general secretary of Community
- Alan Buckle, former deputy chairman at KPMG International
- Bill Wells, deputy director for analysis, briefing and the minimum wage in the Labour Market Directorate at the Department for Business, Innovation & Skills
- Lena Levy, head of group at the CBI Employment & Skills Directorate
- Paul Wilmott, Mike Emmott and Genevieve Bach, Chartered Institute of Personnel & Development
- Nita Clarke, director of IPA
- Jon Cruddas MP
- Frances O'Grady, general secretary of the TUC
- Lesley Ballantyne, director for partner strategy at the John Lewis Partnership
- Karen Jennings, assistant general secretary of Unison (and colleagues)
- Bill Thomas, former senior vice-president and general manager at EMEA Hewlett-Packard
- Sally Gray, Good Work
- Andy Sawford MP
- John Healey MP
- Dave Penman, general secretary of FDA, and Rob O'Neill, national officer at FDA

### Written evidence

- Professor Philip James of Middlesex University and Professor David Walters of Cardiff University
- Professor Ralph Fevre of Cardiff University
- Age UK
- Richard Finn
- Pensions & Investment Research Consultants
- Sarah Welfare

- Norman Pickavance
- Robin Thompsons Solicitors
- Royal College of Nursing
- Unison North West
- Gordon Noble, Inflection Point Capital Management
- Nick Jones, PwC
- Professor Jane Wills, Queen Mary, University of London
- Laura Gosling, BBC
- Dr Ruth Yeoman, University of Oxford
- Communication Workers Union
- British Psychological Society
- British Association for Counselling & Psychotherapy
- Centre for Mental Health
- Unionlearn
- Mark Norris
- Professor Andrew Burke, Cranfield School of Management
- Joseph Rowntree Foundation
- TUC
- ACAS
- High Pay Centre
- Living Wage Commission
- University of Greenwich
- Unions21
- Communication Workers Union

### Inquiry discussion regional events

- Cardiff, 13 March
- Liverpool, 29 March
- Manchester, 21 March
- Coalville (Leicester), 1 May
- Brighton, 23 April
- Leeds, 15 May
- Glasgow, 21 May
- London, 12 June

### Ad hoc meetings

- Advisory group meetings, 27 February and 27 May
- Experts roundtable, 29 April
- Seminar with the German Federal Ministry of Labour and Friedrich Ebert-Stiftung, 19 May
- Seminar with Equality & Diversity Forum, 10 September

### Advisory group members

- Dr Alex Bryson, head of employment group at the National Institute of Economic & Social Research
- David Coats, research fellow at the Smith Institute
- Gill Dix, head of strategy at ACAS
- Sue Ferns, director of communications and research at Prospect
- Prof Duncan Gallie, official fellow and professor of sociology at Nuffield College, University of Oxford
- Deborah Hargreaves, director of the High Pay Centre
- Lord John Monks
- Dave Moxham, deputy general secretary of the Scottish TUC

- John Park, strategy and policy director at Community
- Nicola Smith, head of the economic and social affairs department at the TUC
- Tim Thomas, head of employment and skills policy at EEF
- Prof Paul Willman, department of management at the LSE
- David Yeandle, chair of the Involvement & Participation Association

### **Polling**

- YouGov Poll "Work in Britain", August 2014

