



# **Future of Devolution and Work in Wales**

Professor Jean Jenkins

January 2024

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## **Executive Summary**

This report investigates the intersection of devolution and employment rights in Wales. The primary aim is to assess the effectiveness of current policies in safeguarding workers' rights, better understand the views of workers, propose strategies for improvement and to inform discussions within the Welsh labour movement about the prospects for the devolution of employment rights to Wales.

## **Key Findings and Conclusions**

- The Welsh labour market in 2023 is characterised by low unemployment, high rates of economic inactivity and wages that have been stagnant for 15 years.
- Wages and productivity are lower than almost anywhere else in the UK. Major levels of labour market discrimination persist for Black and Ethnic Minority workers, for women and for disabled people.
- One in nine workers in Wales are in insecure work. The post-2008 labour market recovery was built largely on low paid, insecure, non-unionised jobs. Outsourcing of jobs from the public sector and the growth of zero hours contracts have contributed to a weakening of worker power.
- Labour rights are weakly enforced. Just £10.45 is spent on enforcement for each worker and the capacity of our inspectorate bodies ranks 27<sup>th</sup> out of 33 OECD countries.
- The Welsh Government does not have control over employment rights, but it has set out a clear policy direction with its Fair Work programme and by putting social partnership structures on a statutory footing.
- Workers in Wales are pro-devolution in most policy areas. On the issue of devolving employment rights, however, they are evenly split. Younger workers are significantly more likely to support devolving employment rights than older workers.
- Workers identified the most important aspects of their job as security, work life balance and good pay. Fair pay, health and safety and flexibility were flagged as the rights that people were most concerned about at work.
- There was an almost three to one split in favour of providing more support to workers. 58% agreed that workers needed better protection from unfair exploitation compared to just 22% who said that businesses needed less regulation on employment rights to allow them to grow and create jobs. There was also strong support for a ban on zero hours contracts (55% support a ban; 26% would oppose one).
- Beyond legal minimum standards, workers in Wales are often employed under terms determined outside Wales. Frequently this will be under the terms of sectoral agreements and UK-wide collective bargaining arrangements. Understanding the implications of the

devolution of employment rights on these agreements would be a central challenge in any such project.

- Questions about devolving employment rights are inseparable from discussions about funding. More responsibility on its own without the resources to operationalise new powers is unlikely to deliver the kind of changes that workers across Wales want.

It is for the Wales TUC and its affiliate unions to reach a position on the devolution of employment rights. In the recommendations below we set out actions that should also be prioritised alongside any consideration or campaigns on the constitutional issue. It is vital to recognise that there are concrete things that could be done now within the existing settlement that could begin the task of creating better working lives for people in Wales.

### **Recommendations**

These recommendations, all of which are explored in greater detail in the final section of the report, are aimed at developing a clear and distinct environment for work and workers' rights in Wales.

- 1. A Minister for Work in the Welsh Government.** Workers need a clear voice for them in Welsh Government who can operate with authority at Cabinet level and drive the Fair Work agenda.
- 2. Investment in enforcement.** Wales does not have to passively accept the UK's threadbare labour rights enforcement system. We should better co-ordinate devolved agencies in this area, work more closely with non-devolved agencies, and strategically invest to transform the enforcement approach in Wales.
- 3. Overhaul the ways in which employment rights and industrial relations are understood across the devolved public sector.** Invest in core training and the development of a minimum standard of awareness of employment rights, labour market conditions and industrial relations across the devolved public sector over the next two years to complement the roll-out of the Social Partnership Duty and deliver on the ambition to use all devolved levers to make work fairer.
- 4. Prioritise collectively bargained pay, terms and conditions.** Welsh Government should establish a fair work National Milestone to set out specific ambitions in relation to the collective bargaining national indicator, therefore doing what it can to improve the context for better industrial relations.
- 5. Make Wales a world-leader in openness on labour rights.** Rights are being undermined by a lack of data collection, research and transparency. Wales should up-end this situation and develop its openness as a key positive feature of its labour market and commitment to human rights.
- 6. Revisit the Fair Work Commission's recommendations on workers' awareness of their rights.** Workers need greater support in understanding their rights – particularly

given the emphasis that the current enforcement system places on the individual. We should learn from best practice across the world in this area and provide clear markers on progress.

- 7. The Wales TUC should establish a working group to examine the practicalities of the devolution of employment rights.** Given the unpredictable and challenging economic and political environment for labour rights in the UK, the Wales TUC should establish a working group that examines the practicalities and strategies for the potential devolution of employment rights to Wales.

## Foreword: Wales TUC General Secretary Shavanah Taj



When we tasked Professor Jean Jenkins with considering the interplay between devolution and employment rights in Wales, we did not quite appreciate the scale of the challenge we had set her.

A few things quickly became apparent.

The devolved state has a significant degree of power over workers' lives despite employment rights and industrial relations being reserved to Westminster.

There has also been very little consideration within Wales of what it would mean to actually devolve employment rights and industrial relations law, and therefore little debate about the risks and advantages of this.

And industrial relations can feel impossible to pin down, spanning national boundaries with little regard for devolution in some cases and absolutely reshaped by them in others.

Our movement owes Professor Jenkins huge thanks for taking on this enormous task.

This final paper makes for fascinating reading, especially in terms of where we find ourselves now. Our labour market is broken. It is failing hundreds of thousands of workers. Their rights are not being respected and their expectations could not be lower.

The Wales TUC has been – and continues to be – a proud and vocal supporter of devolution in Wales. We campaigned for a Welsh Parliament and we have seen first-hand the difference having our own government in Cardiff can make – not least during the financial crisis, during the Covid pandemic and in the establishing of the social partnership structures that give workers in Wales a voice at the highest levels. Our starting position is therefore that control of work in Wales should lie as close to workers in Wales as possible.

Professor Jenkins's report establishes the complex and challenging realities that we must address when looking at the question of devolving employment rights.

There is significant support for the devolution of employment rights among workers in Wales. But not currently majority support. Many of those who may want to see any such devolution happen swiftly do so from a good place – they want to see a Welsh Government that has sought to protect workers from the extremes of successive UK government attacks take the reins.

But, as Professor Jenkins deftly sets out, the government of the day is far from the only relevant actor in the labour market.

The Commission has focussed to a significant extent on how the devolved settlement and existing legislation that is going unenforced can be fully harnessed to create the sort of conditions where workers are then able to determine the right pathway for them. It sets out how Wales's labour market can begin to be strengthened and rebuilt.

By exploring the core themes of labour rights, institutions and enforcement it looks at what is necessary to ensure that any outcome – including further or full devolution – does not reinforce existing labour market failures.

And this needs to be the starting point for our movement.

We need to approach these issues with our eyes wide-open about what those risks could be, with careful consideration given to how to mitigate these, whilst protecting what workers have already won and secured.

Doing so will offer us a chance to create a distinct, more progressive and equitable labour market in Wales.

We also need to be ready to take advantage of the potential opportunities to in-source workers into the public sector in Wales. The move towards privatisation and the outsourcing of workers has been a major factor in undermining workers' rights and accountability over the last 40 years. With the UK Labour party committed to the "biggest wave of insourcing in a generation" we need to consider how we can seize this opportunity in Wales.

Professor Jenkins's recommendations focus on radically reshaping labour market institutions within Wales, by investment in enforcement and pivoting the devolved state towards rebuilding the conditions necessary for workers to access their basic labour rights. I also make note of her recommendation on how the Wales TUC should be building its own capacity to look at the practicalities of potential further devolution.

**I speak for all our affiliates when I offer our sincere thanks to Professor Jenkins for her commitment and work in considering these issues and writing this report.**

**It will now be for the Wales TUC to consider these recommendations and agree our next steps as a movement to make work fairer for all.**

**Shavanah Taj**  
**General Secretary, Wales TUC**

## Introduction: Professor Jean Jenkins



The focus of this report is the relationship between devolution and standards of work in Wales. It is a subject that touches all of us whether we are in paid work, are seeking paid work, are unemployed or otherwise unable to undertake paid work for any variety of reasons.

The political environment for labour relations in Wales is characterised by the language of social partnership – the idea of government, employers and unions working together. Ideals of sanctuary and inclusivity are promoted as core values in our public life. It follows that the policy work being undertaken in Wales on employment, forced labour, procurement and discrimination is framed around improving the quality of people's working lives.

There is no need for this Commission to run over well-trodden ground in defining what good quality work should look like. The excellent reporting of the Fair Work Commission has already established that a combination of fairness in remuneration, security of employment, predictability of earnings and hours, access to meaningful collective representation, training and development and freedom from discrimination, is the minimum we should expect from our working lives. Put simply, these terms and conditions are essential ingredients of 'fair work'.<sup>1</sup>

Acceptance of these aspects of fair work is characterised by contradiction. For example, we have some of the highest levels of unionisation in the UK with some of the lowest regional rates of pay.

The nature of work being done in Wales may be partly responsible for this finding, as the incidence of low skilled, low pay work attest and high levels of employment insecurity is also relatively more prevalent in Wales. Furthermore, despite moves towards gender equality and anti-racism in the policy arena, the labour market shows evidence of persistent discrimination on grounds of gender, race, disability, and other protected characteristics.

In pursuing the work of this Commission, we were forced to return to these contradictions between intent and reality time and again.

While our founding assumption was that, on the basis of the evidence, we had no need to convince our *current* devolved administration of the value of good quality work, we have been unable to avoid the conclusion that Welsh Government policy has had limited impact in the workplace. It is at this level that the strength of enforcement mechanisms and power relations are tested: the workplace is where conditions are truly determined.

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<sup>1</sup> <https://www.gov.wales/fair-work-commission>



Accordingly, this report has been written in a spirit of a critical friend, who values and applauds the intent of policy concerned with standards of work in Wales, while being unafraid to confront the gaps through which good intentions may be falling.

Above all, in the writing our aim has been always to resist the temptation to offer one-dimensional solutions to complex problems.

We commend this report to our readers in the knowledge that we have not provided all the answers but in the hope we have at least clarified the questions we need to be asking about the future of good work in Wales.

**Professor Jean Jenkins – December 2023**

## Remit

The Wales TUC launched the Future of Devolution and Work Commission in October 2021, following a vote in favour of such a project at Wales TUC's 2021 Congress.

The Commission was tasked with considering the relationship between standards of work in Wales in the context of the current and possible future devolution settlements.

At present, powers over employment law in Wales, Scotland and England are almost entirely reserved to the UK Government.<sup>2</sup> As a working principle, with the exception of the Agricultural Sector (Wales) Act 2014, Welsh Government has no legislative powers in respect of individual and collective employment rights. All such legislation is enacted at Westminster.

The Commission was asked to consider the powers enshrined in current devolution arrangements in addressing issues such as insecure work, non-compliance with labour rights legislation and in-work poverty, in a context where 'employment' is not among the devolved powers.

We consulted various sources alongside conducting our own research with workers. In addition to studying data in the public domain, we sought the views of constitutional and public policy experts and consulted the substantial body of reporting on employment in Wales.

## Wales's Constitutional Debate

Following the UK's exit from the European Union, the Welsh Government has taken proactive steps to establish a clear set of principles and proposals to steer the constitutional debate.

Key points that Welsh Government has made in this debate and that are relevant to our discussion here include:

- *"We believe the Union can be strengthened. We believe Wales's future is best served by having strong devolution – so decisions about Wales are made in Wales – and by being an equal partner in a strong and revitalised United Kingdom."*
- *"It is very difficult to explain – and justify – the differences between the devolution settlements of Scotland, Wales and Northern Ireland. Powers should be held at the most local level possible."<sup>3</sup>*

In addition, Welsh Government has called for justice and policing to be devolved to Wales.

In the context of the constitutional debate, the most important development from the Welsh Government has been its decision to establish its Independent Commission on the Constitutional Future of Wales. The Independent Commission is being co-chaired by Professor

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<sup>2</sup> <https://www.legislation.gov.uk/ukpga/2017/4/enacted>

<sup>3</sup> <https://www.gov.wales/reforming-our-union-shared-governance-in-the-uk-2nd-edition>

Laura McAllister and Dr Rowan Williams. Wales TUC's General Secretary, Shavanah Taj, has been appointed to the Commission. It will report in early 2024.<sup>4</sup>

## Values

The Commission embraces free and independent collective representation as a fundamental and universal labour right.<sup>5</sup> Our belief is that the independent, collective, democratic representation of the interests of labour is a necessary and desirable feature of improving the economic, equality and social conditions of workers in Wales, whether or not they are currently in paid employment.

## Policy Context

In Wales, currently, there is a willingness on the part of the devolved government to sit across the table with trade unionists and try to find a constructive way forward in a spirit of social partnership. This is an important distinction between the devolved administration and the current UK administration.

We see indicators of Welsh distinctiveness. For example, in the Social Partnership and Public Procurement (Wales) Act (2023) (SPPP 2023),<sup>6</sup> as well as the Welsh Government's broader concerns to improve the environment for work and employment in their attention to skills policy,<sup>7</sup> the principles of Fair Work,<sup>8</sup> the Wellbeing of Future Generations,<sup>9</sup> as well as a focus on anti-racism and disabled people's rights in Wales.

The difference in the climate and tone for industrial relations in Wales has been somewhat apparent during the intense periods of industrial unrest that affected all parts of the UK in 2022-2023, across multiple sectors.

Nurses, doctors, teachers, rail workers, university staffs, postal workers – all have engaged in industrial action of one form or another over the past year. While Wales has been affected by industrial action, it has not always been to the same degree as has prevailed across the English border. For example, rail strikes and some stoppages by nurses differed in Wales – thanks, at least in part, to a greater willingness from the Welsh Government to engage in good faith with workers. This suggests that industrial relations are already being 'done differently' here – albeit to a limited extent.

This said, workers in Wales are subject to the same workplace pressures and cost of living stresses that are being felt across the UK. In addition, in many respects our labour market statistics are less favourable than those of other UK nations – lower wages, more economic

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<sup>4</sup> <https://www.gov.wales/independent-commission-constitutional-future-wales>

<sup>5</sup> <https://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm>

<sup>6</sup> Social Partnership and Public Procurement (Wales) Act | GOV.WALES

<sup>7</sup> <https://gov.wales/skills-and-employment-survey-work-wales-2006-2017>

<sup>8</sup> Fair Work Wales - Report of the Fair Work Commission (gov.wales)

<sup>9</sup> The Well-being of Future Generations | GOV.WALES

inactivity, lower productivity. In this context there is zero room for complacency about substantive standards of work in Wales, even if the climate for industrial relations is more conducive to constructive dialogue.

There also needs to be clarity about the limit of the Welsh Government's reach and impact. Any difference in approach is most likely to show up in the devolved public sector. It is questionable as to whether any novel Welsh approach has had any impact at all in large parts of the private sector.

The job of the Wales TUC Commission, therefore, has been to focus on present and future standards of work and employment in Wales and consider whether, how and to what extent changes in devolved powers might have implications for the betterment of workers' lives.

In considering alternative futures for devolution of matters of work and employment this report will not deal in any detail with the broader debate around radical federalism, civic engagement, deliberative democracy or wider constitutional matters.<sup>10</sup>

## **The Report**

In the following report we engage in a staged process of review. First, we set the context for our enquiry. This provides a backdrop to our key concerns about standards of work, enforcement of regulation and the outcomes currently experienced by workers in Wales. Second, we take workers' own views into account. Third, we evaluate the scope for the Welsh Government to exert influence. We examine not only potential levers for change but also the constraints facing Wales in its ambition to become a nation synonymous with good, sustainable working conditions, skilled work and higher earnings.

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<sup>10</sup> Davies, G. and Pritchard, H. (June 2021) Wales Governance Centre, Cardiff University, Report: CONSTITUTION-BUILDING IN WALES: FINDING WAYS FORWARD Workshop Report

## Part 1: The Context for Work in Wales

Enshrined in the terms of reference for this report is the question of whether and how the devolved Welsh Government might improve standards of work in Wales.

Policy statements already commit to the betterment of workers' terms, conditions and life experiences in Wales. However, for Welsh Government the challenge is to realise in practice some of the conditions it already champions in policy, so that workers on the ground can feel and identify a positive difference of what it is to be working in Wales. Without ignoring real-world constraints, it must be acknowledged that there remains much to be done if policy commitments to principles of fair work are to be realised.

### Section 1: The Welsh Labour Market

The Welsh labour market is characterised by contradictions. Low unemployment sits alongside relatively high rates of economic inactivity, while average earnings are generally lower in Wales than other parts of the UK - even though trade union density is generally higher.

The Annual Survey of Earnings (2022) reported that median gross weekly earnings for full-time adults working in Wales stand at £598.1. This is just 93.5% of the average for the UK (£640.0).<sup>11</sup> Thus, the present low rate of unemployment is juxtaposed with significant weaknesses in the Welsh labour market.

Overall, economic inactivity is also generally higher in Wales than England. Percentages for economic inactivity among residents over the age of 16 years due to retirement stand at 24.7%, long-term sick or disabled at 5.9% and those studying at 5.7%. This compares with numbers for England at 21.5%, 4.1% and 5.6%, respectively.<sup>12</sup>

In addition to general issues for earnings and economic inactivity, there are pockets of deprivation among specific groups. Across Wales as a whole, for example, the unemployment rate is more than twice as high for Black and Minority Ethnic (BME)<sup>13</sup> workers. There is also a significant gender pay gap with male earnings being 12.3% more than those of women.<sup>14</sup> Disadvantage is also intensified in certain localities. For instance, in Blaenau Gwent, no fewer than two in five adults aged 50 – 65 are economically inactive.

Alongside those who are economically inactive, sit those who are *underemployed* – that is working fewer hours than they would ideally wish, often on unpredictable terms. As of 2019

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<sup>11</sup> <https://www.gov.wales/annual-survey-hours-and-earnings-2022>

<sup>12</sup> <https://stats.wales.gov.wales/Catalogue/Business-Economy-and-Labour-Market/People-and-Work/Economic-Inactivity/economicinactivityrates-by-ukcountryenglishregion-quarter>

<sup>13</sup> The BME classification is used in line with the TUC's long-standing policy – as decided by the TUC's Black Workers Conference.

<sup>14</sup> Gender pay gap - Office for National Statistics ([ons.gov.uk](https://ons.gov.uk))

this accounted for 7.6% of the Welsh workforce – roughly 110,000 people. In Ynys Môn and Ceredigion this figure was as high as 11%.<sup>15</sup>

Combined with relatively low pay, unpredictability inhibits a worker's capacity to mitigate or change their circumstances. For example, it becomes extremely difficult to plan for part-time education or training or indeed to take on additional work to supplement low-income levels.

Such scenarios embed people in cycles of debt and longer-term poverty, with wider implications for health and wellbeing. We have been made acutely aware of such implications only too recently, as the impact of Covid has highlighted the interplay between relative poverty and health outcomes.<sup>16</sup>

Accordingly, in conducting our enquiry we identified six central themes for our analysis of the challenges facing workers and standards of work in Wales:

1. Increasing vulnerability.
2. Low pay and poor progression.
3. The rise of in-work poverty and persistent inequality.
4. Unfair employment practices and non-compliance with employment legislation.
5. The impact of attacks on trade union rights and organising.
6. The effects of crises – the Covid pandemic and the cost-of-living

### ***Increasing Vulnerability***

The decline in real terms pay since the financial crisis of 2008 is linked with an increase in precarious work in Wales. In many low-paid sectors there is casualised employment where low hours and zero/low hours contracts have become normalised.

In March 2022, 3.2% of all people in employment in Wales were on a zero hours contract. This accounts for approximately 47,000 people<sup>17</sup>.

While zero hours contracts are invidious, they represent only one part of a wider problem of casualisation and insecure work.<sup>18</sup> In practice, it is relatively easy for an employer to provide very low numbers of guaranteed hours and avoid the accusation of being a 'zero-hours' employer. A fuller definition of insecure work must include those on unpredictable and variable

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<sup>15</sup> <https://www.gov.wales/sites/default/files/statistics-and-research/2019-08/underemployment-of-population-aged-16-by-local-authority-2011-to-2019.ods>

<sup>16</sup> For a publication which draws the data together, please see State of Wales Briefing May 2023 The Welsh Workforce State of Wales briefings - Bevan Foundation

<sup>17</sup> <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/emp17peopleinemploymentonzerohourscontracts>

<sup>18</sup> In fact, avoiding a zero hours scenario is a relatively straightforward exercise for employers. A very low guarantee of hours satisfies the legal instrument while being unlikely to appreciably influence the workers' experience of their work.

hours, agency, casual, seasonal and other workers, as well as the low paid self-employed. Taken together these categories account for approximately one in nine workers in Wales.<sup>19</sup>

Analysis of UK data<sup>20</sup>, which includes data from Wales, shows that certain groups of workers are at greater risk of insecure work:

- Low paid self-employment is concentrated in construction, administrative and support activities, transport and storage, professional scientific and technical, and the wholesale and retail trade.
- Those on a zero-hours contract are most likely to be working in accommodation and food, health and social work and 'transport, arts and other services'.
- Those working on a temporary basis are most likely to be working in education, health and social work, accommodation and food, wholesale, retail and repair, and manufacturing.
- The largest group of workers on a zero-hours contract (36%) are aged 16– 24.

Evidence indicates that those employed on insecure hours also suffered from other types of insecurity such as greater risk of job loss, greater anxiety of job status downgrading, more worry about unfair treatment and speedier dismissal for poor work performance.<sup>21</sup>

Not only do these practices make the worker's job more precarious in terms of their shift patterns and take-home pay, they also make them far more vulnerable to the whim and favour of line managers. A worker dependent on hours at management's discretion rather than the terms of their contract is undoubtedly more vulnerable to all forms of exploitation, discrimination and unfair treatment at the workplace.

In this context it is crucial that the focus on insecurity is not restricted to low wages but also unpredictable hours, shift patterns and contractual insecurity. It is time for us in Wales to challenge the conflation of insecurity and precarity with flexibility - and interrogate unqualified claims that workers "like the flexibility" offered by zero hours contracts and the like. We must question what types of workers are being referred to, and whether their household has access to a stable source of earnings or income that makes such flexibility sustainable for them. Research consistently shows that workers on zero hours contracts would rather have guaranteed hours.<sup>22</sup>

Too often, employer-driven flexibility means precarity for the worker. Worker-driven flexibility, for example to accommodate caring responsibilities, is far less easy to obtain for many workers. For example, it is common for union officials to take calls from workers on zero hours, low

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<sup>19</sup> <https://www.tuc.org.uk/research-analysis/reports/insecure-work-2023>

<sup>20</sup> <https://www.tuc.org.uk/research-analysis/reports/living-edge-0>

<sup>21</sup> [https://www.cardiff.ac.uk/\\_data/assets/pdf\\_file/0011/1309457/6\\_Insecurity\\_Minireport\\_Final.pdf](https://www.cardiff.ac.uk/_data/assets/pdf_file/0011/1309457/6_Insecurity_Minireport_Final.pdf)

<sup>22</sup> <https://www.tuc.org.uk/news/two-thirds-zero-hours-workers-want-jobs-guaranteed-hours-tuc-polling-reveals>

hours and otherwise insecure contracts when they are informed – often in real time as they report for duty – that they are no longer needed for their shift.

Such examples are widespread. A recent 18-month study of the experiences of workers at the Amazon distribution centre in Swansea cites workers being informed on their way to work or a couple of hours into a shift that they are no longer required. The authors describe how *"Amazon operates a hierarchy of disposability, finely calibrating its human capital in anticipation of, or in response to, variable customer demand, driven by the imperative to shave labour costs to the barest."*<sup>23</sup>

Similarly, research by USDAW in retail and associated sectors found that these types of employment practices are contributing to a rise in personal debt among retail workers across the UK – 76% of respondents to the research said they were relying on loans and borrowing to pay essential bills, and 55% were struggling to keep up with repayments. Over a third of workers said they missed meals on a regular basis. Two thirds of respondents said that financial worries were adversely affecting their mental health.<sup>24</sup>

One in three workers who are paid in or around the minimum wage are underpaid. 45,000 workers in Wales do not get the paid holiday they are legally entitled to. 90,000 workers do not get a pay slip – and this is highest in smaller firms with fewer than twenty employees. 20% of workers say they've experienced discrimination at work in the last year.<sup>25</sup>

Such conditions are not exclusively felt in Wales, there are significant sectoral norms to be taken into account across retail, distribution and similar sectors where training periods are comparatively short and workers are classed as unskilled. The issue for Wales is rather the preponderance of such jobs in our labour market.

The structure of the labour market is implicated in research findings that for workers in Wales there is a lower likelihood of being able to work from home. The pandemic changed ways of working, but the nature of work being done in Wales made it an outlier in terms of flexibility around homeworking. In his 2021 Report for the Senedd Economy, Infrastructure and Skills Committee, Professor Alan Felstead reported that *"over half of those questioned in Wales (56%) said that they could not work at home, even if they and their employer wanted them to do so. No English region came close."*

In his analysis, Felstead attributed this finding to the fact that the growth of homeworking has been "strongest in sectors – such as banking and finance – where Wales has disproportionately fewer workers and slowest in sectors – such as public administration – where Wales has more

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<sup>23</sup> Fulfilling the 'British Way': Beyond constrained choice - Amazon workers' lived experiences of workfare, <https://onlinelibrary.wiley.com/doi/10.1111/irj.12232>

<sup>24</sup> [https://www.usdaw.org.uk/Publications/Campaigns/Time-for-Better-Pay/Time-for-Better-Pay-\(Survey-results\)](https://www.usdaw.org.uk/Publications/Campaigns/Time-for-Better-Pay/Time-for-Better-Pay-(Survey-results))

<sup>25</sup> <https://www.resolutionfoundation.org/publications/enforce-for-good/>



than its fair share of workers".<sup>26</sup> This affords us insight into the structure of the labour market in Wales – one of the greatest challenges associated with the quest to improve outcomes from work in Wales.

### ***Low pay and poor progression***

Insecurity of hours and earnings is difficult for any worker but is intensified where work is low paid. We return to the issue of a significant proportion of Wales's labour market being characterised by low-paid work. Around a quarter of workers in Wales were paid an hourly rate of pay below the voluntary Living Wage in 2021.<sup>27</sup> There is also considerable regional variation *within* Wales in this percentage: one in nine workers in the Cardiff North constituency were low paid by this measure - compared to almost one in three in Blaenau Gwent.

Compounding the negative effects of low paid employment is the lack of opportunity that contributes to 'wage stickiness' in sectors and occupations that dominate these low-paid jobs – a form of inequality which is often poorly understood. Women, part-time workers, people with disabilities and older workers are at greater risk of being *stuck* in poorly paid work. The sectoral influence comes to the fore again, with employment in wholesale and retail, accommodation and food services and health and social work identified as putting workers at greater risk of becoming stuck in low paid employment.

David Metcalf, the former Director of Labour Market Enforcement, has also highlighted the particular risk faced by those employed through agencies and other intermediaries in terms of non-compliance with statutory minimum pay, holiday pay entitlements and other legal rights.<sup>28</sup> The Resolution Foundation estimated that in 2016, 2.3% of Wales's workforce were agency workers – and forecast that the proportion of agency workers throughout the UK will only increase.<sup>29</sup>

### ***The rise of in-work poverty and persistent inequality***

The post-2008 recovery saw unemployment fall, but with no corresponding rise in real pay for workers throughout Wales. This is part of the reason for a rise in relative income poverty levels for households with at least one adult in work. Paid work has not been a straightforward route out of poverty.

In 2010, 50% of children living in relative income poverty in Wales were in households where no adult was in paid employment. This has now fallen to 29% - meaning that seven in 10

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<sup>26</sup> Felstead, A (2021) 'Outlining the contours of the "Great Homeworking Experiment" and its implications for Wales', Senedd Economy, Infrastructure and Skills Committee Report, Cardiff: Senedd Cymru/Welsh Parliament, p.ii.

<sup>27</sup> <https://www.tuc.org.uk/news/wales-tuc-calls-action-low-pay-figures-show-over-fifth-welsh-employees-earn-less-living-wage>

<sup>28</sup> <https://www.gov.uk/government/publications/labour-market-enforcement-strategy-2018-to-2019>

<sup>29</sup> <https://www.resolutionfoundation.org/publications/secret-agents-agency-workers-in-the-new-world-of-work/>

children growing up in relative income poverty are now living in households where at least one adult is in work. 35% of these children are in households where *all adults are in work*.<sup>30</sup>

Inequality within the labour market in relation to an individual's protected characteristics is a persistent problem which unions seek to address through organising workplaces, bargaining agreements and democratic structures and leadership. Nevertheless, recent research by McBride and Parken for the Public Health Wales NHS Trust suggests that "*long-term socio-economic inequalities have become entrenched in Welsh society through deindustrialisation and the 2008 financial crisis and subsequent recession*".<sup>31</sup> The Equalities and Human Rights Commission shows that:

- Women continue to earn less than men, and are over-represented in some low-paid sectors.
- Younger people (aged 16-24) are at greater risk of being in insecure work.
- Disabled people are less likely to be in a managerial or professional occupation, are less likely to be in employment, and have lower average earnings than non-disabled people.

### ***Unfair employment practices and non-compliance with other employment legislation***

It is difficult to determine the exact rate of non-compliance with employment law, other relevant workplace legislation and employment contracts in Wales. This is a hidden feature of workplace relations which is UK-wide and persists not only because of workers' limited power and knowledge of employment rights and employer responsibilities, but also because of weak enforcement of employment regulation. So much of what happens at the workplace level is below the waterline of visibility, especially where workers are not in unionised environments.

The unwillingness to collate and publish clear and transparent data on compliance and workplace conditions is itself a clear indication of the UK Government's lack of interest or commitment in empowering workers. The Welsh Government could and should take action to change this within Wales.

We do know that enforcement of labour rights is poorly resourced. Just £10.55 is spent on enforcement for each worker in the UK. We employ 0.29 labour market inspectors per 10,000 workers. This rate puts us 27<sup>th</sup> out of 33 countries in the OECD.<sup>32</sup>

On average, the number of criminal prosecutions for minimum wage underpayment is less than one a year. The default approach of the UK enforcement agencies is the belief that employers want to do the right thing and have simply made a mistake or series of mistakes

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<sup>30</sup> <https://statswales.gov.wales/Catalogue/Community-Safety-and-Social-Inclusion/Poverty/working-age>

<sup>31</sup> Inequality in a Future Wales: Areas for action in work, climate, and demographic change - Dr Sara MacBride-Stewart and Dr Alison Parken (2021) Future Generations Commissioner for Wales and Public Health Wales NHS Trust. [www.nationalarchives.gov.uk/doc/open-government-licence/version/3/](http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/)

<sup>32</sup> <https://www.resolutionfoundation.org/publications/enforce-for-good/>

and that the emphasis should be on self-correction. This approach is often the one that Welsh Government appear to take in the dealings with employers, too. This is not the approach taken in other countries where enforcement is more comprehensive.<sup>33</sup>

There is some evidence of legal violations available in the form of Employment Tribunal data, Health and Safety Executive data and academic research. In terms of Employment Tribunal receipts, these declined after the introduction of Tribunal fees and costs in 2009, which as Frances O’Grady said “*price[d] out thousands each month from pursuing cases*”. More recent changes in the law to remove such charges is already generating in a different picture across the UK.

At present, in Wales the highest proportion of Employment Tribunal cases are for unfair dismissal, unauthorised deductions from wages, breach of contract, disability discrimination and Working Time Directive breaches.

However, the scale of non-compliance with statutory regulation and voluntary commitment to standards of good practice is likely to be much greater than we can easily assess. In a context where many cases will never come to tribunal, it is helpful to look at the records of cases that union officers deal with daily.

The TUC’s research found that the most common concerns for health and safety representatives to deal with in 2023 were stress, bullying/harassment, Covid 19 exposure, falls, back strain, and overwork.<sup>34</sup>

### ***The impact of attacks on trade union rights and organising***

Workers across the UK have been and are being affected by efforts to undermine trade union activity through UK legislation and more generalised employer practices.

The UK Trade Union Act 2016, for example, has directly restricted workers’ rights to undertake collective action. Yet Wales has consistently displayed higher levels of unionisation in comparison with other regions of the UK.

Almost two thirds of workers in Wales have a trade union presence in their workplace. However, when employees are asked about trade union coverage, the proportion of employees who believed that their pay and conditions are ‘directly affected’ by agreements between employers and trade unions – is significantly lower at 33.7%.

Employee perceptions of trade union coverage are not necessarily accurate. When similar questions are put to employers they report a much higher rate of *collective agreement*

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<sup>33</sup> <https://www.resolutionfoundation.org/publications/enforce-for-good/>

<sup>34</sup> <https://www.tuc.org.uk/research-analysis/reports/trades-union-health-and-safety-reps-survey-report>

coverage. No less than 56.1% of employers in Wales reported that pay was set with reference to collective agreements.

The disparity in reporting between employees and employers suggests a lack of information sharing or understanding on the part of workers. Similar misconceptions emerge, for example, from comparisons of Labour Force Survey data (collected from workers) and ONS data (collected from employers) on the incidence of zero hours contracts. Workers consistently under-report the zero-hour contractual arrangement in comparison with employers.

Such insights highlight the limits of what individual workers may understand about their terms and conditions and indeed employment rights, highlighting the importance of collective representation.

The Fair Work Commission report in 2019 stressed the importance of improving worker awareness of their rights.<sup>35</sup> However, it is unclear whether the subsequent campaign – which had a joint focus on also promoting membership of the CBI and the FSB as well as driving up knowledge about rights - made any inroads.<sup>36</sup>

Trade union membership across Wales stood at 31.4% in 2022, only surpassed by that of Northern Ireland.<sup>37</sup> There has been some modest growth in membership over the last five years. In terms of membership, the Wales Centre for Public Policy stated:

*“Wales performs better than most of the UK. As a percentage of the population, there are more members, more recognition agreements, more pro-trade union managers, more union consultations, and more agreement by managers that trade unions improve organisational performance.”<sup>38</sup>*

However, the current environment for trade unions in Wales is challenging, as indicated by the breakdown of the workforce covered by collective bargaining agreements.

There is a sharp public/private sector divide. Union membership is higher across the public sector in Wales. Over half of all workers are members of unions in the public sector, and virtually all pay, terms and conditions are determined through collective bargaining.

In contrast, approximately one in six private sector workers in Wales is a member of a trade union. Many private sector workers – especially those who entered the labour market in recent decades – have no clear idea about unions.

This flags the lack of general education around industrial democracy, employment rights and the concept of joint decision making about working conditions. Unless these deficiencies are

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<sup>35</sup> <https://www.gov.wales/fair-work-wales>

<sup>36</sup> <https://www.gov.wales/know-your-employment-rights-and-responsibilities-urges-new-campaign>

<sup>37</sup> <https://www.gov.uk/government/statistics/trade-union-statistics-2022>

<sup>38</sup> <https://www.wcpp.org.uk/publication/the-value-of-trade-unions-in-wales/>

addressed more broadly in society, we cannot expect workers to understand what collective bargaining is or even how to understand their basic rights as a worker or employee.

This lack of knowledge is a legitimate concern when trade unions in Wales have a formalised role within our democratic institutions, with involvement in policy development and administrative structures through the Welsh Government's social partnership approach. In the [Welsh Government's own words](#) social partnership:

*"brings together government, employers and trade unions in areas of mutual interest, to design and implement better solutions."*<sup>39</sup>

This is an approach that was formally regulated in Europe as part of the post-1945 European settlement after the end of World War II. In the UK, structures of social partnership were not enshrined in the statute books. Rather, consensus politics, Keynesian economics and voluntary collective bargaining set the tone for industrial relations from 1945-1979. This era gave way to the neo-liberal economics and politics of the Thatcher and Reagan eras and these ideas have dominated since that time.

In Wales, the arguments in favour of a more formal stance in relation to social partnership have been rooted in principle. The Welsh approach is in line with that of international bodies such as the International Labour Organisation (ILO), and in principle require that workers, through their unions, should be at the negotiating table to share and contribute to policy decisions that are going to affect them.

In practice, the aim is that social partnership and social dialogue facilitates better decision making, fairer work and tackles inequality. The ILO [has concluded](#):

*"The best solutions arise through social dialogue in its many forms and levels, from national tripartite consultations and cooperation to plant-level collective bargaining. Engaging in dialogue, the social partners also fortify democratic governance, building vigorous and resilient labour market institutions that contribute to long-term social and economic stability and peace."*<sup>40</sup>

With such values at the heart of Welsh Government's strategic approach to governing, it would seem desirable to include these principles – in some form – in the education curriculum as part of raising awareness of democratic engagement. The Wales TUC's *Unions and the World of Work* programme would appear to be a good start in this direction.<sup>41</sup>

Such input is made all the more necessary in view of the increasing potential for workers to be isolated from one another. For growing numbers of workers the 'workplace' has become their own home, someone else's home or a pick-up point with work assigned via a smart-phone. In

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<sup>39</sup> <https://www.gov.wales/sites/default/files/consultations/2019-12/strengthening-social-partnership-consultation-document.pdf>

<sup>40</sup> ILC87 - Report of the Director-General: Decent work (ilo.org)

<sup>41</sup> <https://www.tuc.org.uk/UnionsWorldOfWork>

the platform economy, for example, many workers are classed as self-employed, while others will be on casualised or temporary contracts. For such workers collective organisation is not easily accessible nor is it a simple task for trade unions to organise in this context.

Thus, the challenges to collective representation are not restricted to statutory instruments enacted at the UK level. They reside just as much in the structure of work, ideas about work and changes in capitalism more generally. If workers feel impotent to influence the terms of their employment the risks of public apathy towards democratic engagement affect trade unions and governments alike.

### ***The effects of crises – the Covid pandemic and the cost-of-living***

We cannot leave this review of the Welsh labour market without considering the major impact of crisis and change on ways of working. At the time of writing, the implications of market failure in key areas of public need, like transport, water quality and utility bills are being felt in a great number of UK households. The strain on earnings is implicated in the widespread industrial action in 2022-2023, especially as key workers in the public and private sector found their pay falling behind.

Perceptions of injustice have only been intensified by the recent years of hardship caused by Covid. This especially so in the increasingly fragmented public sector where – despite symbolic gestures like ‘clapping for carers’ – the staff and services who were hardest hit by the UK Government’s post-2010 austerity agenda and are currently hard-pressed post-Covid are left feeling burned-out and undervalued.

In Wales, when the Covid crisis started in March 2020, the then Economy Minister, Ken Skates MS, proposed that the economy would be put into a form of hibernation for the duration of the pandemic. He stated:

*“If you had a good business in 2019, you will have a good business in 2021. If you had a good job in 2019, you will have a good job in 2021.”<sup>42</sup>*

Despite the enormous upheaval of the period since then, to a significant extent that promise was met. There were major economic interventions from both the UK and Welsh governments and as a result there are continuities between the pre and post covid Welsh labour markets.

This said, continuity is not necessarily enough. This is not to minimise the contribution of the First Minister’s handling of the Covid crisis, which was generally well received and much valued in Wales, particularly when juxtaposed with the difference in tone and action emanating from Westminster.

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<sup>42</sup> <https://www.bbc.co.uk/news/uk-wales-politics-51976688>

Post-covid, the challenges for work in Wales could not be greater. The pandemic served to highlight all the stresses that had been building around work and employment in Wales and the UK, especially in the public sector.

Since Covid, it has become impossible to deny the crisis in health and social care and the NHS, for example. The differential impact of the pandemic on the poor, on ethnic minorities, the elderly and the vulnerable has served to highlight decades of underfunding by the UK government. These failures, alongside some recent declarations of bankruptcy by local authorities across the UK, are symptomatic of the present cost-of-living crisis.

The steep rise in inflation and the consequent crisis in the cost of living is multi-factorial in origin, with responsibility inescapable at the level of the UK government. While some factors might be argued to be beyond the control of the UK administration, such as Covid-related supply chain disruptions, the post-lockdown release of pent-up consumer demand and war in Europe, there have been clear political choices implicated in more than a decade of austerity, chaos in energy markets and the destabilising economic impact of the short-lived Truss administration at Westminster.

The combination of these crises and events have eroded the value of incomes for individuals and indeed for the Welsh Government, whose real-terms funding has been undermined by inflation. There will inevitably be consequences for public spending in Wales.

What is the outcome for workers? Even with historically low unemployment figures, workers are unable to leverage pay rises in-line with the current rising cost of living. While wages *have* increased, they still generally lag behind the cost-of-living rises. Furthermore, contrary to media coverage, real-terms pay rises have been limited to a few sectors with specific constraints, while overall real-wages have fallen.

What is also apparent from the review of current vacancies is that today's Welsh labour market does not display a preponderance of high skilled jobs. The picture is not what Welsh Government policy statements aspire to and highlights the challenges for industrial strategy and the promised green revolution.

The challenge must be to find the levers that will help to realise a well-paid, higher-skilled, well represented labour force. This begs two questions: first, what do workers think about these issues *in relation to* devolution of powers and second, in practical terms, what scope does Welsh Government and the Senedd have to make changes?

## Part 2: What do Workers Think about Work and Devolution?

To better understand experiences and attitudes to work as well as on key policy questions, we commissioned three representative surveys of workers in Wales. These surveys, conducted by the independent research firms YouGov and Opinium, spoke to a total of 3,500 workers.

Asked to select their three most important aspects of a job, the most common answers were job security (36%), work life balance (31%) and good pay (30%).

Fair pay (41%), health and safety (30%) and flexibility (27%) were flagged as the rights that people were most concerned about at work. That was followed by redundancy rights (14%), discrimination (13%) and caring and parental rights (10%).

On skills, 49% felt that they could easily get the training that they needed to progress their career; 36% said that they couldn't.

On the matter of devolution and the quest for greater control of Welsh affairs in Wales, our survey respondents supported Welsh Government control of the following policy areas:

- Economic Development (51% Welsh Government vs 37% UK Government)
- Welfare/Social Security (51% vs 39%)
- Education (59% vs 32%)
- Health (54% vs 37%)
- Taxation (47% vs 42%)
- Environment (50% vs 39%)
- Energy (46% vs 44%)

When it comes to work and employment, survey responses do not suggest there is a strong mandate in favour of control being passed to Welsh Government. Welsh control was favoured, albeit within the margin of error:<sup>43</sup>

- Employment rights (45% Welsh Government vs 44% UK Government).

The age of respondents affected the response rate, with older workers more likely to favour control of employment matters being in the hands of the UK government and a strong majority of younger workers wanting to see rights devolved.

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<sup>43</sup> Similarly, UK control of Justice was favoured (35% Welsh Government vs 47% UK Government)



Overall, worker concerns were grounded in their experience of the workplace. For example:

- **Working while sick:** 65% of those who had been sick in the past year reported that they carried on working.
- **Exhaustion and intensity:** 46% always/often come home exhausted, 81% say they work very hard, 47% work beyond their hours.
- **Management:** 1 in 3 say their workplace is poorly organised and it inhibits their efficiency.
- **What drives dissatisfaction at work:** pay (30%), management quality (28%), opportunities to progress (27%), work intensity (20%), access to training (19%).

When compared with results on devolution of powers over employment rights, it suggests that workers don't necessarily or automatically rate changes in governmental powers as a solution to more immediate workplace concerns.

In contrast, support for trade unionism and collectivism seems to have solid foundations in Wales. As noted earlier, while trade unions across the UK have endured a hostile environment and come under sustained pressure and ever-more restrictive legislation since 1979, we have seen that Welsh trade union membership has been reasonably resilient in recent years.

When asked whether Welsh Government should insist on trade union access as a condition of government support given to firms, 48% of respondents said they would support such an initiative while only 8% would oppose it.

On the broader issue of the current balance of workers' rights, there was an almost three to one split in favour of providing more support to workers. 58% agreed that workers needed better protection from unfair exploitation compared to just 22% who said that businesses needed less regulation on employment rights to allow them to grow and create jobs. There was also strong support for a ban on zero hours contracts (55% support a ban; 26% would oppose one).

The fact that respondents were able to offer clear preferences on distinct areas of governance such as justice, education and health may be indicative of them having seen Welsh Government's influence in action. It may just as likely be indicative of genuine ambivalence. The details of employment rights are, generally speaking, less well understood and it might be difficult for people to envisage what might be involved if powers were vested in Wales. In Part III we turn our attention to this element of our enquiry.

## Part 3: What is the Welsh Government's Role?

### The Climate for Industrial Relations and Enforcement of Law

We began by noting that Welsh Government has virtually no direct powers over employment law, with the exception of the Agricultural Sector (Wales) Act 2014.

However, in the struggle to improve working conditions, legal instruments have only ever been a part of the battle. Collective organisation and the power to bargain has been the other crucial part of the equation - not least because having a statutory right is meaningless without the ability to enforce it.

The enforcement (or non-enforcement) of regulation is therefore a place where the state can exert considerable influence over work and employment. First in its role as guardian of individual employment rights. Second in the climate it provides for the conduct of workplace relations and collective representation. In this sense, both action *and the absence of action* is a political choice with material implications at workplace level.

For the individual, power to influence the terms of employment is inextricably linked with access to collective representation and collective bargaining. Long ago, trade union historians Sidney and Beatrice Webb<sup>44</sup> explained the importance of striking a collective bargain by taking the example of the bargaining position of the individual worker vis-à-vis their employer. In a purely individual bargain of that nature:

*"... wherever the economic conditions of the parties concerned are unequal, legal freedom of contract merely enables the superior in strategic strength to dictate the terms ..."*<sup>45</sup>

The imbalance of economic power and information in the employment relationship is a fundamental and enduring feature of work. It determines whether and how rights accruing to individuals may be operationalised.

Indeed, the proof of the capacity of the collective bargain to improve conditions of work is evidenced in the premium that exists for being a trade union member – trade union members are generally better off across a range of indicators, from pay to training.<sup>46</sup>

In short, an industrial relations climate where collective organisation is legitimised is crucial not only for collective representation but also for the enforcement of individual employment rights.

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<sup>44</sup> Sidney and Beatrice Webb wrote seminal works on trade unionism - *The History of Trade Unionism* (1894) and *Industrial Democracy* (1897). In 1895 the Webbs helped found the London School of Economics and Beatrice Webb is credited with first coining the term 'collective bargaining'.

<sup>45</sup> Webb S. and Webb B. (1902) *Industrial Democracy 1902 Edition*, Longmans, Green and Co., London, page 217

<sup>46</sup> Bryson A. and Forth, J. (2017) *The added value of trade unions: New analyses for the TUC of the Workplace Employment Relations Surveys 2004 and 2011*, Trades Union Congress, [www.tuc.org.uk](http://www.tuc.org.uk)

The state is a crucial actor in establishing such a climate for workplace relations. Over the last two decades the Welsh Government has sought to revive and rebuild social partnership in Wales. In line with the recommendations of the Fair Work Commission, it has put principles into law in the Social Partnership and Public Procurement (Wales) Act 2023.

This is a development supported by Wales TUC. That said, the scope and depth of partnership is at its earliest stages. We have a prevailing situation where existing powers to monitor and improve working conditions are not being used to their full potential. This can be seen in the example of health and safety regulation prevailing during the Covid crisis, which reveals the limited reach and capacity of the regulatory state in Wales.

### **The Case of Employers, Covid and Partnership**

A central element of the Covid workplace safety approach adopted in Wales was ensuring that first, employers conducted a risk assessment, second, that this risk assessment was undertaken in collaboration with the recognised trade union (or the workforce more broadly in non-unionised workplaces) and third, that the results of that assessment were shared with workers. This was clear Welsh Government policy from May 2020 onwards and from January 2021 it was explicit within the Covid regulations.

However, these regulations applied in the context of a history of austerity related cuts to the capacity of the UK's regulatory bodies. The Health and Safety Executive's annual funding for example, has been cut by £100m since 2010. Capacity within local authorities has been similarly squeezed.<sup>47</sup>

There were, therefore, serious questions about the extent to which the Covid safety regulations could be monitored and enforced. Wales TUC commissioned the independent research company YouGov to carry out research on a monthly basis during the height of the pandemic. This research revealed the full extent of weak enforcement and inspection.

At no point did more than 50% of workers say that their employer had conducted a Covid safety assessment, and only one in four reported that the workforce had been consulted in the development of an assessment. These findings were consistent over a six-month period from late 2020 to mid-2021 and in practice it seemed that there was no lever that could influence employer behaviour or address the lack of enforcement.<sup>48</sup>

Wales is leading the way in initiatives around social partnership among the nations of the UK. Yet, this example of the limited influence and reach of extant health and safety regulation raises questions about the *depth and effectiveness* of partnership in practical application.

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<sup>47</sup> <https://www.ft.com/content/0e9d502e-9e6e-11ea-b65d-489c67b0d85d>

<sup>48</sup> <https://www.tuc.org.uk/news/wales-tuc-calls-tougher-enforcement-covid-workplace-safety-rules-nation-remembers-workers-who>

By extension, this must raise questions over we can expect of partnership in addressing wider workplace issues in Wales. It also suggests that if the resources required to make full use of powers already on our statute books are not in place, extending powers to regulate will not provide the necessary and sufficient conditions to effect meaningful change in the absence of monitoring and enforcement.

In this context, there are five arenas where Welsh Government and the Senedd have potential influence over work and employment, even allowing for the absence of regulatory powers:

1. As quasi-employer for devolved public sector employment, such as the civil service and the NHS.
2. As funder of employment resulting from devolved public sector funding (including social care and rail, for example).
3. As custodian of the Employability and Skills Agenda – where, in the Ministerial Foreword for the 2022 Skills and Employability Plan, it is clearly stated that despite Wales being denied powers over welfare and employment law the Welsh Government remains *“determined to use every lever available to realise a fair work economy.”*<sup>49</sup>
4. As regulator of other legal instruments which apply to the workforce including, for example, Modern Slavery interventions, as funder of Citizens Advice services and also as the body driving the elimination of the pay gap for gender, disability and ethnicity by 2050, which has been set as one of the milestones associated with national wellbeing indicators.<sup>50</sup>
5. As a strategic influence over workforce related matters, including its focus on Fair Work and the social partnership approach most recently enshrined in the SPPP (Wales) Act 2023. There is also the Healthy Working Wales initiative which seeks to *“support and encourage employers to create healthy working environments, take action to improve the health and wellbeing of their staff, manage sickness absence well and engage with employees effectively.”*<sup>51</sup>

These are employment related arenas which afford the Welsh Government change-making potential. Here again, the *exercise* of influence demands an equally ambitious combination of resources and bargaining mechanisms if policy commitments are to be effective in practical application.

## Resources

In terms of resources, there are three main sources of funding for the Welsh Government: the block grant from the UK government, money raised in Wales from taxation and other charges, and borrowing. Such funding is always subject to constraints, but in the context of high

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<sup>49</sup> <https://www.gov.wales/sites/default/files/publications/2022-05/stronger-fairer-greener-wales-plan-employability-and-skills0.pdf>

<sup>50</sup> The target set by the Welsh government for 2050.

<sup>51</sup> Healthy Working Wales - Public Health Wales ([nhs.wales](https://nhs.wales))

inflation, low growth and the cost-of-living crisis at the UK level, Wales's funding streams are severely challenged at the time of writing.

They are being eaten away by inflation and growing levels of need (for example in the NHS) that are already going unmet. Having responsibility for aspects of governance without the necessary funding to discharge those responsibilities risks obscuring lines of accountability for gaps between policy and practice.

### **The Structure of Collective Bargaining**

A key issue we considered in reviewing standards of work and devolution is exactly where decision making powers reside. Thus, we have to consider key actors in industrial relations and the nature and structure of individual and collective bargaining.

#### **Industrial Relations Actors**

The primary parties to the employment relationship are employers and employees or workers. Managers manage on behalf of employers. Employees are those with an identifiable contract of employment. Workers may provide their services under a variety of contractual arrangements but are unable to claim 'employed' status.

Employers have collective representative bodies in the form of employers' associations, which themselves may be part of collective employer federations such as the Confederation of British Industry (CBI).

Employees and workers have collective representative bodies in the form of trade unions, who in turn are part of a collective body in the Trades Union Congress (TUC).

#### **Employers and the Devolved State**

There are large public sector employers in Wales who set their own objectives, but within targets set or overseen either by the Welsh government or UK administration. There is scope for a limited amount of localised decision making and target setting. However, as the implications of the Trade Union Act illustrate, central government can intervene and override such initiatives.

In the private sector, elements of employers' decision-making powers may be devolved to subsidiaries – for example to the level of the branch office or unit of production. In the past, the relative dearth of firms with their headquarters in Wales has worked against the interests of the workforce and the Welsh economy. Through the 1980s and 1990s in Wales, semi-autonomous branch units of large manufacturers were relatively easily relocated, closed or downsized without affecting the main business.<sup>52</sup>

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<sup>52</sup> Armstrong, P., Marginson, P., Edwards, P. Purcell, J. (1998), 'Divisionalization in the UK: Diversity, Size and the Devolution of Bargaining', *Organisation Studies*, 19:1 (1–22).

Still today, when reviewing the state of the Welsh economy and its preparedness for a digital future, Professor Phil Brown and his co-researchers were forced to conclude that:

*“Our site visits and economic analysis found that the Welsh economy is dominated by businesses that are locked into peripheral parts of global value chains with their headquarters, research, design and business intelligence function located elsewhere. This means that functions located in Wales tend to be less secure, more portable and hence more at risk of automation [emphasis added].”<sup>53</sup>*

The scope of devolved decision-making in branch units is likely to be limited to operational decisions and priorities. Core decision making powers on business strategy and policy are more likely to be retained at headquarters. Integration into *peripheral* parts of global value chains is a vulnerable position for Welsh firms to be in – essentially at the mercy of competition with other suppliers of products and services and likely to be competing on production costs rather than ownership of technological expertise.

### **Unions and the Devolved State**

When we examine the context for unions, it is the case that most unionised workers in Wales are part of trade unions which have a dedicated Wales office with paid officials working in Wales. However, their governance structures – including the amount of autonomy reserved to their Wales or regional office varies, depending on the union.

Typically, unions with members in the devolved public sector have a more developed set of policies on devolution. More broadly, the relevance of the stance of Welsh Government for unions very much depends on where their membership is concentrated – unions without members in the devolved public sector typically have a lot less engagement with the devolved administration in Wales.

That said, it is important to recognise the exceptionalism of devolution in Wales. The devolution settlement requires that there be engagement with private sector unions from the outset, as part of the Welsh Government’s ‘Business Scheme’.<sup>54</sup>

Despite the Senedd and Welsh Government not having direct powers over work and employment, there is a long track record of social partnership in the private sector in Wales. In addition, the role of the Wales TUC in terms of wider economic development, social justice policies and the role of labour party affiliated unions, has meant that many officials from private sector unions have extensive experience of working with Welsh Government.

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<sup>53</sup> Wales 4.0 Delivering Economic Transformation for a Better Future of Work - Review of Digital Innovation for the Economy and the Future of Work in Wales

<sup>54</sup> <https://www.gov.wales/sites/default/files/publications/2018-10/the-welsh-ministers-business-scheme.pdf>

## The Scope of Bargaining

The first element to consider is the *scope* of bargaining – that is the number of aspects of a job that fall within the scope of a collective bargaining agreement.<sup>55</sup> For example, an employer may agree to bargain over grievance handling and dispute resolution but may refuse to bargain over pay.

The scope of collective bargaining is therefore inextricably linked with the depth of bargaining – in other words the degree to which a collective bargain can influence terms and conditions of employment.

In the context of attacks on trade unionism and changes in the structure of the UK economy since the 1980s, there is evidence of the narrowing of the scope and depth of collective bargaining across the UK. This narrowing has been attributed to the shift in power relationships between unions and employers which can be traced back to changes in political economy during and since the Thatcherite era.<sup>56</sup>

The narrowing of the scope of bargaining is reflected in Unite's first ever survey of all its members in May-June 2021, where:

*"[t]he combination of concerns about poor management, job security, pay, conditions and changes imposed at work without consent represent a deeper concern over a more authoritarian world of work".*<sup>57</sup>

There are clear indications here of workers' concerns about employers unilaterally determining conditions without prior meaningful joint consultation or agreement through collective bargaining.

Such perceptions of authoritarian management style were also reflected in the interviews we did with striking postal workers. Such workers do not use terms like 'a narrowing scope of bargaining'. Rather, they reflect their concerns in statements such as that of one postal worker who said that despite many years of employee participation in change to benefit the business, *"[the employer] doesn't really want to negotiate with us [any more]."* Another spoke more graphically, saying the employer has *"a hammer ... he's got a hammer and [has] just gone right, we're going to do it now, and that's it."*<sup>58</sup>

These statements highlight an aspect of the employment relationship that is all too often underplayed in policy analysis – that is, power. Being overly focused on regulation can distract

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<sup>55</sup> Clegg, H.A. (1976), *Trade Unionism under Collective Bargaining: a Theory Based on Comparison of Six Countries*, Warwick Studies in Industrial Relations, Oxford, Basil Blackwell.

<sup>56</sup> Brown, W., Deakin, S., Nash, D., Oxenbridge, S. (2000), 'The Employment Contract: From Collective Procedures to Individual Rights', *British Journal of Industrial Relations*, 38:4 (611–629), page 67.

<sup>57</sup> *Preparing for a post-Covid future: Experiences and attitudes to work - A report on the 2021 Unite All Members' Survey*, Unite Research, December 2021, (JN9672) HB081221, citation from Executive Summary.

<sup>58</sup> WISERD CWU Research, 2022

us from real world evidence that decent work is not achieved by legal enactment alone – there needs to be a combination of statutory regulation *with* the power and freedom to bargain and enforce agreements.

This brings us to our next considerations in examining issues around who has the power to make decisions, which is the unit of bargaining and the level at which bargaining takes place.

### **The Bargaining Unit**

The bargaining unit is the group of employees covered by a collective agreement. For example, doctors in the NHS are a different bargaining unit from nurses in the NHS. Thus, even within the same large organisations, different occupational groups may be in different bargaining units. They may also be subject to national agreements related to their profession or skill, which emphasises the importance of the level of bargaining.

### **The Level of Bargaining**

For any given bargaining unit, bargaining can take place at workplace level, industry level, national level, sectoral level and so on.

In more recent decades, the UK has seen a trend in the decentralisation of bargaining, with more focus on workplace level bargaining, but national and sectoral level bargaining still prevails, especially in the case of large employers such as the retail giants, for example, and also in organisations like the NHS.

When bargaining at a national level, it is likely that regions with lower levels of earnings are benefited by the compromise that unions will aim for in arriving at a generally acceptable standardised national settlement.

When considering the capacity that Welsh Government has to exert influence over employment in the six arenas identified at the beginning of part 3 of this report, it is essential to take into account the nature of bargaining units and the level of bargaining.

In places it is possible for Welsh Government to exert some influence over areas of work and employment while in others the structure of UK wide collective bargaining impedes exceptionalism.

The climate of industrial relations in Wales is already distinct. However, if bargaining were wholly devolved this would unquestionably involve an element of risk that wages could be driven downwards - as Wales has generally lower earnings than several other locations in the UK and those lower earnings would be a factor in setting the context for bargaining.



In the past, this factor allowed Wales to be marketed as a prime location for the peripheral parts of global supply chains. Wales provided relatively cheap locations for branch manufacturing assembly plants that, in reality, left little behind them when they closed.

As we approach the mid-point of the third decade of the 21<sup>st</sup> Century, the knowledge economy of new manufacturing has not emerged at a scale sufficient to raise the general standard of work, skills and employment in Wales. The significant proportion of work classed as low skill (and low paid) in sectors such as retail, construction, hospitality and care, reinforces the need for an industrial policy for Wales for a new age. It is not here yet.

In Wales we have a geographical border with economic conditions under regular and immediate comparison with our nearest neighbour in the UK. Workers criss-cross that border regularly for work. Furthermore, remote working is a much more significant feature of work since Covid.<sup>59</sup>

It is difficult to escape the reality that workers in Wales are often working under terms determined by employers outside Wales. Frequently, as we have seen, this will be under the terms of sectoral agreements and UK-wide collective bargaining arrangements which, for very good reasons, trade unions are not immediately eager to dismantle. The creation of borders around the regulation of employment in Wales is therefore fraught with complexities.

Where a UK-wide collective agreement exists which applies to workers in Wales, greater decentralisation of bargaining arrangements carries risk. The possibility that a changed legal framework in Wales might be used to undermine or weaken the coverage of existing collective agreements therefore needs to be taken into account in any consideration of ways to improve standards of work in Wales.

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<sup>59</sup> <https://wiserd.ac.uk/publication/remote-working-a-research-overview/>

## **Part 4: Conclusions and Recommendations**

### **Climate for Industrial Relations**

While a healthier climate for industrial relations *is* being striven for in Wales, it is a top-down process that has not always been felt at workplace level.

As highlighted by the example of weak enforcement of health and safety risk assessments during Covid, a question remains over the capacity of partnership in practical application. Evidence from the field suggests that workers are conscious of limitations in the scope and depth of bargaining at workplace level.

Arguably, conceptions of partnership in Wales may (as yet) not fully embrace the processes of shared decision making. While some employers may be prepared to involve workers and trade unions in implementing decisions *they have already taken*, there is less evidence of robust, mutually beneficial negotiation and joint decision-making. There is also evidence to suggest that a climate of social partnership is not preventing violations of agreed principles of good employment.

The SPPP (Wales) Act 2023 is in its infancy. We applaud the social partnership ethos that, if deepened and strengthened, has the potential to provide trade unions with a legitimate place at every bargaining table.

However, powers to require involvement of trade unions under the headings of health, wellbeing (and indeed procurement) are currently not being fully implemented. The requirement for employers to engage with unions where public funds are being granted to businesses has overwhelming public support. There are thus opportunities for improvement in standards of work that could be harnessed effectively under the Welsh Government's existing devolved powers.

Legislative power should in any case be seen as only one part of the solution to the improvement of terms and conditions of employment. Given the opportunity to be heard, workers can do so much more for themselves through organised, collective, democratic engagement at the workplace. The SPPP Act (Wales) 2023 is an opportunity to educate all parties to the employment relationship in Wales of the value of consensus building and meaningful joint decision making in work and employment.

From this perspective, Welsh Government's vision, purpose and consistency in implementation and enforcement of their policy commitments could do much to facilitate improvements in standards of work.

### **The Labour Market**

In terms of the labour market, there are clear challenges for Welsh Government in strengthening industrial policy. Structural problems in work and employment persist. There

are too many low paid jobs at low skill levels. If Wales were to achieve the most advanced skills profile for its workforce tomorrow, the jobs aren't there to utilise them.

The powers to drive forward industrial policy currently reside with Welsh Government. Limitations on funding have no doubt hindered progress in this respect, but we should be clear sighted about the road ahead for much needed and long overdue industrial development in Wales.

### **False Expectations of a New Dawn**

There are risks inherent in relying on a pathway of deterministic devolution as though it alone will solve all problems.

If we look at the institution of collective bargaining, for example, devolution of state powers to Wales does not guarantee or safeguard how trade unions could adapt their current UK-wide agreements or forge new ones. There may be some aspects of industry where bargaining closer to home might improve workers' representation and leverage, but in general terms the risks of fragmentation of agreements would seem to be greater.

The incidence of UK-wide bargaining is an important context for any decisions about how substantive terms and conditions of employment might be influenced by the devolved administration in Wales. In addition, any improvement on UK wide collective bargaining arrangements would need to take account of the present gap between earnings in Wales and the UK. The threat to UK collective bargaining and longer-term union strength and solidarity seem real in this respect.

Facing up to these issues in reality is crucial for any discussion of the potential of increased devolution of powers over work and employment to 'make a change' to conditions in the Welsh labour market.

The easy solution is to say that "if only Wales had more power over employment things would be different." However, more responsibility on its own without the resources to operationalise new powers is unlikely to deliver the kind of changes that workers across Wales want and need.

### **Recommendations**

So, what is to be done? We suggest the following steps be considered as initiatives with potential to promote meaningful changes in work and employment in Wales:

#### ***Recommendation 1: A Minister for Work in the Welsh Government***

Despite employment rights and industrial relations being reserved to Westminster, Welsh Government has a degree of influence over the domestic labour market – primarily through its functions in non-reserved areas including agriculture and economic development, its powers in terms of skills and employability policy and devolved public sector employment.

Currently, the quality and nature of work in Wales is a hindrance to the Welsh Government's ability to deliver on its priorities for a prosperous and sustainable Wales. The prevalence of poverty, which is inextricably linked to the labour market, harms citizens and increases the need for public services. The generational harms of poverty are also well documented, as well as the labour market's influence on place. There is simply no upside for a government tolerating (or even at times seemingly promoting) bad work.

There is also an issue with understanding and awareness within Welsh Government and the devolved public sector, especially in relation to the intersection of policy which is focussed on the needs of the citizen, for example, and the consequences for workers. This is entirely logical – a government with limited resources and very restricted power over employment rights and industrial relations law does not have the same impetus to develop a minimum standard of organisational awareness in terms of labour market institutions, for example.

However, after over two decades of devolution and the growth of national and regional structures which have considerable labour market influence, it is time that this institutional knowledge gap is addressed – and a full cabinet member who has responsibility for championing fair work.

Similar to the role of climate change and social justice ministries, a Minister for Work could drive the Fair Work agenda within government and across the devolved public sector. If nothing else, this would raise the profile of labour rights. The Minister's brief would include testing all aspects of government policy through the lens of work, and determining where existing labour market agencies and institutions (such as collective bargaining arrangements) need to be engaged to ensure success and a strengthening of workers' position in the labour market.

### ***Recommendation 2: Investment in Enforcement***

Core labour market enforcement is undertaken by three agencies:

- HMRC enforces the minimum wage;
- the Gangmasters and Labour Abuse Authority (GLAA) defines its role as to protect vulnerable and exploited workers, including licensing gangmasters working in the UK and investigating modern slavery in England and Wales;
- the Employment Agency Standards Inspectorate enforces standards in employment agencies.

In addition, HSE and local authorities enforce workplace health and safety law and ACAS is publicly-funded to provide - as its name suggests - advisory, conciliation and arbitration

services to workers and employers. It is widely understood that labour market enforcement is persistently underfunded in the UK.<sup>60</sup>

Apart from local government, these agencies are all linked to UK Government departments and fall out of Welsh Government's remit. However, their work – primarily addressing unfair and illegal employment practices – clearly impacts Welsh Government's core remit, including in relation to public health and poverty.

If there is underinvestment in enforcing labour standards, it creates costs for Welsh Government because those exploited workers require greater help from the state.

Welsh Government also has direct power in relation to several inspectorate-type arrangements which have the power to inspect and investigate non-compliance with Welsh law in workplaces, like food hygiene and standards,<sup>61</sup> and even in relation to workplace regulations for the handful that exist in Wales law, such as Care Inspectorate Wales's responsibility to enforce the right for domiciliary care workers on zero-hours contracts to be offered a fixed-hours contract after three months.<sup>62</sup>

There is also devolved responsibility for some workforce regulation, such as the Education Workforce Council and Social Care Wales.

The fact that there is significant and persistent underinvestment in enforcing employment rights means that if this responsibility were devolved tomorrow, Welsh Government would be allocated insufficient resources (assuming that the resource allocation would be based on current spend, rather than need). This would be hugely risky and would not necessarily improve the outcomes for workers.

We are therefore suggesting a lower-risk intervention in this space, building on work already underway by Welsh Government to establish greater links between the labour market enforcement agencies and others.

This is still a major undertaking, for which we would like to set two main objectives for the Welsh Government:

- To supplement UK Government funding for labour market enforcement so that an additional 90 enforcement officers are employed in Wales, thereby bringing Wales into compliance with the ILO benchmark on enforcement.<sup>63</sup>
- To place a duty on devolved workplace inspectors to report employment rights abuses to the relevant authority when they identify them. For example, this might overlap with

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<sup>60</sup> <https://unchecked.uk/wp-content/uploads/2021/11/Labour-Market-Enforcement-Gap.pdf>

<sup>61</sup> <https://www.legislation.gov.uk/anaw/2013/2/section/2>

<sup>62</sup> <https://www.gov.wales/new-requirements-ensure-care-workers-are-treated-fairly-come-force-0>

<sup>63</sup> Enforce report draft Final Version 2020 110521.pdf (tuc.org.uk)

the role of public health enforcement and wider labour standards, or the role of food standards inspection work.

These suggestions build on the precedent set by investment in Police Community Support Officers, and work which Welsh Government has undertaken to improve partnership working to address modern slavery, by adding value to the work of non-devolved enforcement agencies to achieve their Well-being objectives. It also builds on the establishment of the Workplace Rights and Responsibilities Forum to bring together relevant agencies and organisations working within the labour rights space, alongside social partners.

***Recommendation 3: Overhaul the ways in which employment rights and industrial relations are understood across the devolved public sector.***

The work of the Fair Work Commission in 2019 set out a definition of Fair Work which has been widely adopted, including by Welsh Government, but this does not necessarily equate to being well-understood.

Building on the need for the role of a Minister for Work, this recommendation is for a minimum standard of awareness of employment rights and industrial relations to be established within the devolved public sector to support the ambition for Wales to become a fair work nation.

The framework for this work is already in place. The Fair Work Commission concluded that:

*“Having arrangements in place for employee voice and collective representation is of itself a substantive characteristic of fair work and also provides a process which helps ensure fairness in the other areas. Thus recognition of a trade union for collective bargaining is both a route to, and a key indicator of, fair work.”<sup>64</sup>*

It recommended that *“Welsh Government take all measures possible within its sphere of competence to support and promote trade unions and collective bargaining,”* including a public policy commitment to this end. Welsh Government has since adopted *“proportion of employees whose pay is set by collective bargaining”* as a national indicator.<sup>65</sup>

However, the necessary uplift in awareness and understanding of collective bargaining arrangements has not occurred concurrently. No investment has been made in ensuring that the adoption of this indicator is meaningful within the devolved public sector.

The role of the Social Partnership and Public Procurement Act is relevant here. Investment has been made in training on social partnership, and social partners have been clear that social partnership is distinct from industrial relations. But there has been no investment in raising the level of awareness and understanding of employment rights, labour market conditions and

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<sup>64</sup> <https://www.gov.wales/fair-work-wales>

<sup>65</sup> <https://www.gov.wales/wellbeing-wales-national-indicators>

industrial relations across the devolved public sector – which is arguably much more important to the government’s Fair Work ambitions.

We therefore recommend that Welsh Government invests in core training and the development of a minimum standard of awareness of employment rights, labour market conditions and industrial relations over the next two years to complement the roll-out of the Social Partnership Duty and deliver on the ambition to use all devolved levers to make work fairer.

***Recommendation 4: Prioritise collectively bargained pay, terms and conditions.***

To further develop the policy commitment to increasing collective bargaining coverage within the context of hostile industrial relations law, Welsh Government should establish a fair work National Milestone to set out specific ambitions in relation to the collective bargaining national indicator, therefore doing what it can to improve the context for better industrial relations.

Focussing on areas where it has greater leverage, an achievable goal would be to work towards determining pay, terms and conditions in the devolved public sector by collective bargaining, accepting the broadest possible definition of public sector for this purpose. This could then reach organisations such as housing associations.

Additionally, collectively bargained rates of pay should be the benchmark aspiration for procurement and government funding and investments should mandate, monitor and enforce compliance with collectively-agreed rates of pay (determined by a sector council if local collective bargaining is not possible).

***Recommendation 5: Make Wales a world-leader in openness on labour rights***

The UK Government has consistently chosen to obscure the realities of working life across the country. They have done this by underinvesting not only in enforcement but also in research and data collection that would establish the realities and allow third parties to gain a better understanding of what’s happening and what needs to be done.

Wales does not have to accept this. The Welsh Government’s Social Partnership and Fair Work Directorate should work with social partners to agree a programme of proactive data collection and research on work in Wales. This would create an immensely useful resource for the various social partnership structures, would inform broader debate, allow more focussed policy and would be relatively inexpensive.

The Welsh Government should adopt the ambition of having the most well-understood and open labour market in the world. Doing so would, in turn, give Wales the opportunity to play an outsized role in labour market regulatory discussions at a UK-level.

***Recommendation 6: Revisit the Fair Work Commission's recommendations on workers' awareness of their rights.***

Welsh Government should review the impact of their work on improving workers' awareness of their rights. The UK has a regulatory framework which relies on individuals taking action themselves – so it is essential that everyone understands where they stand.

International best practice should be studied and followed. Establish a task force with social partners and set an explicit target for success. Again, the budget implications of a renewed focus on this area are likely to be relatively limited.

***Recommendation 7: The Wales TUC should establish a working group to examine the practicalities of the devolution of employment rights.***

This report has emphasised some of the risks associated with the devolution of employment rights to Wales and the extent to which on its own this is unlikely to have a transformative impact on people's experiences at work.

However, the political and social dynamics that led to the commissioning of this work are very real and it is clear that it will be important that the Welsh labour movement deepens its understanding of what devolution might look like in practice. The movement also needs to be able to respond swiftly and meaningfully to the increasingly unpredictable UK political landscape.

Therefore, it would be prudent and useful for the Wales TUC to establish a working group tasked with looking closely at the mechanics of further devolution. Such a group should also monitor the extent to which the Welsh Government is making progress on the challenges this report raises and the wider fair work programme.