

Making employment rights work

**A five-point plan for effective
enforcement of employment rights in
the UK**

Introduction

Workers' rights are set for a significant upgrade.

The new government was elected on a platform that included making the minimum wage a living wage, basic individual rights from day one and expanded family-friendly working.

These support a drive to ensure that good quality work underpins an economic recovery after years of lacklustre growth and flatlining pay.

However, new rights are only worth something if they are upheld.

And the enforcement system in this country is at breaking point.

Trade unions are often the first line of defence for workers, acting informally to resolve disputes and ensure employers honour their duties. But currently only a quarter of workers are covered by collective agreements, where there are mechanisms to bargain on pay and resolve disputes in the workplace.

The tribunal system is under strain with a backlog of tens of thousands of cases. Parties wait nearly a year on average for even a preliminary hearing.

And the state enforcement system is underfunded with vastly fewer inspectors than required by international standards.

The incoming government has pledged to introduce a Fair Work Agency bringing together several existing state enforcement bodies "to ensure greater coordination in the face of complex enforcement challenges."¹

This report sets out a five-point plan to ensure that the enforcement system is able to support the new government's plans.

1. Create a properly resourced single enforcement body with a strong union voice in its governance structures
2. Recycle fines back into the enforcement system
3. Increase the number of inspectors and inspections
4. Extend the licensing scheme to new sectors
5. Build international links and create a firewall with immigration enforcement to crack down on the exploitation of migrant workers.

¹ Labour Party (2024): *Labour's Plan to Make Work Pay* <https://labour.org.uk/wp-content/uploads/2024/05/LABOURS-PLAN-TO-MAKE-WORK-PAY.pdf>

The enforcement challenge

The UK has been conducting a long experiment with ultra-flexible labour markets combined with patchy and under-resourced enforcement.

The result is widespread failure by employers to honour even basic rights.

This matters because workers are losing out on wages and key entitlements.

Meanwhile decent employers are undercut by those that don't meet their legal duties.

Furthermore, fragmentation of employment relationships (outsourcing, franchising, use of labour market intermediaries) has made it even more difficult for many workers to enforce their rights.²

Workers can struggle to identify their employer due to complex supply chains. Organisations are using a range of strategies to transfer accountability to other parties, meaning they have little legal responsibility for the people who do work for them.

Holiday pay

Too many workers are not getting the holiday pay they are entitled to. TUC analysis shows that 1.1 million employees (1 in 25 employees) did not get any of the paid holiday they were entitled to last year. This adds up to £2 billion in lost holiday pay. Black and minoritised workers were hardest hit – 6 per cent of BME employees did not get any paid holiday last year, compared to 4 per cent of white employees.³

Minimum wage

There is strong evidence of non-compliance with minimum wage rules. The Low Pay Commission estimates that one in five workers receiving the National Living Wage/National Minimum Wage (NMW) were not provided with the correct pay in 2022.⁴

² Trades Union Congress (April 2018). *Shifting the Risk*, TUC.

³ TUC analysis of Labour Force Survey data Q3 2024.

⁴ Low Pay Commission (September 2023). *Compliance and Enforcement of the National Minimum Wage* (September 2023):

https://assets.publishing.service.gov.uk/media/65004e0657278000142519c1/NC_report_2023_final.pdf.

Pay slips

A recent report on enforcement by the Resolution Foundation pointed out that 1.8 million workers reported that they did not receive a payslip.⁵ Without a payslip it is hard for a worker to understand if they have been paid correctly.

Migrant workers

Vulnerable migrant workers are being failed by the enforcement system. A recent report by the Independent Chief Inspector of Borders and Immigration highlighted the institutional indifference to worker exploitation:

“Home Office compliance officers identified “significant [welfare] issues”. Reports included summaries of interviews in which some workers told compliance officers that they were treated poorly, discriminated against on the basis of nationality, had received incorrect pay, were living in damp, poor-quality and unsafe accommodation, or had been obstructed from accessing healthcare. At best, reports were fed back to scheme operators months later. At worst, they were not fed back at all.”⁶

Modern slavery

It’s been estimated that there could be at least 130,000 victims of modern slavery in the UK.⁷ Modern slavery is the severe exploitation of other people for personal and commercial gain. In addition to the degrading and barbaric conditions that modern slavery victims have to endure, little is done to compensate victims for the breaches of core employment standards.

⁵ Resolution Foundation (2023). *Enforce for Good*

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

⁶ Neal, D. (May – August 2022). *An inspection of the immigration system as it relates to the agricultural sector*, Independent Chief Inspector of Borders and Immigration.

⁷ Home Office (October 2020). *2020 UK Annual Report on Modern Slavery*, HM Government.

Action 1: create a properly resourced single enforcement body with a strong union voice in its governance

The Labour Party's proposed Fair Work Agency seems likely to bring together the Gangmasters and Labour Abuse Authority (GLAA), the Employment Agency Standards Inspectorate (EAS) and HM Revenue & Customs National Minimum Wage and National Living Wage team.

If a single enforcement body is implemented well, existing barriers that prevent data being shared between enforcement bodies will no longer exist and a labour market inspector will be able to deal with multiple breaches of employment rights in the course of one investigation.

TUC polling of more than 3,000 voters – conducted by Opinium on the day after the general election in July – showed large-scale backing across the political spectrum for a Fair Work Agency.

More than six in 10 voters supported introducing a single enforcement body to make sure that workers' rights are properly enforced – with fewer than one in 10 against.

Resourcing

Insufficient resources are a huge problem for enforcement bodies. For example, the GLAA expects its funding to be reduced in 2024-25 by at least five per cent.

The EAS employs approximately 20 inspectors to regulate around one million agency workers.

There is a shortfall of labour market inspectors in the labour market enforcement system, meaning the UK doesn't meet international benchmarks set by the ILO.

Any plans for an SEB should set out a route to significantly building overall funding for the relevant enforcement bodies.

As discussed in more detail below, the introduction of more effective and robust penalties and new powers for enforcement bodies to recoup fees and fines from employers could contribute to proper resourcing of the body.

The Fair Work Agency should have powers, and accompanying resources, to enforce unpaid holiday pay, statutory sick pay, and unpaid employment tribunal awards.

Sharing union expertise

Given their presence in workplaces, unions are able to spot emerging trends around employments rights issues.

This first-hand knowledge should be used to shape enforcement strategies. Trade unions should be allocated board seats on the new Fair Work Agency and have a formal, strategic, oversight role in the labour market enforcement system as part of a tripartite approach to governance.

Identifying and dealing with non-compliance could be made easier if there was greater scope to involve trade union reps, who play a key role in supporting exploited workers. The 2016 Low Pay Commission recommendation for a third-party compliant protocol should be implemented so that third parties like trade unions are able to bring complaints to the body and have them acted on.

Action 2: recycle fines back into the enforcement system

Enforcement systems can generate additional funding, so some of the costs for the labour market enforcement system are borne by the employers who breach basic workplace standards.

Where enforcement agencies find that employers have breached employment law and impose fines to sanction this non-compliance, these fines should be recycled back into the system. This way, the money would bolster the resources of enforcement agencies and fund further enforcement work.

The TUC supports recommendations made by a previous Director of Labour Market Enforcement, Sir David Metcalf, that there should be a significant increase in the size of civil penalties for non-compliance.⁸

Sir David flagged changes to the Sentencing Council guidelines for the Health and Safety Executive, linking financial penalties to the company's annual turnover, which means that large organisations can be fined in excess of £10 million for severe offences. Fines in line with these guidelines for non-compliant employers should be pursued.

GLAA licensing fees should also be increased, which would give the GLAA additional resources to deal with existing and potentially additional duties.

⁸ Metcalf, D. (July 2019). *Executive Summary: United Kingdom Labour Market Enforcement Strategy 2019/20*, HM Government

Action 3: increase the number of inspectors and inspections

Levels of labour market inspection in the UK are woefully inadequate.

For example, it has been estimated that the resources and inspectors available to the national minimum wage enforcement team mean that employers are only likely to be inspected once every 500 years.⁹

The International Labour Organisation (ILO) benchmark for inspectors, which it recommends all countries meet, is one labour market inspector per 10,000 workers. The ILO has also stated that labour inspection systems should “be efficient and effective, with workplaces visited as often as possible”. The ILO pointed out that “comprehensive inspection coverage is required for the control and functioning of the labour market”.

TUC analysis¹⁰ of labour market enforcement statistics shows that the UK would need an additional 1,797 labour market inspectors to meet the ILO benchmark.

Currently, the UK is failing to meet ILO benchmarks and potentially breaching the UK-EU Trade and Cooperation Agreement. The agreement stipulates that “each Party shall have in place and maintain a system for effective domestic enforcement and, in particular, an effective system of labour inspections in accordance with its international commitments relating to working conditions and the protection of workers”.¹¹

The increase of fines and licensing fees from new sectors, as outlined above, would also contribute to the resourcing needed to increase inspectors and inspections.

⁹ O'Connor, S. (December 2017). “Bigger fines urged for employers who underpay staff”, *Financial Times*.

¹⁰ Office for National Statistics, A01 and EMP17 data tables

¹¹ Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, Clause 6.3

Action 4: extend the licensing scheme to new sectors

The licensing model currently used by the GLAA, in the shellfish-gathering, food processing, agriculture and horticulture sectors, should be extended further across the labour market.

There is a strong case for extending the GLAA's remit so that new sectors such as social care, construction and hospitality come within the licensing scheme.

There are high proportions of workers in these sectors who are vulnerable to exploitation because of their employment or immigration status and there is evidence of exploitative working practices routinely being used.

The inspections and routine monitoring of standards that licensing entails would help prevent exploitation, improve intelligence gathering and ensure that criminal prosecutions are targeted at the worst cases.

Licensing requires organisations operating in a particular sector to prove that they can comply with minimum employment standards. This involves providing evidence of compliance with core labour standards through initial and ongoing inspections. However, extending licensing should not just be a tick box exercise, it needs to include robust physical checks with the necessary training and staff numbers employed to do this.

Action 5: Build international links and create a firewall with immigration enforcement to crack down on the exploitation of migrant workers

Migrant workers are particularly vulnerable to exploitation.

To stop this, close cooperation with overseas authorities is essential. This should include collaboration to understand patterns of exploitation and methods to develop global best practice in fighting it.

The Fair Work Agency will need an international function to deliver this.

Meanwhile, the immigration enforcement and employment rights enforcement should be separated as there is clear evidence¹² that workers are deterred from making complaints as they fear being referred to immigration enforcement

Currently, there are close working relationships between employment rights enforcement agencies and immigration enforcement. Intelligence sharing and joint investigations are commonplace.

Joint working should cease and a firewall between immigration enforcement and employment rights enforcement agencies should be established.

¹² Barnard, C, Ludlow, A, Fraser-Butlin, S. (July 2018). "Beyond Employment Tribunals: Enforcement of Employment Rights by EU-8 Migrant Workers", *Industrial Law Journal*