

CIPD

*Championing better
work and working lives*

Fair Work Wales

Background

The CIPD is the professional body for HR and people development. The not-for-profit organisation champions better work and working lives and has been setting the benchmark for excellence in people and organisation development for more than 100 years. It has 150,000 members across the world, provides thought leadership through independent research on the world of work, and offers professional training and accreditation for those working in HR and learning and development.

Our membership base is wide, with 60% of our members working in private sector services and manufacturing, 33% working in the public sector and 7% in the not-for-profit sector. In addition, 76% of the FTSE 100 companies have CIPD members at director level.

Public policy at the CIPD draws on our extensive research and thought leadership, practical advice and guidance, along with the experience and expertise of our diverse membership, to inform and shape debate, government policy and legislation for the benefit of employees and employers, to improve best practice in the workplace, to promote high standards of work and to represent the interests of our members at the highest level.

Q1: What do you regard as the key indicators of fair work and the characteristics of a fair work employer?

CIPD has conducted a major questionnaire 'UK Working Lives', which has robust samples for all UK Nations and Regions including Wales. These include seven measures for respectively; pay and benefits, terms and conditions, job design and the nature of work, social support and cohesion, voice, work life balance, health and wellbeing, and employee voice. We also draw the Commission's attention to the welter of evidence on fair work measurement reviewed in the Carnegie report, in response to the Taylor review of UK Working Practices, as well as the work CIPD have conducted with the University of Warwick and the University of Strathclyde. These studies and reviews build on extensive European research on indicators of job quality and related factors, which though they may range in terms of the components, generally come to focus on familiar terms such as pay and reward, opportunities for learning and progression, wellbeing, employee voice and consultation, social aspects and job design. These factors are the key drivers of job satisfaction and engagement and also constitute in large part high performance working practices. CIPD's wide and inclusive approach was recognised by the RSA/Carnegie measuring Good Work review as embodying many of these factors, and constitutes a major resource to build better work and working lives, as defined in our defining purpose statement. The RSA/Carnegie report recommended that Government adopt the CIPD seven dimensions of job quality as a framework for measuring job quality in the UK.

<https://www.carnegieuktrust.org.uk/project/measuring-job-quality/>

Q2: What unfair work practices are currently experienced in Wales? In what ways is work unfair?

In CIPD's view, there are structural and systematic features of any workplace that can lead to poor work outcomes. We do not see any evidence from our data that these are specific to Wales. However, issues such as a lack of proper people management guidance and advice, poor line management, a lack of development and progression as well as a dependence on low paid employment are all features within the UK. As always though, this is nuanced. In some sectors, driven by immediate operational requirements, HR teams and the managers they support may

not have the authority to act and support their employees. In the NPF sector, there is a short term and unstable nature of funding, and in common with the rest of the UK, there is a shadow economy problem with a minority of unscrupulous employers in sectors such as cleaning, catering construction and personal services - offering exploitative employment which fails often to pay taxes and provide statutory benefits such as minimum wages and basic pension provision. According to a major report conducted by HMRC/Nat Cen, about 5% of citizens work in the hidden economy. Just over 2.5% do not pay due tax and national insurance (NI) obligations. Most evade any form of benefits and often offer substandard accommodation on exploitative terms. In addition to this, there are underground or criminal forms of employment found in businesses such as nail bars, car washes and the food trade. In these sectors, illegal migrants are held to ransom in hyper exploitative employment, often with their passports confiscated. We raise these issues to caution that some of the worst working conditions are to be found in this informal economy despite the focus of many commentators and policy actors with the so called Gig economy. To create fair work, we need to focus on the fair work challenge throughout the whole economy and ensure that playing fair doesn't disadvantage either employers or employees who play by the rules.

Q3: What does fair work mean in the context of genuine self-employment and how might it be supported and encouraged?

CIPD believes that in a changing economy the role of self-employment is a key aspect of choice in creating a dynamic, flexible and fair labour market. Self-employment in Wales, according to our UKWL survey taking self-employment, freelance and independent into account is around 17%, is no higher than the UK as a whole. However, as we have stated in our UK policy positions, we recognise that such individualised employment has consequences for fair work. Our research shows that the incidence of gig employment has plateaued, and when asking this question around brands (such as Uber and Delivered) to ascertain whether it is the individuals main job, the numbers are no more than around 4%. That said, our survey design based on panels does oversample those in higher paid managerial roles.

The key issue in terms of tackling false self-employment is ensuring employers and workers understand their responsibilities and rights under the law. There should be a 'know your rights' campaign launched in Wales led by the Welsh Assembly in partnership with employers, employees, professional bodies, trade unions and organisations such as the Citizens Advice Bureau to ensure employers and workers have more knowledge on employment status and associated rights.

Evidence from the CIPD 2018 UK Working Lives Survey suggests that the self-employed are typically more satisfied with their work than those in regular employment, having higher levels of wellbeing. On average, 76% of those working as self-employed freelance or own business roles are satisfied with their job, compared to 61% of permanent employees. The percentage for temporary short hours and gig workers is broadly identical at 58%.

This is, however, likely to depend on individuals genuinely choosing to be self-employed and benefiting from the freedom this gives them - mainly to decide with who they provide services to, and when and how they do this.

Taking short hours and temporary contracts into account, Wales stands out in our UK Working Lives survey data for non-standard or atypical employment at 9%. This compares against a UK average of 6%. We cannot offer any explanation for this divergence, however we suggest that though it is higher than the survey average, it is still a relatively small proportion of overall employment and should be considered as such as atypical employment.

Evidence from the CIPD Working Lives Survey finds that the temporary (including zero hours contracts workers) have comparable job satisfaction with permanent employees. However the factors that underpin job satisfaction for the two cohorts are different. Permanent workers are more satisfied with employment security and opportunities for training and progression, whilst temporary workers are more satisfied with their work-life balance and report less exposure to excessive pressure – making them less likely to report that work has a negative effect on their mental health.

Q4: What data do you consider necessary or desirable for assessing and monitoring fair work at enterprise, local and national level.

In CIPD's view the measurement of fair work should follow the large body of work which has already been established in the area of job quality. CIPD have been working for a number of years with the Universities of Strathclyde and Warwick to develop our job quality index which is developed from our UK Working Lives Survey. This sets out the key aspects of good/fair work and we have recently mapped this to Scotland's fair work framework. In 2019, we plan to focus on Wales and will be able to focus the data on the Welsh workplace.

Q5: What data and data sources are already available and how adequate are they?

In CIPD's view we must make use of existing business and labour market statistics and use the regular survey evidence provided by other organisations including academic institutions, professional bodies, consultancies and think tanks etc. Mapping the data in this way would provide a sound basis for identifying gaps and opportunities to promote fair work. The RSA/Carnegie review Measuring Good Work has assessed the main indicators of job quality in the UK and we broadly support their recommendations. We think that it is essential that the Workplace Employment Relations Survey is retained and run regularly because of its useful time series and the depth of insight it provides for policy makers, employers and academics.

Promoting Fair work

Q6: The Welsh Government currently seeks to promote fair work through public sector procurement and its economic contract with those receiving government funding; how might these levers be strengthened and given wider effect?

CIPD believes that public sector procurement processes, matched with supply chain management by large scale contractors, can help to build fairer work - but only with fair and sustainable contracting. There are systemic problems in the nature of public procurement, with many services procured at lowest cost as public authorities

respond to cost saving pressure. This can lead to a down-bidding environment leaving little headroom for building a sustainable workplace deal. In the care sector, for example, this can lead to high turnover, poor client delivery and a vicious cycle of perpetual staff shortages and poor service delivery. There are also examples of gaming and subterfuge in public procurement contracts where a “shop front” organisation secures contracts with much joint fanfare about their credentials. Subsequently, these contracts are procured through a mix of price cutting subcontractors, none of whom has the leeway to offer basic fair terms and conditions. Instances of unpaid or late wages, provision of poor and substandard materials and speeded up and substandard work have resulted in areas like the care sector and construction, for example.

Q7: Should voluntary approaches currently in use (such as the signing up to the Code of Practice on Ethical Supply Chains) be made mandatory?

CIPD does not have a view on this, but we refer the commission to our views on the need for sustainable procurement. We also think there is a major role for people and development professionals to be involved in procurement processes (as they currently are in some national rail franchise, utility and business service bids).

Q8. What are the benefits and problems of (a) voluntary and (b) mandatory approaches as drivers to fair work? (The former would include signing up to voluntary codes of practice, charters or voluntary accreditation schemes. Mandatory approaches would include having to be certified as a Fair Work Employer to access government financial support or public sector contracts).

There is a place for a voluntary approach to increasing fair work, however the limits inherent in this approach need to be recognised. For example, the Public Health Responsibility Deal: Health at Work Pledges which employers were encouraged to sign up to following the Government commissioned review of the health of the UK working age population have had little meaningful impact on employer behaviour.

The danger of a purely voluntary approach is that it resonates with employers that are already meeting high standards, rather than those who most need to change their behaviour. However, these sorts of initiatives can encourage progressive employers to share what they are doing which can help spread good practice. The Engage for Success movement is an example of a voluntary approach to spreading

good practice on people management and has had some real success in achieving reach and impact through leveraging networks of practitioners and experts.

CIPD's view is that voluntarist approaches to boosting job quality or increasing fair work through codes of practices, charters or accreditation schemes need to be linked with accessible, low, or no-cost high quality information, advice and guidance if they are to be successful in encouraging 'low road' employers to engage.

CIPD believes that creating engagement and enthusiasm among employees and employers through voluntary approaches is one element of building more sustainable good work across the economy, but should in no way be regarded as an entire solution. Activating this appetite for good work should be the priority; we do not see any evidence from existing fair work initiatives that there is an appetite amongst the broad range of stakeholders for a mandatory approach.

Q9: What more be done to promote fair work within the Wellbeing of Future Generations (Wales) Act 2015

In CIPD's view, building fair work in Wales will provide a key foundation for future sustainability of jobs and the economy. With key aspects of fair work around income, poverty and inequality, these could be addressed as aspects of well-being within the fair work proposition. This would also help to build a legacy of fairer, more engaging and more productive work, and an engaged, resilient and productive workforce – building the economy and society for future generations.

Q 10. The Welsh government is supportive of social partnership and tri-partite arrangements (bringing together representatives of the government, employers and trade unions). What greater role could social partnership play in delivering fair work in Wales and what structures if any may be needed to assist this?

Social partnerships are critical to building fair work in our view. All of the main workplace actors need to be involved and have an equal chance of contributing to the discussion to shape the Fair Work agenda. Tripartite mechanisms keep government connected to the viewpoints and concerns of key partners, whether they be organised labour or organisations. Structures should be simplified and inclusive

and should be organised around a frank, free and fair (as befits the purpose) dialogue. In CIPD's view, this is the best way to build the peak engagement around fair work.

Q11: How might legislation support trade unions and social partnership as a way of driving fair work?

In CIPD's view Trade Unions are a key aspect of the UK employment scene, working often in partnership with employers to increase productivity and innovation, raise wages, and in some cases support learning for the hardest to reach and least served employees. Unions also play a key role in diversity and inclusion, as well as their more traditional role in collective bargaining and health and safety. Wage premia unions play a part in boosting the pay and earnings of workers and without their presence, levels of inequality in both the labour market and society would be higher.

The obverse of this positive effect is that unions can impede profitability in the private sector. Unions can have more negative impacts; strikes in pursuit of their bargaining objectives which can severely disrupt the delivery of key services for example. In standard economic models of the operation of labour markets, unions can also bid up wage levels above market clearing rates, leading to unemployment. They can also impede innovation and agility through demarcation rules and impede efficiency and productivity through their incentive to overemployment or poor allocation.

Legislation already exists in the shape of the Trade Union and Labour Relations Act 1999 and amendments to support the key enablers of trade union involvement. The right to hold recognition ballots and to take lawful industrial action within constraints have been on the statute book since the same period. We question the type of legislation which would act to support unions in playing their full part in building an initiative such as fair work.

For CIPD and the HR/ People and Development profession, the agenda is as much about changing mind-sets and promoting dialogue. Much of the evidence favouring unions and promoting their role in workplaces is based on the unique context of US employment relations where unions are effectively suppressed in many workplaces, and where "at will" notions of employment seriously disadvantage and disfavour

union representation. In the UK, ER environment union recognition is a free choice offered to union members above certain thresholds. The appetite for union membership amongst employees especially in the younger demographic has been falling as the UK TUC evidence shows. Unions clearly have a part to play in the good/fair work agenda, but we need to recognise the changing context of the workplace and how this is driving representation and voice. Our UKWL survey measuring job quality seeks to gauge the extent of employee awareness of channels for voice. It shows that in Wales, unions cover less than a fifth of the workforce, with a further 5% identifying staff associations as their representative body. The latest data show that around three fifths are satisfied with their level of voice towards senior management. CIPD can provide detailed data on this aspect to the review.

Q 12: Collective bargaining is a tested way of providing worker voice and effective representation at the workplace and of underpinning fair employment conditions. How might collective bargaining be supported/ extended?

CIPD would make distinction between collective bargaining and effective employee representation. We recognise that there is evidence (see Scottish Fair work Review), that collective bargaining can increase the role and effectiveness of unions as a social partner and that there are legitimate arguments (free riding etc.) to support the enrolment of all employees into a collective bargaining agreements. CB can also be an efficient mechanism for employers to engage their workforce as it can help to increase positive outcomes on key areas like earnings and diversity

13. Do you have evidence or examples of effective worker voice and representation mechanisms in non-union environments?

Given that the majority of workplaces are non-union, the incidence of non-union voice is high. Researchers such as Beaumont (1991) and Gollan (2001), have tended to focus on institutional structures for non-union representation which operate very much like unions or staff associations. Such examples include Bulmers in the food and drink sector, News International and John Lewis's partnership council. All of these have unique institutional features and a unique context ranging from Bulmers paternalism, to News International's union suppression in the wake of the print strikes of the 1980s. However CIPD's research into the contemporary workplace looks at voice much more in terms of channels. Trade unions are a legitimate channel for voice, and in Wales, around 17% of our sample see unions as their main

voice channel. A further 5% recognise non-unions structures such as staff associations, although these operate especially in financial services where there are single employer corporate unions.

Voice channels are more likely to be those facilitated by management even in union environments, with around half of Welsh employees in our UK Working Lives Survey seeing one to one meetings with line managers and team meetings as their most commonly used channels for raising issues, ideas and concerns with senior management.

Q 14. What form should new legislation take to drive forward fair work in Wales? (There are issues relating to devolved competence under the Wales Act 2017 which you may wish to consider)

Having reviewed the competences reserved to Wales, with the exception of some adjustments to the regime on in-work benefits and other welfare to work provisions, CIPD does not believe that legislation is the way forward. Fair work is about engaging and enthusing employers, unions and other stakeholders to change the culture and shifting to an inclusive and productive labour market supporting a high involvement and high performance workplace.

CIPD believes that improved awareness and enforcement of existing regulation in relation to employment status and rights and health and safety in the workplace would be a much more effective step towards fairer work than any form of new legislation.

As referenced above, CIPD believes there is significant potential in a Welsh Assembly sponsored 'Know your rights' campaign in partnership with key stakeholders to ensure that there is more basic awareness of existing employment rights, linked to sources of information, advice and guidance.

One area where there is poor existing awareness of their obligations under health and safety law among employers is work-related stress. CIPD research (2018 Health and wellbeing at work survey) suggests that only about six in ten employers are meeting their obligation to risk assess for the causes of work-related stress and then to take action to mitigate risks identified.

The Health and Safety Executive's stress management standards are a recommended approach for employers to take action in this area and focus on six core causes of work-related stress: demand; control; support; roles; relationships; and change. Used in right way, the stress management standards can act as a means of helping employers to improve the quality of leadership, people management and job quality.

In the view of the CIPD, running an awareness campaign to highlight to employers their legal duty to conduct risk assessments for work-related stress would act as a very strong nudge to employers to focus more on the organisational factors that can create work-related stress, including issues such as sexual harassment and bullying.

Q 15: What is needed to ensure effective monitoring and enforcement of fair work standards?

For CIPD, fair work is an aspiration that every employer in every sector and at every level can seek to fulfil, and in most cases would wish to. Therefore, enforcement would only be appropriate in the case of regulatory aspects such as living wages and working time, for example.

As stated above, the CIPD believes that the real challenge is to enforce current legislation. There is a welter of existing legislation on aspects of pay, condition and contracts as well as safety and wellbeing which would have far more impact if there was more effective enforcement.

There are also existing regulatory checks such as those conducted by HMRC that can be used to ensure compliance with standards. Many legislative enactments lie unused for lack of either adequate resource for enforcement, or a lack of transparency and visibility about their existence.

Q 16. What else could the Welsh Government do to encourage fair work?

In CIPD's view a focus on preparing the ground for fair work should be government's main role in the workplace policy space. For that to be truly effective, government needs to use its convening power to bring together parties such as employers,

unions, civil society groups, academics and citizens to engage all of Wales in the fair work effort. Influence and inspiration are as much part of government's role as legislation and regulation. By working with organisations like CIPD and others, we believe government can build a lasting movement towards fair work. The real test however will be whether employers, employees and their representatives start to move towards fairer work. CIPD will work with other business organisations and workplace partners to build that effort, but government's role will be crucial.

If government were to focus effort and resource, CIPD is convinced that the small business operator owned sector would provide the best results given their overall weight in the economy. CIPD has developed a successful model for delivering basic HR support to owner managers in small firms employing between 1 and 50 employees, which was initially funded by JP Morgan foundation

(https://www.cipd.co.uk/Images/hr-capability-small-firms_2017_tcm18-27313.pdf).

The funding was used to run three HR business support pilots in Glasgow, Stoke and Hackney, East London over the course of 12 months, via partnerships such as chambers of commerce, Local Enterprise Partnerships and local authorities. In each area, small firm owner-managers were able to access up to two days' worth of free face to face and telephone information, advice and guidance via local CIPD qualified and experienced HR consultants.

One of the most significant findings from the evaluation of the research project was that the first step to business improvement for many small businesses that lack HR support or knowledge is getting the very basics of people management in place - for example, establishing workers' terms and conditions and job descriptions. The research suggests that until these people management 'foundations' are in place, owner-managers don't have the capability, interest, or time to invest in value-added activity such as training staff. However, while the typical type of support delivered to SMEs through the People Skills service was fairly transactional, the evaluation found evidence that the initiative added significant value to participant organisations. For example, the data from the pilots suggest that owner-managers were more likely to report that their organisation were better or much better than similar organisations in their sector on measures of workplace relations, labour productivity and financial performance after using the People Skills.

CIPD is currently developing a free 'People Skills' digital hub drawing on the insights of the pilots which we hope will provide a valuable resource for owner managers. This includes access to a free six-week digital course on basic people management for owner managers and anyone else who manages people, provided by Future Learn.

While the provision of high quality digital support is useful, the People Skills pilots found that bespoke face to face advice and guidance is by far the most effective way of engaging with owner managers and acting as a catalyst for change.

Consequently CIPD believes there should be consideration of the feasibility of rolling out a 'People Skills' HR support service to small firms across Wales. In our view, the cost of doing so would not be prohibitive and would be the most effective way of helping owner managers of small firms to improve their people management capability.

Encouraging larger firms through their supply chains and using levers on industrial would be key. Just as important would be government re-appraising policies which might have an impact on fair work. We note for example:

- The current climate of cost driven procurement, which often operates against minimal rather than fair work standards in some cases.
- Industrial policy which focuses on job growth, specifically volume and targets that can lead to unsustainable, unproductive and short term jobs. We should focus instead on growing quality jobs productivity, and wages.
- A focus skills acquisition rather than using policies to support skills utilisation, a key building block of job quality.

Context and Impact

Q 17: The objective of being a fair work employer should apply universally across Wales but how this is achieved and judged needs to be appropriately sensitive to context (e.g. sector, region, size and nature of employer). How might this be achieved in practice?

By targeting and focusing through understanding and engagement with local labour markets, we can ensure that work initiatives are sensitive and aligned with that context. The key to this is engaging with local businesses, unions and other groups using champions in each sector and by using agreed measurements of progress and

success. CIPD has an extensive network of people and development professionals within Wales across our branches and wider member networks who can be activated and engaged towards the good work agenda. Supported by experts and using local labour market data, they can help to build good work on the ground.

Q18: Are specific measures needed in some sectors or in relation to certain occupations?

It is of course necessary to recognise the unique operational challenges that sectors such as transport, health and social care, retail and other industries present where the nature of work is driven by service delivery. For CIPD the broad focus should be on the same measures of job quality, regardless of the type of environment these will have focused upon. However, the implementation must be sensitive to operational and business challenges. CIPD members in these sectors can play a part in encouraging knowledge sharing and exchange of good practice, especially in services where the benefits of everyone working together can be harnessed by all. For example, the retail sector is facing the challenge of online competition and automation and needs to focus on building the skills and capabilities of its people. The good/fair work dimension would certainly help. Franchised transport services might want to co-operate on good/fair work initiatives and work with the unions in their sector to do the same. We can see similar focus in other sectors. Government could fund and support the knowledge exchange networks which might arise from this.

Q19: Who should make the assessment whether an employer is a fair work employer and how should this be done?

CIPD does not believe it is helpful at this stage to proscribe regulation of fair work. We should focus on developing an agreed standard and approach before we attempt this. To ensure that fair work can get initial traction, we recommend the establishment of fair work forums across industries and sectors. These could work with other skills development bodies to build fair work understanding and challenge different sectors on how this approach can be built. We envisage these would have employer, union, academic and employee/citizen representation. They should

operate not as formal structures, but as agile networks, sharing knowledge and expertise. We believe that appropriate assessment can arise from such approaches.

Q 20: What impact would promoting fair work have on employment in Wales?

We are not clear that there is any evidence on the impact of fair work or that any evidence base needs to be established as this will take concerted effort from a whole range of organisations. We instead suggest that an ongoing review of evidence should be established.

Q 21: What are the barriers to the achievement of Wales as a Fair Work Nation and how might they be addressed.

In common with the UK and other devolved nations and regions, Wales faces major challenges as the UK enters a new era of political and constitutional change. The Welsh economy is still skewed in employment terms towards heavy manufacturing, financial services and supply chain dependent manufacturing. The low level of earnings in Wales compared to the rest of the UK, as well as the issues around geography, transport and infrastructure, are all issues which hold Wales back. Other issues operating everywhere such as demographic change, automation and other forms of technological disruption still affect Wales. Our biggest existential challenge is also something that will massively impact the world of work. We recognise that widespread inequality, short term and unsustainable business practices and populist political fixes will not work in the long term for any part of the UK.

Focusing on fair and productive work can, we believe, mobilise and enthuse government, business and society to tackle the challenges and opportunities we face. With Wales a well networked context can help us make real progress. The fair work effort needs to be inclusive and cannot be seen as the project of one any specific stakeholder. It needs everyone rowing in the same direction and with everyone recognising the challenges each other face. CIPD's research and insight and our network of committed and capable people and development professionals

will play their part working with government and others to deliver a feasible fair work future for Wales.

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