

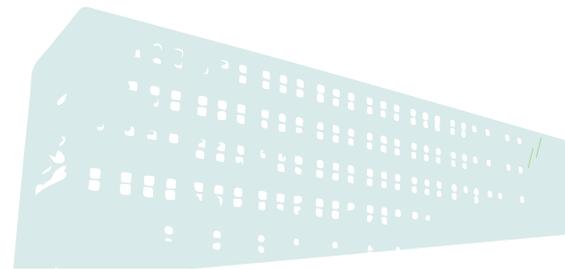
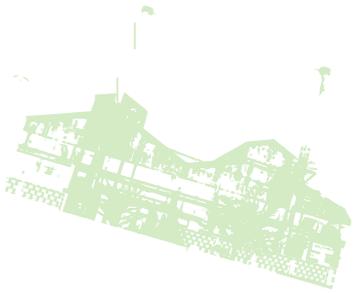
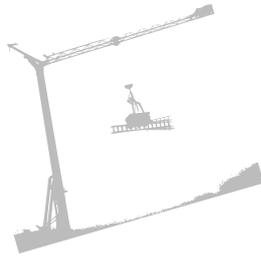
Fair Enough?



**Protecting Scotland's
workers from
unfair treatment**

Summary version
of a report by
Citizens Advice Scotland





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Fair Enough?: Protecting Scotland's workers from unfair treatment

Summary version

The Citizens Advice Service is a major source of external advice for people who experience employment problems. In 2013/14, citizens advice bureaux in Scotland advised clients on 46,540 new employment issues. Some of these issues are examples of extremely unfair employment practices which place clients in a difficult, complex and miserable situation. This report examines the unfair employment cases brought to bureaux and makes recommendations for how the system can be improved.

As well as being in the interests of people who experience unfair treatment at work, it is in the interests of government and society as a whole that fair employment is promoted. Workers in low quality, stressful jobs have poorer general health outcomes, and poor daily quality of life than other groups – even those who are unemployed. It is also important to ensure that unscrupulous employers who wilfully undermine their employees' basic employment rights do not gain an unfair advantage over fair employers.

The numerous examples of unfair employment we present in this report include:

-  Clients being dismissed in unfair circumstances, including for being off sick, attempting to take holiday, or informed of their dismissal by text message
-  Employees who were not paid at all by their employers, in one case for six months' full-time work
-  Employers who failed to pay their employees' income tax and national insurance leaving them to pick up the bill; and instances of clients paid considerably below the National Minimum Wage
-  Clients who were unfairly denied sick pay when seriously ill
-  Employers refusing to allow employees to take paid holiday
-  Women who were dismissed when they became pregnant
-  Instances of racist and sexist bullying at work
-  Migrant workers who were exploited and made to work excessive hours

-  Clients who could not afford the fees to pursue an Employment Tribunal claim
-  A client won their case at an Employment Tribunal, and was awarded several thousand pounds, but their ex-employers managed to avoid paying them any of the money due
-  Many of the examples of poorest practice relate to clients on zero hours contracts

Citizens Advice Scotland believes more should be done to promote fair employment and ensure that unfair employers are brought to account. In the report, we make a number of recommendations for how the system should be improved.

Improvements to the Employment Tribunal system

No fees should be charged to bring a claim before the Employment Tribunal

Citizens Advice Scotland has consistently opposed Employment Tribunal fees and believes them to be an unreasonable barrier to justice. The mounting evidence of their negative impact continues to grow, and we believe they should be removed.

The system of enforcement of Tribunal awards in Scotland should be strengthened. The Scottish Government and Parliament should work together with the UK Government to address this as it overlaps devolved and reserved issues

Only 41% of successful claimants receiving their award in full is clearly unacceptable. Citizens advice bureaux in Scotland have seen employers fail to pay awards of several thousand pounds to clients who have been wronged. Action should be taken to significantly improve payment and collection of awards for claimants.

As an example of changes that have been made elsewhere, a 'fast track system' for enforcing Employment Tribunal awards has been introduced in England and Wales which allocates a High Court Enforcement Officer at the beginning of the enforcement process in an attempt to speed up the process. A fee is payable but remission is possible¹. CAB advisers who have advised clients who enforce their judgement against an employer based in England have spoken positively about their experience of using it anecdotally in addition to the case cited earlier. The Scottish Government should explore a range of options for improving the system of enforcement in Scotland, compatible with Scots law.

¹ I have an Employment or Employment Appeal Tribunal award but the respondent has not paid – HM Courts and Tribunals Service <http://hmctsformfinder.justice.gov.uk/courtfinder/forms/ex727-eng.pdf>

 **Employment Tribunal awards, expenses or fees unable to be enforced due to insolvency or phoenix trading should be able to be claimed from the National Insurance Fund**

As we have seen, CAB clients have been successful in challenging unfair employment at a Tribunal, only for their ex-employer to make the company insolvent and restart as a 'phoenix company' to avoid paying them. To ensure the integrity of the system, it is important that employees in this situation are not disadvantaged and ensuring they receive the money they are due should be explored as a priority by being able to claim full award from National Insurance fund. We would support the suggestion made by the TUC of barring employers who are found guilty of this practice from being company directors.

 **The length of time an employee is required to have worked for an employer to be able to bring an Employment Tribunal claim for unfair dismissal should be reduced from two years to one**

As shown in this report, workers are often dismissed in circumstances which would appear to be unfair, but are unable to have their case heard by a tribunal because they have worked for their employer for less than two years. As well as enabling employers to get away with some very unfair practices, this creates an unfair barrier to justice for employees who may be substantially disadvantaged in finding a new job because of the lack of a reference from an employer who they have spent a fair length of time working for. Reducing the length of time required to bring an unfair dismissal claim to one year working for the employer, as was the case prior to 2012, would deter some of the most unfair practices.

 **The Acas Early Conciliation system has the potential to make a positive to the enforcement landscape, and ongoing evaluation of its effectiveness should be conducted. However, it should not be viewed as a replacement for the Employment Tribunal system, nor as a justification for levying fees to bring a Tribunal claim**

As we have seen in the previous section, the new early conciliation system is generally well-received and well-used. However, despite some anecdotal evidence of successful resolution of cases, detailed evaluation of its effectiveness should take place. It should also not be seen as justification for the continuance of the tribunal fee regime as it cannot resolve every case, and unfair employers can frustrate its good work by refusing to engage constructively.

Enforcing employment law and promoting fair employment

 **A new statutory body, an Employment Commission, should be created to oversee the enforcement of employment law, with the legislative teeth to target rogue employers**

The enforcement landscape for fair employment is patchy, and no one body has responsibility for actively challenging unfair employment and unscrupulous employers. A new body could bring together a number of functions to effectively promote fair employment.

For instance, whilst individuals can be successful in their employment tribunal claim, or at early conciliation, others will suffer in silence because of a fear of further detriment for raising the issue with their employer – justifiably as many of the cases in this report demonstrate. For those who are paid less than the National Minimum Wage, or believe their employer is not paying their Income Tax or National Insurance contributions, they can report this in confidence to two HMRC services, the Pay and Rights Helpline and the Tax Evasion Hotline. These reports can be actively investigated. Employers who do not comply with the law in these areas could be fined, required to pay the employee the money they are due, and can now be publicly ‘named and shamed’.

An Employment Commission could bring together these functions to either augment or replace the stretched and under-resourced HMRC services, and could roll out the same approach to tackle other unfair employment practices. The Commission could allow workers to confidentially report unfair treatment such as breaches of their maternity, holiday, sickness, pay, dismissal, redundancy and other rights. They could bring this information together with outcomes of employment tribunal judgements, non-payment of the National Minimum Wage and tax and reports from other agencies, such as Acas, citizens advice bureaux, trade unions and other advice and representation agencies.

Legislation could give the Commission power to investigate these reports, and identify rogue employers who ignore their legal responsibilities and treat their employees extremely unfairly. They could have the power to require unfair employers to undertake training on basic employment rights and to compensate employees who have suffered poor treatment. For the worst offenders, the Commission could have power to levy fines and ‘name and shame’ unfair employers, in the same manner as those who underpay the Minimum Wage currently can be.

However, the new body need not be all stick and no carrot. They could build on the good work carried out by Acas and others and help employers and employees understand workplace rights, actively promote best practice and aim to address problems before they arise.

 **Continuing additional resources for the enforcement of payment of the National Minimum Wage should be provided to ensure that its payment is promoted and all reports of underpayment can be actively investigated**

Recently, enforcement of the National Minimum Wage has taken a step in the right direction with increased fines for underpayment and the advent of 'naming and shaming'. However, as we have seen from this report and from reports from others such as the Trade Union Congress (TUC) there are still too many instances of underpayment. The UK Government's recent announcement of additional funding for Minimum Wage enforcement is welcome, but this must continue to enable awareness to be promoted and all reports of underpayment to be investigated, whether continuing as a function of HMRC or as part of a new statutory Employment Commission.

 **Efforts and resources to tackle employers not paying employees' Income Tax and National Insurance should be increased**

HMRC's Tax Evasion Hotline is a good example of a system that allows employees who have been unfairly treated to report wrongdoing, but more must be done. It cannot be right that the first workers know of their employer not passing on their tax and National Insurance payments to the authorities is when they receive a large tax bill several years later. Increased public education on what workers should look out for and promotion of the reporting mechanism should take place, whether as part of HMRC's responsibilities or as part of a new Employment Commission.

 **Scotland's Fair Work Convention is a welcome development. The Scottish Government should examine the possibility of extending its role once it is fully established**

The establishment of the Convention has the potential to actively promote fair employment in Scotland, and it could play a bigger role in future years. For instance, the Fair Work Convention could work with Acas, trade unions and other stakeholders, such as the Citizens Advice Service to promote awareness of basic rights at work and how to assert them for employees and employers alike. The Fair Work Convention could also take on a role overseeing enforcement of employment law under Scots law, such as the proposed administrative devolution of employment tribunals.

 **When an employee is dismissed, an employer should have a legal duty to communicate the redress systems that are open to the employee, should they wish to contest the decision**

This suggestion has been made by CAB advisers who have advised clients who have been dismissed in very harsh circumstances. This move would help improve fairness and transparency. If employers are free to sack people, then the redress systems should, at the very least, be made expressly clear to the employee.

Strengthening the rights of zero hours contract 'workers'

 **Protection from unfair dismissal should be extended to 'workers' as well as 'employees'**

The differences in the basic employment rights afforded to those classed as 'workers' compared with 'employees' has gained prominence with the increase in misuse of zero hours contracts. This option would strengthen the rights of workers on zero hours contracts by giving them some redress in situations where the amount of work provided is dramatically cut in an apparent attempt to 'get rid of them'. The announcement of a wide-ranging UK Government review of the employment status of 'workers' is particularly encouraging in this regard, and CAS would urge the review to carefully consider this option, and to take action based on its findings².

 **Full rights to parental leave and pay should be extended to 'workers' as well as 'employees'**

Citizens advice bureaux have reported cases where workers are denied paid maternity leave, including those on zero hours contracts. This reduces the flexibility of the individual engaged on a zero hours basis. One step to address this could be to extend the paternal leave and pay rights currently enjoyed by employees to workers.

As above, the welcome review of employment statuses has the potential to make a difference in this regard, and we encourage action to be taken based on its findings.

² Employment review launched to improve clarity and status of British workforce – Department for Business, Innovation and Skills, October 2014 <https://www.gov.uk/government/news/employment-review-launched-to-improve-clarity-and-status-of-british-workforce>

 **'Workers' and 'employees' on a zero hours contract should be given a statutory 'right to request' a contract that guarantees hours, without suffering dismissal or detriment for making the request**

One of the reasons that misuse of zero hours contracts occurs is because they are issued in situations for which they are not suitable. One possible remedy to this would be to give workers the right to request their contract be altered to one that is more suitable, such as a flexible part-time arrangement, without fear of being dismissed or disadvantaged by making the request. There would be no obligation on the employer to grant the request, but by giving reasons for declining it would encourage them to consider the implications of the contract on the worker, whether it is appropriate and alert them to the worker's desire for a more stable working pattern.

The UK Government has commented that in its view, workers would be able to use new rules on flexible working to make this request³. Publication of statutory guidance to make this clear to employees, employers and advice agencies would be welcome.



Fair Enough?

Whatever job you do and wherever you work, you have rights*.

These cover things like wages, sick pay, holidays and parental leave.

Is the way you are treated by your employer fair enough?

Check your employment rights by asking at your local Citizens Advice Bureau, or visiting www.cas.org.uk/fair-enough

*Some workers are not entitled to some statutory rights. Ask at your CAB or search www.adviceguide.org.uk for more details.



#fairenough

The Scottish Association of Citizens Advice Bureaux - Citizens Advice Scotland
(Scottish charity number SCO16637)

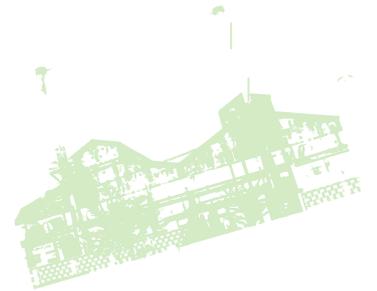
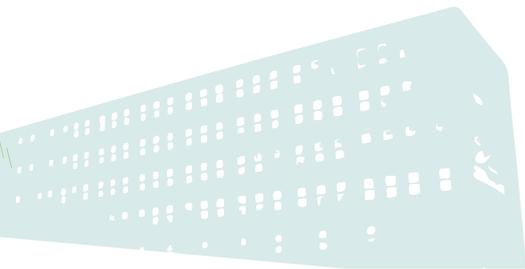
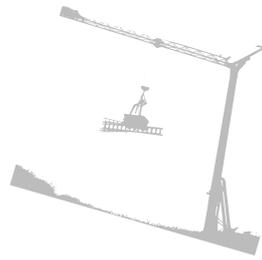


Poster from the Fair Enough? campaign which accompanies this report.

**www.cas.org.uk/fair-enough
#fairenough**

Fair Enough? summary report

³ HC Deb 6 November 2014, col 552



Citizens Advice Scotland (CAS), our 61 member bureaux and the Citizen Advice Consumer helpline form Scotland's largest independent advice network.

Advice provided by the Scottish CAB Service is free, independent, confidential, impartial and available to everyone. We are champions for both citizens and consumers and In 2012/13 we helped over 314,000 people deal with over a million issues. Our financial gain for clients in this year was £120,705,471.

Our bureaux deliver frontline advice services through more than 200 service points across the country, from the city centres of Glasgow and Edinburgh to the Highlands, Islands and rural Borders communities. This network of dedicated staff and volunteers is ideal to represent and assist the consumers in Scotland in all transactions and services they operate in.

Our vision is paramount to all our goals in the consumer landscape as well as being simple but robust:

*"A fairer Scotland where people
as citizens and consumers are
empowered and their rights
respected."*

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Get advice online: www.adviceguide.org.uk/scotland

The Scottish Association of Citizens Advice Bureaux - Citizens Advice Scotland (Scottish charity SC016637)