



Citizens Advice Scotland response Sustainable employment in Scotland inquiry Scottish Affairs Committee February 2017

- 1. Citizens Advice Scotland (CAS), our 61 member Citizen Advice Bureaux (CAB), the Citizen Advice consumer helpline, and the Extra Help Unit, form Scotland's largest independent advice network. Advice provided by our service is free, independent, confidential, impartial and available to everyone. Our self-help website Advice for Scotland provides information on rights and helps people solve their problems.*
- 2. In 2015/16 the Citizens Advice network in Scotland helped over 310,000 clients in Scotland alone and dealt with over one million advice issues. With support from the network clients had financial gains of over £120 million and our Scottish self-help website Advice for Scotland received over 4 million unique page views.*

Summary

3. Scotland's CAB network provides a substantial amount of advice relating to problems at work. In 2015/16, citizens advice bureaux in Scotland advised clients on 48,530 new employment issues.
4. Examples of unfair employment practices that have affected CAB clients include unfair dismissal; not being paid for work carried out; being paid considerably below the National Minimum Wage; being denied sick pay or paid holiday; and instances of bullying and discrimination including racism, and women who were dismissed when they became pregnant.
5. The emergence of so-called new forms of employment relationships between workers and employers, such as misuse of zero hours contracts, bogus or unwanted self-employment, as well as reliance on agency or temporary contracts instead of permanent contracts, have put a strain on existing employment protections.
6. CAS believes that it is in the interests of employees, employers and government that fair employment is promoted in Scotland. CAS believes that action should be taken by both the UK and Scottish Governments to prevent unfair employment practices from occurring and strengthen access to justice for workers who have been subject to them.
7. Unfair employment practices can be combated by making improvements to the Employment Tribunal system, by enforcing existing employment law and by promoting fair employment practices. Additionally, CAS believes changes should be made to strengthen the rights of people employed on zero hours contracts, and other similar forms of insecure work.

8. CAS believes that the devolution of employment programmes represents an opportunity to replace the existing Work Programme and Work Choice with schemes that more effectively support long-term unemployed people to get into work, based on the positive employability programmes already existing in Scotland. However, this requires that the Scottish approach to employability introduced by the Scottish Government aligns effectively with DWP approaches to employability and avoids any use of sanctions and conditionality.

Q2. How might employment in Scotland change over the next 10 to 20 years?

9. In recent years, the emergence of so-called new forms of employment relationships between workers and employers has put a strain on existing employment protections. Misuse of zero hours contracts, bogus or unwanted self-employment, as well as reliance on agency or temporary contracts instead of permanent contracts are situations where CAB clients have been poorly treated at work with very few practical options for redress. With the recent rise in the 'gig economy', this may be a continuing trend over the next few years.
10. Whilst in some cases, these arrangements may suit workers, CAB evidence has shown that in many cases these arrangements have been misused by employers to restrict people's basic rights at work, such as payment of the national minimum wage, not be unfairly dismissed, to expect proper disciplinary processes to be followed, to not be discriminated against, and to receive paid holiday and sick pay. These arrangements have also caused issues with the tax system and prevented people receiving support from in-work benefits.

Q3. To what extent is sustainable employment in Scotland threatened by unfair employment practices?

11. Scotland's CAB network provides a substantial amount of advice relating to problems at work. In 2015/16, citizens advice bureaux in Scotland advised clients on 48,530 new employment issues.
12. Over the past three years, Citizens Advice Scotland has published extensive evidence of the problems caused by some employers who treat their workers unfairly. This response builds on reports such as 'Fair Enough – Protecting Scotland's Workers from Unfair Treatment'¹, 'Seeking Decent Work – An Analysis of Employment Advice Provided by Scotland's CAB Network'², 'Working at the Edge: Zero Hours Contracts'³, together with evidence

¹ Fair Enough? Protecting Scotland's Workers from Unfair Treatment – Citizens Advice Scotland, February 2015 <http://www.cas.org.uk/publications/fair-enough>

² Seeking Decent Work – An analysis of employment advice provided by Scotland's CAB network – Citizens Advice Scotland, April 2016 <http://www.cas.org.uk/publications/seeking-decent-work>

³ Working at the Edge: Zero Hours Contracts – Citizens Advice Scotland, July 2014 <http://www.cas.org.uk/publications/working-edge-zero-hours-contracts>

provided to the UK Government⁴, Scottish Government⁵ and Scottish Parliament⁶.

13. Some of these issues are examples of extremely unfair employment practices which place clients in a difficult, complex and miserable situation. The numerous examples of unfair employment encountered by CAB clients include⁷:

- 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
- Many of the examples of poorest practice relate to clients on zero hours contracts

14. In addition, when employees seek to enforce their rights in the face of poor employment practices, many experience barriers accessing justice, including clients who could not afford the fees to pursue an Employment Tribunal claim

15. 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 –

⁴ Consultation response – Banning exclusivity clauses in zero hours contracts – Citizens Advice Scotland, November 2014 <http://www.cas.org.uk/publications/consultation-response-banning-exclusivity-clauses-zero-hours-contracts>

⁵ Response to the Scottish Government's consultation on changes to the public procurement rules in Scotland – Citizens Advice Scotland, April 2015 <http://www.cas.org.uk/publications/cas-response-scottish-government%E2%80%99s-consultation-changes-public-procurement-rules>

⁶ Submission to Scottish Parliament Economy, Energy and Tourism Committee Work, Wages and Wellbeing in the Scottish Labour Market inquiry – Citizens Advice Scotland, August 2015 <http://www.cas.org.uk/publications/work-wages-and-wellbeing-scottish-labour-market-inquiry>

⁷ Fair Enough? Protecting Scotland's Workers from Unfair Treatment – Citizens Advice Scotland, February 2015 <http://www.cas.org.uk/publications/fair-enough>

even those who are unemployed.⁸ 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.

Q3a. How can unfair employment practices be combated?

16. Unfair employment practices can be combated by making improvements to the Employment Tribunal system, by enforcing existing employment law and by promoting fair employment practices. Additionally, CAS believes changes should be made to strengthen the rights of people employed on zero hours contracts, and other similar forms of insecure work.
17. 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. We welcome the Scottish Government's commitment to do so once powers in this area are devolved. Whilst CAS welcomes the Ministry of Justice's recent proposals to extend the fees remission scheme and exemption from fees for proceedings for recovery from the National Insurance Fund⁹, we are disappointed that the opportunity to remove Tribunal fees outright was not taken, given the clear evidence from Scottish citizens advice bureaux¹⁰, and from many other stakeholders, that they represent an unreasonable barrier to justice for people affected by unfair employment practices.
18. Additionally, CAS would support moves to strengthen the system of enforcement of Tribunal awards in Scotland, where the majority of successful claims are not paid in full, and a reduction in the length of time employees are required to have worked for an employer to be able to bring an Employment Tribunal claim for unfair dismissal from two years to one.¹¹
19. The UK Government could also play a greater role in enforcing employment law and promoting fair employment. CAS recommends that 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.¹²

⁸ Employment, poverty and social exclusion – Poverty and Social Exclusion in the UK project, June 2014

http://poverty.ac.uk/sites/default/files/attachments/Bailey%2C%20Employment%2C%20poverty%20and%20social%20exclusion_0.pdf

⁹ Review of the introduction of fees in the Employment Tribunals – Ministry of Justice, January 2017 <https://www.gov.uk/government/consultations/review-of-the-introduction-of-fees-in-the-employment-tribunals>

¹⁰ The Price of Justice: The impact of Employment Tribunal fees on CAB clients in Scotland – Citizens Advice Scotland, March 2015 <http://www.cas.org.uk/publications/price-justice>

¹¹ Fair Enough? Protecting Scotland's Workers from Unfair Treatment – Citizens Advice Scotland, February 2015 <http://www.cas.org.uk/publications/fair-enough>

¹² Page 45 of Fair Enough? Protecting Scotland's Workers from Unfair Treatment – Citizens Advice Scotland, February 2015 <http://www.cas.org.uk/publications/fair-enough>

20. This body could bring together a number of existing functions, such as the HMRC Pay and Rights Helpline and Tax Evasion Helpline, 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.
21. 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.
22. CAS believes that more should be done to protect workers from misuse of zero hours contracts by employers. Citizens Advice Scotland has recommended that the following could be used as a definition of inappropriate zero hours contracts for the purposes of creating statutory guidance, which has since been adopted for use in the Scottish Government's Business Pledge¹³. However, this could equally apply to agency workers, or other so-called 'gig economy' workers.
23. A zero hours contract, or other similar form of employment relationship should be considered inappropriate:
- Where a worker would prefer a more secure part-time or full-time contract
 - If it causes hardship to individuals due to regularly changing patterns of work
 - If it denies individuals basic employees' rights
 - If it acts as a deterrent to workers asserting their basic employment rights
 - If an exclusivity clause is used (although this is now banned by the Small Business, Enterprise and Employment Act 2015)¹⁴
24. Citizens Advice Scotland also recommends that changes should be made to employment law to further protect people who are employed on a zero hours contract, as detailed below.

Q4. Does UK employment legislation meet the needs of Scotland, where those needs differ to those of other parts of the UK?

25. The status of those who are defined as 'workers' has become increasingly blurred in recent years, due to the emergence of different types of contractual

¹³ Scottish Business Pledge - <https://scottishbusinesspledge.scot/contracts/#fs-tabbed-15>

¹⁴ Response to the Scottish Government's consultation on changes to the public procurement rules in Scotland – Citizens Advice Scotland, April 2015 <http://www.cas.org.uk/publications/cas-response-scottish-government%E2%80%99s-consultation-changes-public-procurement-rules>

arrangement, most notably zero hours contracts. This has been misused by some employers to create ambiguity around the status of employment rights for people who work for them, particularly around whether mutuality of obligation exists. In practice, this has caused barriers for CAB clients in asserting or enforcing their rights.¹⁵

26. One possible solution may be to remove the distinction between ‘employees’ and ‘workers’ in law, given this overlap. This was one of the suggestions being considered in a review by the previous Government, the findings of which have never been published.¹⁶

27. Alternatively, CAS would recommend that there are other approaches that the Government should consider to clarify the status of workers employed on zero hours or casual contracts and protect them from being unfairly treated:

- Legislate to ensure that where mutuality of obligation for the employee to undertake work provided by the employer is present, an individual is classed as an employee rather than a worker regardless of what may be stated in their written contract
- Give workers a statutory ‘right to request’ a contract that guarantees hours, without fear of dismissal
- Extend protection from unfair dismissal to workers as well as employees
- Extend rights to parental leave and pay to workers as well as employees

Q5. What ambitions should the UK Government have for the future of employment in Scotland?

Q5a. What measures could the UK Government take to support sustainable employment in Scotland?

28. As detailed above, CAS believes that it is in the interests of employees, employers and government that fair employment is promoted in Scotland. CAS believes that action should be taken by both the UK and Scottish Governments to prevent unfair employment practices from occurring and strengthen access to justice for workers who have been subject to them.

Q6. How should the Scottish and UK governments work together to manage both the transfer of powers and funding relating to employment support programmes, and the ongoing overlap of responsibilities relating to employment in Scotland?

Q6b. What impact will the devolution of some employment support programmes have on provision of employment support across UK and on the individuals accessing this support?

¹⁵ Working at the Edge: Zero Hours Contracts – Citizens Advice Scotland, July 2014 <http://www.cas.org.uk/publications/working-edge-zero-hours-contracts>

¹⁶ 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>

29. CAS believes that the devolution of employment programmes represents an opportunity to replace the existing Work Programme and Work Choice with schemes that more effectively support long-term unemployed people to get into work, based on the positive employability programmes already existing in Scotland. However, this requires that the Scottish approach to employability introduced by the Scottish Government aligns effectively with DWP approaches to employability and avoids any use of sanctions and conditionality.
30. The largest areas of advice provided by bureaux in Scotland relate to benefits, tax credits and National Insurance, with 227,000 new issues in 2015/16 representing 39% of bureaux caseload in Scotland.
31. The proposals to introduce in-work progression in Universal Credit will have an impact on the delivery of employability services in Scotland. The Scottish Government should consider how its Scottish approach to employability support will interact with the efforts of the Jobcentre to encourage those in part time work and underemployed to increase their hours and earnings, whilst at the same time ensuring that the support provided by both the Scottish employability programme and the DWP is meaningful and appropriate for those it seeks to help. For example, it may not be appropriate to encourage those with caring responsibilities into full time employment if this is not something they want to or are able to do.
32. Equally, it is important to ensure that the service that will replace the Work Choice programme aligns effectively with the DWP's Work and Health agenda as outlined recently in *Improving Lives: The Work, Health and Disability Green Paper*¹⁷. The proposed strategy combines overlapping aims and actions in both devolved (health and skills) and reserved (social security and employment) areas. This will require collaboration between the UK and Scottish Governments to achieve the worthy and shared aspiration of halving the disability employment gap.
33. From the point of view of service users, it will not always be clear which government is delivering which service (for example, Jobcentre Plus services versus the new Work First Scotland service) so for the policy aims or delivery to be too disparate will be confusing.
34. CAS welcomes the Scottish Government's announcement that the employability services in Scotland will be voluntary and will not include sanctions and conditionality.
35. However, CAS remains concerned about how this structure will sit alongside the current punitive regime which remains reserved. Previously, Work Programme Providers have had to refer ESA and JSA claimants for a possible sanction in every case where they fail to comply with their conditions;

¹⁷ Department for Work and Pensions, *Improving Lives: The Work, Health and Disability Green Paper* https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/564038/work-and-health-green-paper-improving-lives.pdf

they have no discretion and are not able to consider whether the person had good reason for failing to comply – even though they know the claimant and might be sympathetic to, or in agreement about why non-compliance took place – e.g. a sick relative; transport problems; hospital appointments. Work Programme Providers should be there to support people into work rather than monitor conditionality.

36. Any requirement on a Scottish Government-devised employment support programme to continue to refer people for sanctions will result in a massive strain between Governments which have a different view of the sanctions and conditionality regimes put in place by the UK Government.

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