



Devolution and Employment Standards

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1. Introduction

This research aims to:

- generate up-to-date insight into how devolution in England, Wales and Scotland has affected the realisation of improved employment standards.
- identify key opportunities and constraints to furthering employment standards and decent work through devolved authorities.

It sets out the powers relating to employment standards and collective bargaining held by devolved authorities (e.g., local, combined, regional and national [England, Scotland, and Wales]). The starting point is that jurisdiction over employment rights (collective and individual), health and safety at work and aspects of workplace training are reserved to the UK government.

The research draws upon interviews with key stakeholders and four case studies focusing on the devolved governments of Scotland and Wales and devolved powers in the administrations of North of Tyne, Greater Manchester, and London. An additional case study was conducted of Leicester with the aim of focusing on the input of a local authority to improve employment standards, where there was no additional devolved power. There are also references to actions taken by London local councils. The intention was to demonstrate that while devolution brings some advantages to local communities, in terms of the powers that the devolved authorities have, those communities that are not contained within devolution areas can still look at new ways to improve employment standards, through working with local mayors, employers and trade unions. Case studies are based on interviews with those representing devolved authorities (with quotes denoted by DA), academics (quotes denoted by A) and trade unions (with quotes denoted by TU). The research considers:

- The key limitations to devolved powers and how these limitations affect the ability of devolved authorities to further employment standards and collective bargaining;
- The extent to which devolved authorities have used the powers available to them to further employment standards and collective bargaining;
- Whether and what powers are under-utilised;
- How devolved authorities have engaged trade unions in setting and monitoring policy related to employment standards;
- The key enablers and barriers for trade union engagement; and
- What trade union strategies have been most successful in relation to securing improvements in employment standards.

Research Methods are outlined in Appendix A. The review does not reference in detail the content of the various employment charters introduced over the last eight years in English authorities. Nor does it examine the detail of policy outcomes in the devolved authorities of Scotland and Wales. A TUC review published in September 2022¹ provides a detailed account of these as do several studies listed in Appendix C.

¹ TUC *Linking employment charters to procurement Opportunities and challenges September 2022*.

2. Executive summary

The summary is based on key research findings; recommendations at the end of the report suggest the key enablers and barriers for trade union engagement in devolution and effective trade union strategies in relation to securing improvements in employment standards. The report suggests that there is no one model to deliver improvements in regional employment standards. Each of the case studies reflects local labour market legacies, the nature and embeddedness of trade unions, political will, and resources. They are suggestive of what can be achieved with trade union engagement and influence, but also of limitations.

Limitations of Devolution

- The research suggests that economics rather than politics are driving government policies, so that devolution may become part of a strategy to reduce spending and devolution is not supported by necessary resources.
- Overall, the key focus of the devolution deals has been to shift power to the regions so that they can focus on economic growth. Increasing jobs, skills, and employability. Getting people into work and reducing reliance on benefits, are central to the work tasked to the devolved authorities and this can be at the expense of employment standards in existing jobs.
- The processes for putting devolution in place have been more complex than anticipated and it had taken longer for the devolved authorities to establish themselves. In turn this has meant that it has been more difficult to catalogue their achievements, in terms of concrete outcomes.
- A key limitation on the exercise of powers to improve employment standards is the very low floor of rights that apply nationally. The government's proposal to legislate to end all EU derived employment law by the end of 2023 would represent a further limitation on the potential that the devolved authorities have in relation to employment standards.
- Policies maybe identified with one charismatic figure and there is some concern that structures might not yet be sufficiently robust to withstand change at the top.

The use of powers

- The key gains from devolution are local administrations' better understanding of their populations and closer relationships with key local stakeholders.
- Devolution has legitimated the role of trade unions and worker representation and, in some cases, revived tripartite relationships between governments, employers and unions.
- The limited regulatory powers which the devolved authorities can utilise in relation to employment standards has directed them towards 'soft' measures, such as charters or commissions.
- There is a focus on pay in the form of the Real Living Wage (rLW) yet little movement on pay above that level. However, in some cases, devolved authorities are looking beyond pay to settlements guaranteeing minimum hours and/or sick pay.
- While charters are seen as useful and providing leverage, there are limitations in terms of improving employment standards. However, in the context of tighter labour

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markets there might be more willingness by employers to sign up to these where they would allow them to be identified as 'good' employers and to attract workers.

- Devolution had brought benefits to trade unions in terms of their learning programmes. In Scotland and Wales Union learning funds had been continued and within most of the new devolved authorities in England, funds were being made available for trade union regional skills' and learning programmes.

The under-utilisation of powers

- Charter initiatives acknowledge the importance of worker engagement and voice, but this is generally not defined as union recognition and collective bargaining. A focus on low pay can shift attention from the principle of the collective bargaining of workers' wider terms and conditions and work organisation as essential to the improvement of employment standards. A minimum hourly rate is easier for employers to attain.
- Key terms such as 'social partnership' and 'fair work' are in some cases not defined in practice, although some respondents felt that too much time was taken in attempting to define 'fair' or 'good work'.
- Devolutionary measures are seen to entail the equal promotion of employer and worker interests, despite power differences. Thus, it was sometimes perceived that a higher level of support is available to employers, compared to that offered to trade unions and workers. There was seen to be a pro-business mentality within the structures of administrations designed to keep employers on board, leading to concessions, particularly regarding small and medium employers.
- The accreditation of employers is resource intensive. There is debate about the merits of a 'binary' approach to accreditation whereby employers either meet a criterion or do not – more latitude means the introduction of complexity and nuance that allows employers leeway and may mean that charters only reflect legal compliance. Higher standards may reduce the pool of local employers that can deliver local services.
- An essentially voluntarist model means that enforcement of charter requirements is a challenge. There is hesitancy in policing employers and enforcement is constrained by lack of resources. There is caution on procurement by local authority officers due to a fear of legal challenge, with a belief that there is no legal power to compel suppliers to sign up to good work standards. Procurement specialists are often focused on the law and their statutory duties.
- The monitoring of contracts represents a challenge to procurement policies. With local authorities engaged in hundreds, if not thousands of contracts there is insufficient capacity to ensure compliance due to the hollowing out of in-house local authority staff.
- While devolution has brought a focus on social care and the terms and conditions of a largely female workforce, overall equality has not been central to devolved policies, but particularly, practice.
- While there was acknowledgement that pushing up standards can challenge the logic of contracting out, there was no clear preference for public sector provision of services and a perceived equivalence in public and private provision. This is a particular issue in social care.

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Trade union engagement

- Devolved authorities engage with trade unions, both in the formulation of strategies and in their application, with union representatives sitting on boards. However, much of this engagement remains at a technical level only, falling short of engaging with workforces directly. Worker engagement and voice are rarely expressed as being the property of workers themselves, who consequently have mostly been absent from the discussion and implementation of devolution.
- Questions about trade union capacity to deal with devolution were raised. The trade unions were seen as having an insufficient number of people who could engage at the strategic level, as they were industrially focused and there appeared to be the absence of a trade union vision as to what devolution could become and a range of positions expressed by different unions.
- Political and organisational structures within the devolved authorities are seen by some as insufficiently diverse, and that administrations do not reflect the composition of local communities in terms of gender, race and ethnicity, and disability.

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3. The context

3.1 What powers do devolution confer?

Devolution has been described as a process of decentralisation that ‘puts power closer to the citizen so that local factors are better recognised in decision making’². It has been applied principally to Scotland and Wales and more recently to regional bodies in England³. In Scotland and Wales legislation was introduced following referendums, where majorities voted to establish a Scottish Parliament and a National Assembly for Wales. Consequently, the *Scotland Act 1998* and the *Government of Wales Act 1998* were introduced, establishing devolved legislatures, given some powers previously held by the Westminster government. The introduction of devolution initially saw a period of growth. In the first decade following devolution in Wales jobs grew faster than in the UK, partly due to growing employment in the public sector. In Scotland too, the first decade after devolution saw increased prosperity⁴ although more recently earnings growth has been slower⁵. However, the link between these and devolution itself has been questioned, with a 2010 report on labour market trends finding no correlation between the policies of the devolved bodies and employment growth⁶.

The powers of the devolved governments of Scotland and Wales

Devolution did not mean that the new governments of Wales and Scotland could apply whatever measures they thought appropriate to ensure the welfare of their populations as they are both constrained by the terms of each of the devolution deals. The new administrations now have primary law-making powers in all areas that were not ‘reserved’ [to the Westminster parliament]. However, unlike the situation in Northern Ireland with its devolved assembly, they were not given powers to legislate on employment rights (collective and individual), health and safety at work and aspects of workplace training, which were all reserved to the UK government. This limitation did, at least initially, promote caution as to what matters might be within the devolved authority’s power in relation to employment and workers’ rights⁷.

Subsequently the Scottish and Welsh bodies were given additional devolved powers including in relation to social security benefits and some taxation [Scotland]. Amendments to the devolution legislation, such as in the *Government of Wales Act 2006*, have also imposed duties to promote or improve economic, environmental, and social well-being and to produce annual reports on equality. There are also powers in relation to employability which the Scottish government has used to establish a National Workforce Plus Partnership around voluntary and public sector providers. Employment Tribunals were due to be devolved in 2022 and may strengthen the rights of Scottish workers. However, the extent to which these powers have driven substantive change has been challenged⁸.

² Devolution of powers to Scotland, Wales and Northern Ireland, Published 18 February 2013, Last updated 8 May 2019.

³ This report does not cover the situation in Northern Ireland where more extensive powers have been devolved.

⁴ Dobbins, T. (2022) Good work: policy and research on the quality of work in the UK, Research Briefing, Commons Library Research Briefing, 6 June 2022.

⁵ McIntyre, Stuart, Mitchell, James and Roy, Graeme (2022) Careful what you wish for? Risk and with Scottish Tax Devolution, The Political Quarterly, pp 1-9.

⁶ Bivand, P. Bell, L. Vaid, L. Whitehurst, D. and Wan, K. (2010) The impact of devolution: employment and employability, Joseph Rowntree Foundation.

⁷ Cook, Phillip and Clinton, Nick, (2005) Visionary, precautionary and constrained ‘varieties of devolution’ in the economic governance of the devolved UK territories, *Regional Studies* 39, 437–451.

⁸ Parken, A. (2019) Equality and devolution in Wales: a distinct approach?

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Devolution in England

Devolution, although initially applying to Scotland and Wales, has since occurred in England as Westminster began a process of devolution to English authorities in 2014, with the first devolution deal reached for Greater Manchester (covering Manchester, Salford, Tameside, Oldham, Trafford, Stockport, Bolton, Rochdale, Bury and Wigan). The Greater Manchester Agreement provided powers and funding to the Combined Authority. The 2015 Conservative government was elected with a manifesto commitment 'to devolve powers and budgets to boost local growth in England'⁹ and consequently other deals have since followed covering Liverpool city region (2015), Sheffield city Region (2015), West Yorkshire (2015), North of Tyne (2017), West Midlands (2015), Tees Valley (2015), Cornwall (2015), Cambridgeshire/Peterborough (2017), West of England (2016), Norfolk (2022), Suffolk (2022), York and North Yorkshire (2022) and East Midlands (2022). The majority of these are Mayoral Combined Authorities (MCAs) each with an elected mayor, although three of them, Norfolk, Suffolk and Cornwall are with a single local authority and one, the East Midlands, is a combined county authority. In many of the above cases there have been further devolution deals, expanding the powers of the MCA.

Separate to these devolution deals Greater London has acquired similar powers through its Greater London Authority and Mayor established in 2000 and exercising a range of powers that include control of transport, the police, fire and rescue services.

Powers conferred on the English devolved authorities

The government stated that its aim was to hand power from the centre to cities to give them greater control over local transport, housing, skills and healthcare, with three principle aims, economic growth, better and more integrated public services and enhanced public engagement and accountability. Other aims attributed to devolution include, helping develop local leaderships, improving living standards and public services, boosting productivity, and restoring civic pride. Then Chancellor, George Osborne stated that people had the right to a single point of accountability where someone they elect 'takes the decisions and carries the can'¹⁰. At present the government, through its levelling up agenda, is committed to further expansion of devolution to cover any areas of the country that wish for devolution, and a new set of devolution deals came into effect in 2022.

To gain devolutionary powers, English authorities, either individually or combined, must apply to the Westminster government and a deal is reached as the result of negotiation. Each deal is unique although the areas that they can cover are limited to:

- Transport
- Skills, employment, health (joint working with UKTI; Business support services; Adult Education Budget; Work and Health)
- Land and housing
- Public Services (Children's services; Supporting families/working well; Police and crime commissioner and the Fire service).
- Finance

⁹ Ayres, S. Flinders, M and Sandford, M. (2018) 'Territory, power and statecraft: understanding English devolution, *Regional Studies*, Volume 52, 2018 - Issue 6: Labour, Work and Regional Resilience.

¹⁰ Sandford, M. (2023) Devolution to local government in England, House of Commons Library, Research Briefing, 16 January 2023.

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The range of powers devolved in England are thus more limited than is the case for Wales and Scotland and again power in relation to employment and industrial relations is reserved to the Westminster government. However, how the powers are exercised in relation to the five areas above could have an impact on employment standards.

There are three levels of devolutionary deal. Level 1 consists simply of informal joint working between local authorities. Level 2 is a single institution without an elected mayor, while Level 3 has a directly elected mayor with the greatest range of powers. Level 3 authorities have a consolidated transport budget, a key route network of roads, brownfield funding, an investment fund and can operate employment support programmes, Mayoral Development Corporations, Police and Crime Commissioner responsibilities, a public health duty and the power to set a precept on council tax and a supplement on business rates. Manchester and Liverpool have used their powers to apply a precept to their council taxes to fund the devolution programme and West Yorkshire is currently committed also to do so. Greater Manchester has funded beds for the homeless through this precept while Liverpool has a renewable energy plan to be similarly funded. To date none have used their powers to supplement business rates.

In some authorities the initial deal has been followed by subsequent deals which clarify or extend the devolution powers. As each deal is unique to the negotiating authority there is no one standard model for devolution, with some authorities having more extensive powers than others. In general, the longer the devolutionary arrangements have been in place, the more extensive the powers that can be exercised.

Within the five areas listed above, some authorities have a full range of powers while others do not. For example, in the area of Transport most have powers in relation to bus franchising, but North of Tyne, Suffolk and Norfolk do not. The Northern TUC argues that additional powers in relation to transport are essential in the promotion of good work policies. In relation to Skills, Employment and Health, West of England has no powers in relation to business support services. The deal for West Yorkshire, East Midlands, York and North Yorkshire, Cornwall, does not devolve work and health.

The *Adult Education Budget* (AEB) can be used to fund adult learners obtaining qualifications and while this was within the deals for the other devolved administrations, Cornwall only gained powers over the AEB in 2022. Save in the case of London, the AEB is held within the overall pot of funds devolved. In London it is ring fenced. Alongside the AEB, the national government operates *Local Skills Improvement Plans* (LSIPs) led by local employers and providers, however, MCAs only have a consultative role in these. It is TUC policy is that LSIPs should also involve trade unions. London along with Greater Manchester also operates a Work and Health Programme, which provides targeted employment support.

Manchester and West Yorkshire (as well as London) also have *control over policing* and Manchester (and London) over fire and rescue. New devolution deals give control of policing, fire and rescue to York and North Yorkshire. Manchester also is developing an integrated rehabilitation service with the Ministry of Justice. The more recent (2022) devolution deals

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have less mention of matters such as work and health, employment support, business support services, and spatial development¹¹.

The devolution deals have also allowed some MCAs, in particular Greater Manchester, to develop schemes on *affordable housing*. The Greater Manchester devolution deal devolved responsibility for *social care*. This led to the creation of a *Health and Social Care Partnership* which includes a commitment to better employment standards for healthcare workers. A *Working Well* programme also works around issues of health and access to work. In London there is an NHS land strategy that will see the proceeds from land sales invested in healthcare; a sugar levy to tackle obesity; and a *London Workforce Board*, to co-ordinate training between health and social care staff.

In relation to *transport* and specifically bus franchising, Manchester has introduced a bus franchising system and Liverpool City Region, South Yorkshire, West Yorkshire and Cambridgeshire & Peterborough are also considering a similar system to develop bus route networks suited to local areas. The bus franchising system is claimed as an employment support policy, aimed at providing an affordable journey from home to work. However, it has no focus on employment standards in relation to transport workers although within the franchising process there are certain minimum employment standards, such as the guaranteeing of pension rights in cases of contract transfer¹².

The role of elected mayors

Most of the devolution deals reached in England have an elected mayor, commonly referred to as a Metro-Mayor, whose role is to work with local councils. (A list of the current Metro Mayors is provided in Appendix D).

While the majority of the Metro Mayors are Labour, two are not. They are elected for four years and all seven will face re-election in 2024- 26. The Metro-Mayors were established under the devolution legislation, applying to England only, and they differ from the 16 existing elected mayors in the non-devolved authorities. Metro Mayors have a wider political remit to include economic development, planning and transport, as provided under the individual devolution deals. They cover more than one local authority and, in some cases, (such as Liverpool) there may be a local authority mayor and a combined mayor for the devolved administration. In contrast to the mayoral powers of the MCAs, London is characterised by greater powers to its mayor, who can take decisions without reference to the London boroughs, while its Greater London Assembly (GLA) only has power to veto a small number of high-level mayoral decisions. In the MCAs there are effective vetoes over mayoral decisions in relation to the local authorities under their umbrella.

How can powers be exercised?

Many devolution deals are relatively new and, in some cases, so recent that it is not yet possible to assess their impact. A government evaluation of the devolution deals, published in May 2021, found that establishment, legal compliance, building relationships and developing capacity had taken the new devolved institutions considerable time and that the

¹¹ Sandford, M. (2023) Devolution to local government in England, House of Commons Library, Research Briefing, 16 January 2023.

¹² Greater Manchester Combined Authority (2020) have your say on how your buses are run, Consultation Document.

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devolution agenda has been ‘fragmented since its inception, making it appear confusing to local stakeholders’¹³. Combined authority budgets are relatively small in comparison to the budgets of local authorities, somewhere between £15m and £38m a year. In the case of the nine MCAs, just three show an overspend for 2020/21 with the remaining having underspent on their budgets. They have relatively small staff resources. Except for Greater Manchester, that has a workforce of just over 2,000 and the West Midlands with just under 500, most of the rest have a workforce of between 50-100.

Atkinson’s research suggested that English devolution has been marked by limited local discretions and uncertainty as to the long-term role of the new ‘metro mayors.’ A 2021 review of the Northern Mayors¹⁴ suggests that while their powers ‘remain vulnerable to the whims of a centralising government’ and while they remain under-resourced, they have been using their formal powers and spending ability to create change. This includes: the bringing of Teeside Airport into public ownership (Tees Valley); proposals on bus franchising (Greater Manchester and West Yorkshire); the funding of a first ownership hub to help businesses become worker-owned or co-operatives (South Yorkshire).

An analysis of the Mayoral manifestos in their most recent elections suggests that their ambitions go beyond their formal powers and that they represent ‘a new style of political leadership that directly addresses local people and crafts narratives about place, local pride and belonging’:

‘Mayors’ ambitions have grown far beyond what centrally shaped devolution deals originally conceived. They have developed holistic place-based visions that utilise their hard powers, soft powers, and abilities to bargain and advocate for their places¹⁵.’

Identified as their priorities are, job creation through building inclusive and environmentally sustainable economies; creating healthier environments; and improving local transport. The mayors have also used their ‘soft’ powers to specifically focus on employment, through the development of local employment charters and in relation to public procurement policies as well as experimenting with new forms of inclusive democracy through citizen assemblies, partnerships in the creative industry sector and working with young people¹⁶.

The powers of the Mayor of London are established under different legislation with the role as a strategic and regional co-ordinator rather than as leader of a local authority. The Mayor of London has ultimate responsibility for transport, policing and the fire services in Greater London while the individual boroughs run most public services¹⁷.

¹³Evaluation of Devolved Institutions Final Report BEIS Research paper number: 2021/024 [Evaluation of devolved institutions \(publishing.service.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97442/evaluation-of-devolved-institutions-pub.pdf).

¹⁴ Johns, M. (2021) Northern Mayors, 100 days of a new term, IPPR North.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Stanford, M. (2022) Directly elected mayors, House of Commons Library Research Briefing, November 2022.

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3.2 Devolved powers in employment standards

There is a need to first define both *employment standards* and *collective bargaining*. For this research, *employment standards* are defined as the terms and conditions applying to existing jobs and how far these may be improved through devolved powers. In the absence of ‘hard’ powers the devolved authorities have been forced to address improving employment standards through ‘soft’ powers such as charters and ‘good’ work initiatives.

Of course, the position of individual workers may also be improved where they gain additional skills, allowing them to enter employment where they have previously been excluded or to access better jobs within the labour market. In such situations it is not the employment standards themselves that have changed, rather the worker adapts to obtain improved standards. In relation to the outcomes available through devolution, limited hard powers over employment often mean a focus on individual skills, employability and employment support. This report focuses on measures to than improve the quality of existing jobs, rather than policies aiming to increase more ‘good’ new jobs.

In relation to *collective bargaining* this research follows the TUC definition that collective bargaining is the official process by which trade unions negotiate with employers, on behalf of their members. It is only possible where an employer recognises a trade union and, between them, they decide on the scope of negotiations. It thus goes beyond the concept of worker voice which is frequently used to imply consultation only.

The range of powers devolved in England are relatively limited and do not specify the improvement of employment standards. As with the devolution agreements in Scotland and Wales, employment policy and the establishment of employment standards are specifically excluded. In terms of the use of their ‘hard’ powers these are limited in the field of employment. There are powers over job creation, adult learning and skills, as well as powers to guarantee health and well-being, but there is no power to alter existing employment terms or to amend them where the existing models are weak. The main reason for this is a desire by the Westminster government that employment rights come within the national ambit, to provide a level playing field through the whole of the UK, with the Westminster government having complete authority in relation to the setting of such standards. In reality, employment standards have never been the same throughout the UK. In areas such as Greater London where living costs are higher, there have always been specific measures (such as the London Allowance) to retain skilled workers.

In periods where national government is seen as committed to better working conditions for all it may be appropriate to argue for a single national standard. However, in a period where there are attacks on employment standards, devolved authorities have had to take on policies that defend employment standards within their areas of control, although there has been caution over what powers they can exercise. Authorities have used the *Social Value Act* to encourage contractors to pay the Living Wage¹⁸ (see below), while it has also been argued that the authorities do have some powers in relation to employment, on the basis that employment as such is not a reserved area, as the UK government only reserved *employment*

¹⁸ Ibid.

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*rights, duties, and industrial relations*¹⁹. Thus, various aspects of the current legal and regulatory framework – taken together - have created an enabling environment in this regard²⁰. However, such arguments remain to be tested in the courts. A study for Unison provides a detailed analysis of the extent of the legal powers which devolved authorities could utilise in relation to employment and refers to legal advice obtained by Liverpool City Council which indicated that employment terms could be included in procurement where it could be linked to best value in the contract, and then justified on a case-by-case basis. Procurement policies may thus be a way to improve employment standards, although the literature has provided limited evidence of the use of procurement in this way.

Indirectly it could be argued that the exercise of some existing powers may create situations where household expenditure is reduced and consequently workers have higher spending power. For example, the announcement by the Mayor of London in February 2023, that all primary school children would be entitled to free school meals, raises the spending power of households with primary school children. The decisions taken by some of the devolved authorities to introduce bus franchising, providing public transport to areas that were without it, similarly has the impact of raising household spending power where transport costs are reduced.

Each of the devolved authorities has used the limited powers that they have to address the needs of their communities. Of the five areas where they have devolved powers Transport, Skills, employment, health, Land and housing, Public services and Finance, there may be some scope to address employment standards. For example, as *Interviewee DA2* stated, that while the devolution deal was limited to job creation and skills' maximising opportunities, the mayor 'had interpreted these creatively'. The powers in relation to skills and job creation can be related to improving employment standards albeit indirectly. While, as discussed above, they do not of themselves raise standards in the workplace, they can provide the opportunity for workers to move to jobs where standards are higher. The North Tyneside devolution deal provides for an inclusive growth board with £20million a year for 'economic priorities' and a mandate to improve education and employment outcomes - including through initiatives to help overcome employment barriers for the those with disabilities, long-term health conditions and who want to rejoin the labour market following their having undertaken caring roles.

Greater Manchester has linked tackling poor wages through the creation of new jobs and through developing skill levels. Local skills improvement plans have the potential to improve skills particularly to workers excluded from the labour market by the lack of technical and digital skills. However, the strategy was constrained by the shortage of trainers due to the crisis in Further Education. Additionally, there was an issue of engagement with people from different backgrounds and the need to deliver diverse methods of training to fit shift patterns and workers' other commitments (*Interviewee TU9*). In commenting on skills training some interviewees suggested that there was too much of a focus on employability, but there could be more emphasis on life skills and on adapting to technical change (*Interviewee TU6*).

¹⁹ O'Connell, C. (2009) The place of equal opportunities in the devolution settlement: a legal analysis, Equality and Human Rights Commission.

²⁰ Johns et al. (2019) Decent work: Harnessing the power of local government. IPPR North.

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In Wales and Scotland decisions were taken to maintain union learning funds following Westminster government withdrawal of funding, and these have been used to promote members skills. In Scotland the Union Modernisation Fund had supported union capacity, while the Wales Union Learning Fund will provide more than £13m to support trade unions to deliver skills solutions and learning support to workers over a three-year period from 2022. North of Tyne, Yorkshire and Humberside, the Midlands and Liverpool have all provided funding for TUC regional skills and learning.

3.3 The potential of devolved powers

Equality

Authorities have existing duties to promote equal opportunities in relation to public bodies. The *Government of Wales Act 1998* specifically states that the assembly has to ensure that its business is conducted with due regard to the principle that there should be equality of opportunity for all people. The *Government of Scotland Act 1998* similarly states that public office holders or authorities must carry out their duties with due regard to the need to meet the equal opportunity requirements. This has been described as an ‘absolute duty’²¹ to promote equality of opportunity for all people. It is also said to have provided an established feminist presence within Welsh government policies²². Powers related to specific employment legislation, such as the *Equal Pay Act* and the *Disability Discrimination Act* remain reserved. A paper prepared for the Equality and Human Rights Commission on the legal basis of equality legislation in the devolved settlements, suggested that there might be scope for applying equal opportunities law to employment.

The Public Sector Equality Duty (PSED) in 2011, obliges public authorities to tackle discrimination and promote equality, including in public procurement. For the TUC ‘the PSED provides an important legal mandate to secure progress in charter equalities provisions, given the obligation it places on public authorities to advance equality through procurement’²³. The Scottish Specific Duties Regulations provide some scope for the Scottish Government to take action in the public sector, particularly in relation to the Gender Pay Gap. Regulation 8 of the Scottish Specific Duties Regulations requires listed public authorities to publish an Equal Pay Statement including occupational segregation and information, by gender, race, and disability.

There has been a focus on the role that devolution can play in raising the pay and conditions of social care workers (largely female). The Feeley Report into social care in Scotland and the Fair Work Convention’s 2019 report into the social care sector in Scotland raised the prospect of the extension of sectoral collective bargaining to social care and/or for a separate bargaining group for health and social care workers- both proposed a sector-level body. In Wales it has been proposed that the Care Inspectorate Wales take responsibility for monitoring basic labour standards as part of their inspection of registered providers in Wales, although this has not yet happened. Regulations require employers to take action against

²¹ Chaney, P. (2004) ‘The Post-Devolution Equality Agenda: The Case of Welsh Assembly’s Statutory Duty to Promote Equality of Opportunity’, *Policy and Politics* 32(1): 37-52

²² Parken, A. (2019) Equality and devolution in Wales: a distinct approach?

²³ TUC (2022) Linking employment charters to procurement Opportunities and challenges.

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casualisation in homecare (Regulation and Inspection of Social Care (Wales) Act 2016 and the Social Care Wales (Registration) Rules 2018)²⁴.

Public procurement

In addition to the specific devolved powers, duties are placed on public authorities procuring services providing 'an enabling environment in this regard'²⁵. The *Local Government Act 1999* had introduced a best value duty, thereby significantly expanding the scope for including employment-related outcomes in procurement. The *Public Services (Social Value) Act 2012* required that public authorities consider, at the pre-procurement stage, 'how what is proposed to be procured might improve the economic, social and environmental well-being of the relevant area' (although this was not enforceable). The *Public Contracts Regulations 2015*, added specific reference to employment terms, including that 'Contracting authorities may lay down special conditions relating to the performance of a contract, including economic, innovation-related, environmental, social, or employment-related considerations, if they are linked to the subject-matter of the contract and indicated in the tender'²⁶. Since January 2021 'In-scope organisations' (Central Government Departments, their Executive Agencies and Non-Departmental Public Bodies) have been required to implement the 'social value model'²⁷. The *Procurement Bill 2022* provides a new legal framework, with 'public benefit' included in the Bill as a core objective of procurement, which according to the government encapsulates social value considerations. The TUC response to the Bill is that it needs to 'support a more strategic and intelligent approach to public procurement that leverages the purchasing power of the public sector in support of employment standards throughout supply chains, jobs, skills and economic development' with the aim of supporting strategic national and local priorities, including quality employment, and have strong transparency, oversight, exclusion, and remedy. This would require the right of contracting authorities to flexibly set and implement their own strategic priorities and means of supporting better work, for example through charters²⁸. The Scottish government will retain its own procurement arrangements while the general scope of the Bill will be applied in Wales. In Scotland, as advocated by the Feeley Report, a National Care Service could eliminate competition from the commissioning process to support equal pay and move towards collaborative and ethical commissioning. The National Care Service (NCS) provides for the alignment of the health and social care workforces, allowing for the pay and grading of social care workers within either the Agenda for Change (AfC) or Scottish Joint Council (SJC) frameworks.

The devolved authorities thus can exercise considerable power in relation to the procurement of goods, services, and work and in many key sectors are the principal client. Procurement can be a strategic lever for achieving a wide range of policy goals²⁹. Research demonstrates the role of public procurement in the promotion and deliverance of sustainable outcomes, including in relation to employment conditions³⁰ thereby benefiting societies and economies.

²⁴ Hayes, LJB (2023), TUC Legal Advice Panel.

²⁵ Johns et al. (2019) Decent work: Harnessing the power of local government. IPPR North.

²⁶ TUC (2022) Linking employment charters to procurement, opportunities, and challenges.

²⁷ Johnson et al (2021) 'Raising the bar? The impact of the UNISON ethical care campaign in UK domiciliary care'. *Transfer: European Review of Labour and Research*. 2021;27(3):367-382.

²⁸ TUC (2022) The Procurement Bill – Committee stage briefing.

²⁹ OECD (2022) Integrating Responsible Business Conduct in Public Procurement Supply Chains: Economic Benefits to Governments, OECD 2022.

³⁰ McCrudden (2004), Using public procurement to achieve social outcomes.

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An OECD 2022 report notes that, when companies address working conditions and other responsible business objectives in their supply chains, they can contribute to reducing gender pay gaps, combating and preventing human and labour abuses across the global value chain³¹. The North East TUC *Great Jobs Agenda* has identified procurement as a potential mechanism for a wider focus on work quality and employment conditions. Where working conditions are improved there are benefits to local communities as household budgets grow and ways of improving terms and conditions in the workplace could thus fall within the competence of current powers. As Harrison and Edwards have noted, in relation to social care, this would provide an opportunity to ‘rebuild social capital within the workplace, where it has been lost through outsourcing and the contractualisation of social care’³².

Promoting ‘fair work’ and social partnership

The devolved administrations have established various initiatives towards promoting better, good or fair work (the term used may differ), including the *Fair Work Convention*, established by the Scottish Parliament in 2015, the *Fair Work Wales Commission* established in 2018 and the good employment/fair work charters in some of the devolved English city regions. Fair Work Wales, defines ‘fair work’ as ‘where workers are fairly rewarded, heard and represented, secure and able to progress in a healthy, inclusive environment where rights are respected’ and where legal rights are respected and enforced.

Research has shown that active promotion of the Real Living Wage (rLW) standard has emerged in both Wales and Scotland from a broader commitment to an economic policy of ‘inclusive growth aided by powers acquired through devolution’³³. In Wales the *Well-being of future generations Act 2015*, was aimed at improving the social, economic, environmental, and cultural well-being of Wales. From this, and following campaigns by trade unions in Wales, have followed proposals for legislation on social partnership that would refer explicitly to ‘fair work’ and include a Social Partnership Duty on public bodies to seek consensus or compromise (as far as is reasonable) with its recognised trade union (or where there is no trade union, staff representatives) on its well-being objectives and strategic decisions to meet such objectives³⁴. It is believed that this might go some way to mitigating the lack of powers in relation to employment legislation³⁵. The legislation, although limited to a duty to consult and not to bargain, would legally embed social partnership and social dialogue between government, employers, and trade unions, regarding matters like fair work. It would create a social partnership council; strengthen socially responsible public procurement standards; and deliver fair work outcomes. Its aims are:

- The promotion of fair work through economic incentives (including supporting fair work through setting public sector procurement standards).
- Promoting fair work through trade unions and collective bargaining.
- Promoting fair work through other measures (such as increasing awareness of fair work).

³¹ OECD (2022) Integrating Responsible Business Conduct in Public Procurement Supply Chains: Economic Benefits to Governments, OECD 2022.

³² Ibid.

³³ Heery, E. Hann, D. and Nash, D. (2020) Political devolution and employment relations in Great Britain: the case of the Living Wage, *Industrial Relations Journal*, 51:5, September 2020, pp. 391-409.

³⁴ Wales TUC Briefing: Social Partnership and Public Procurement Bill.

³⁵ Parken, A. (2019) Equality and devolution in Wales: a distinct approach?

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- Taking fair work forward building capacity, institutions, and mechanisms (proposed a new Office for Fair Work within the Welsh government, and sector-level Fair Work Wales Forums, starting with Social Care)
- Measuring and reporting progress on Fair Work.

The Welsh TUC has supported amendments to ensure that social public works clauses are included, where the primary contractor enters into subcontracting arrangements³⁶. The Welsh Government Programme for Government has included the payment of the rLW, with effect from April 2022 for social care workers, although this does not equate to an employment right to the rLW as such.

The Fair Work Convention Scotland published its Fair Work in Scotland report at the end of 2020. It recommended that targeted sector-level interventions by the Scottish Government, Fair Work Convention and employers and trade unions were necessary to address constraints to fair work, aimed at reforming these sectors' core business and employment models. One of the main recommendations is to create sector level fair work processes. In September 2021, the Scottish Government published 'Fair Work First Guidance' to support the implementation of fair work in workplaces across Scotland primarily using public procurement and 'social licensing' rules, whereby the award of public contracts, grants and funding depends on payment of the real Living Wage, trade union recognition, minimal use of zero hours contracts, and positive action to address the Gender Pay Gap³⁷. Moore's analysis of Ethical Care Charters (ECC) suggested that the political and legal context in Scotland and the promotion of 'fair work practices' through public procurement reform appears to have eased the introduction of the ECC there³⁸.

3.4 The constraints on devolved powers

Ayres et al. concluded that there has been a 'rhetoric-reality gap' and that a 'devolution revolution has not occurred'³⁹. They noted that, in the context of far-reaching public sector budget cuts, devolution to the English regions was in part an attempt to shift responsibility for making unpopular cuts to public services. It is suggested that successive governance 'solutions' within England have been imposed by the centre and have been driven purely by an economic/technocratic outlook⁴⁰. Parken noted an erosion of powers post-Brexit; as EU funding streams ended, undermining the Welsh approach to equality and sustainability in social and regional development programmes⁴¹.

Harrison and Edwards found that success was dependent on political leadership at all levels of implementation, including national influence and here there were tensions between progressive policies and less progressive agendas such as the government work programme.

³⁶ Wales TUC Briefing: Social Partnership and Public Procurement Bill.

³⁷ Dobbins, T. (2022) Good work: policy and research on the quality of work in the UK, Research Briefing, Commons Library Research Briefing, 6 June 2022.

³⁸ Moore, S. An Evaluation of UNISON's Ethical Care Charter Work, Employment and Research Unit; University of Greenwich.

³⁹ Ayres, S. Flinders, M and Mark Sandford, M. (2018) Territory, power and statecraft: understanding English devolution, [Regional Studies](#), Volume 52, 2018 - [Issue 6: Labour, Work and Regional Resilience](#).

⁴⁰ Tomaney, J. (2016). Limits of devolution: Localism, economics, and post-democracy. *Political Quarterly*, 87(4), 546–552. doi:10. 1111/1467-923X.12280.

⁴¹ Parken, A. (2019), Equality and devolution in Wales: a distinct approach? Cardiff Business School.

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They raise the question as to how progressive regional and local policies can be built within the constraints of austerity, public sector funding cuts and the unrelenting requirement to deliver more for less⁴².

Academic and policy literature concurs that raising employment standards requires a combination of 'hard' (the powers specifically set out in the devolution deals) and 'soft' voluntarist policy measures. While what matters most to employees is hard policies, employers typically prefer soft policies, and for advocates of decent work it is usually a mix of these⁴³. Dickenson et al. argue that 'soft' measures are insufficient and that initiatives need to be supported by legislative interventions⁴⁴. Gibb et al., in their study of employers, found that they would welcome a clear, widely accepted and easily measurable definition of 'decent work' and that employers often believe that they already offer 'decent work', 'without necessarily having a clear understanding of what 'decent work' means'⁴⁵. Similar views were reported by Harrison and Edwards⁴⁶. Also, there was a tendency that those employers who were engaging with charters were generally already offering better work⁴⁷.

3.5 The next stages of devolution

The current government is committed to extending the devolution process to every area of the country where there is a demand for it. In November 2022 the Labour Party published a report from its "*Commission on the UK's Future*"⁴⁸, chaired by former prime minister Gordon Brown, calling for extending devolution by giving metro-mayors powers to devise local skills' improvement plans and to devolve and consolidate a number of skills and careers-related funding streams. The proposals would also devolve the administration of JobCentre Plus to local authorities, linking local employment needs to local skills' training, combining this with employment support and community health services and provide greater support for bus franchising, including by municipally-owned companies, and more scope for local partnerships to shape local rail services. It also calls for the encouragement of particular industries through procurement and demand incentive. It proposes that local administrations are given greater fiscal flexibility to determine their own priorities.

The Commission argues that the UK has 'an unreformed, over-centralised way of governing that leaves millions of people complaining they are neglected, ignored, and invisible, all too often felt to feel as if they are treated as second class citizens in their own country'. It identifies regional economic inequalities as reflected in lower wages, poorer health, and fewer educational opportunities. It therefore calls for a change in governance, giving greater powers to the governments of Scotland, Wales, and Northern Ireland, identifying and taking

⁴² Harrison, D. and Edwards, P. (2018) Making Procurement Work for All Procurement practices as a route to fulfilling work in North East England.

⁴³ Gibb, S., Ishaq, M., Collins, C. (Ed.), Pautz, H. (Ed.), & Stuart, F. (Ed.) (2016). 'Decent Work': The Employers' View. (UWS-Oxfam Partnership, Collaborative Research Reports Series, Decent Work in Scotland: Thematic Report 2). UWS-Oxfam Partnership.

⁴⁴ Dickinson, P. (2022) Review of Employment Charters in the English Mayoral Combined Authorities, ReWAGE, Universities of Warwick & Leeds.

⁴⁵ 'ibid.

⁴⁶ Harrison, D. and Edwards, P. (2018) Making Procurement Work for All Procurement practices as a route to fulfilling work in Northeast England.

⁴⁷ Dickinson, P. (2022) Review of Employment Charters in the English Mayoral Combined Authorities, ReWAGE, Universities of Warwick & Leeds.

⁴⁸ The Labour Party (2022) A New Britain: Renewing our Democracy and Rebuilding our Economy Report of the Commission on the UK's Future.

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a bottom-up policy that would transfer power from national to local administrations in England, empowering towns, cities and regions. This is described as a ‘double devolution’ pushing power as close as possible to people and communities.

The Commission specifically focuses on worsening employment standards in the UK, describing ‘a lost decade for workers’, not because they work less hard, but due to long-term underinvestment - in capital asset formation, skills, and infrastructure. It therefore calls for the strengthening of workers’ rights and for progress towards fair wages with the reform of UK employment law to be considered in the context of social dialogue with trade unions. At the same time, it is cautious about breaching the floor of basic employment rights and would not support a right for regions to undercut national standards. It submits that by devolving responsibility for economic regeneration to regional, city or other locally based administrations, this decline can be reversed.

Future policy direction

Prior to the 2019 general election, the UK government published its manifesto with a pledge to “level up” the UK. A subsequent *Levelling Up White Paper* was published in February 2022. It acknowledged the UK’s high geographical inequality and stated that the aim was to close the gap in pay, employment, and productivity between top and bottom performing areas⁴⁹. It sets out a new devolution framework for England, extending it beyond metropolitan areas, underpinned by four principles: effective leadership, sensible geography, flexibility and appropriate accountability. The White paper sets goals for increased skills’ training and to support this it promotes: putting local employers at the heart of provision; strengthening locally accessible institutions; ensuring all individuals have lifetime access to training; offering new opportunities to access high quality work and progress in the workplace; and providing employment support for disabled people and people with health⁵⁰.

Employment Support focuses on getting people into work, however the Commission on the Future of Employment Support is looking at ways in which employment support and services could more effectively help people who want to, to move into, and progress in work and help employers find, recruit, and retain the right people across the UK. It has asked what role employment support should play in tackling low pay and job insecurity and raised the issue of good employer practice in relation to job quality. A submission from the Local Government Association points to the work local government can do with employers around good work, citing the North of Tyne Combined Authority’s Good Work Pledge and Greater Manchester Good Employment Charter⁵¹.

In 2021 the Wales TUC launched the Future of Devolution and Work Commission tasked with considering the impact that the current devolution arrangements are having on standards of work in Wales. Its two broad objectives are 1. to develop options for fundamental reform of the constitutional structures of the United Kingdom; and 2. to “consider and develop all progressive principal options to strengthen Welsh democracy and deliver improvements for the people of Wales”⁵². In Scotland work continues through its Fair Work Convention and in

⁴⁹ Ifan, G. Siôn, S. and Wincott, D. (2022) Devolution, independence, and Wales’s fiscal deficit.

⁵⁰ Levelling up white paper: LGA briefing, 4 February 2022.

⁵¹ LGA response to the Commission on the Future of Employment Support (2023).

⁵² Future of Devolution and Work Commission: Interim Progress Report.

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England a range of initiatives at primary and secondary tier of regional and local authorities is contributing to new ways of addressing the issue of bad work and its elimination.

4. Research Findings – Devolution and employment standards

Devolution has resulted in the shift of some powers from the Westminster government to the administrations of Scotland and Wales, as well as to those authorities in England that have reached devolution deals with Westminster. Interviewees acknowledged the benefits that devolution had brought to the administrations concerned, for example, *Interviewee TU14* acknowledged the 'positives of devolution' whereby those who understand the local population are closer to decision-making, there are closer relationships with key stakeholders and there is an ability to agree changes.

However, the context of the post 2010 deals has differed from the regional development policies implemented during the period of the Labour government from 1997 to 2010. An interviewee with experience of the pre and post 2010 situation described the Conservative government policies as 'weak regional policies' where the trade unions were disadvantaged; in comparison Labour's policies had been inclusive of a trade union role (*Interviewee TU6*). There was a view that it was economics that was often driving the agendas rather than the policies of the government and particularly in relation to well-being (and consequently employment standards) there had been a more recent shift to devolution being part of a strategy to reduce spending (*Interviewee TU1*). There was also a reference to tensions between combined authorities and local authorities (*Interviewee DA2*), particularly where they had different political allegiances.

The devolution process has been complex, and it has taken some time for the devolved authorities to establish themselves and begin to exercise their powers. One devolved authority official highlighted some of the difficulties the new authority had faced, noting that there were 70 directly employed staff, but many were seconded from the previous authority, and it had taken time to change the culture:

'It took time for it to ensure priorities were met and things could have been speeded up. Internal processes needed attention, policies got to cabinet before [the Mayor] had seen them, and it was recognised that there was a need to ensure that [the Mayor] has early sight of policy proposals so that it was not officers reflecting priorities. There was a culture of policies being office rather than politically led' (*Interviewee DA2*).

At the same time there can be tensions between the policies that the devolved authority promoted in terms of 'good work' and its role as an employer, particularly in the context of the current wave of industrial action (*Interviewee TU4*). Furthermore, each devolved authority is different, both with respect to the powers that their devolution deal offers, as well as in relation to the politics of the authority and its leadership. *Interviewee TU6* spoke of authorities that were geographically close to one another but that were 'as different as chalk and cheese' and the issue was how devolution could bring benefits everywhere.

As already noted, the devolution deals reached so far limit the powers of devolved authorities to engage directly with the improvement of employment standards. In each of the five devolved areas, while it might be open to the authorities to interpret their powers to effect improvements, they are also held back by concerns that they could be challenged by the Westminster government that sees employment standards as a matter reserved to it. This concern has also encouraged the authorities and the mayors to make greater use of their 'soft' powers to introduce changes in the field of employment. As *Interviewee DA2* noted, the

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mayor 'uses soft power to bring people together across the combined authority' and this was seen as a more effective way of working. In the case studies interviewees were more likely to reference the work done in the devolved authorities around employment charters, pledges or employment commissions.

4.1 Good or Fair Work Charters and Pledges

A number of good employment or fair work charters have been introduced in devolved English city-regions. These voluntarist charters generally outline the main elements of good work, such as a real living wage, job design and skills' development, and support local employers to establish them through encouraging best practice. They are not a consequence of devolved powers, but they arise in situations where the devolved authority has the political will to make changes but lacks the legal power to do so.

In the interviews it was not universally the view that employment charters were the best means of achieving improvements in employment standards. They were a 'good tool in the box but not the answer' in the absence of a good floor of employment rights (*Interviewee TU6*). They were voluntary and did not necessarily deliver change (*Interviewee TU14*), but they did offer some political leverage (*interviewee TU10*). *Interviewee DA7* described them as having 'created a movement' and although they did not work on their own, they needed 'visibility and noise', they could make a difference, particularly in the context of tighter labour markets. There was a view that charters had to be applied lightly, as employers did not want cumbersome, complex or tortuous processes and preferred an approach based on due diligence rather coercion (*Interviewee DA5*).

There were contrary opinions, one interviewee believed that fair work charters did not make for changes, and too much effort was put into defining fair work (*Interviewee A3*). Another commented that they needed teeth to enable trade union activists and that without the force of law little could be achieved (*Interviewee TU13*). For this interviewee charters were really something that was promoted among employers, but workers and union demands for better employment standards had been lost in the quest to give employers increasing initiatives to improve their practices.

A key limitation on the exercise of powers to improve employment standards is the very low floor of rights that apply nationally. The Westminster government's plans to disapply all EU legislation by the end of 2023 would further weaken the powers of the devolved authorities in relation to the improvement of employment standards. *Interviewee TU6* expressed the view that actions by devolved authorities on employment charters and standards would have much more chance of impact if the national environment was supportive and charters were thus less likely to be subject to challenge from the Westminster government.

Legitimizing worker representation

Across the case studies a key benefit of devolution was seen to be the greater legitimacy given to trade unions, this is particularly the case in Wales. Here and in Scotland, Greater Manchester and North of Tyne, there is some evidence of a renewed tri-partism, bringing together government, employers, and trade unions. While Greater Manchester requires trade union access to employers, the North of Tyne Good Work Pledge is unique in its

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requirement that advanced accreditation must come with union recognition and not just living wages but living hours. Examples include:

- In Wales the Social Partnership and Public Procurement Bill (SPPP), which is expected to come into law in 2023, will require the establishment of a Social Partnership Council on which employers, trade unions and government will sit. It will impose a statutory duty on some public bodies to seek agreement with their recognised trade unions, or staff representatives, in setting out their well-being objectives and a consequent statutory duty on the government to consult with the social partners. However, it does not apply outside beyond these public bodies.
- In the North of Tyne the *Good Work Pledge* advanced accreditation requires trade union recognition.
- In London union recognition is flagged as desirable under the highest level grade of the good employment standard, however, the Greater London Authority (GLA) will launch in 2023 a *Good Work Charter for the Gig Economy* which unlike its *Good Employment Standards* is not based on accreditation but where union recognition and worker dialogue are an essential criterion for the assessment of good employment standards.
- In Scotland the *National Care Service: Fairer Scotland Duty Assessment Bill* aims to embed sectoral and collective bargaining in social care.

The Real Living Wage

In all the case studies conducted for this research the focus had been on combatting low pay through the promotion of the Real Living Wage (rLW) in their local economies⁵³. There was variation in mechanisms to raise pay rates, namely procurement, employer accreditation through charters or a mixture of both. Accreditation of the living wage may be direct through tri-partite bodies as in Greater Manchester's *Good Employment Charter* and in the North of Tyne's *Good Work Pledge* or indirect through the Living Wage Foundation or, in Scotland, the Poverty Alliance. Examples include:

- From October 2016 the Scottish Government and the Convention of Scottish Local Authorities (COSLA) jointly agreed that frontline care staff working in publicly funded adult social care should be paid at a minimum the rLW.
- The Welsh Government has applied the rLW to registered workers in care homes and domiciliary care in both adults' and children's services as well as to personal assistants funded through a local authority direct payment.
- The Greater London Authority has launched a pared down Good Employment Standards (GES) scheme covering micro employers (10 or fewer employees) requiring payment of the rLW, although the other three pillars of the GES have been adapted to reflect these organisations more limited resources.

Without devolved powers two councils had found ways to improve pay and conditions.

- In Islington the Council funds a Coop Development Agency that would promote better working conditions and has set up a delivery cooperative paying the rLW and is exploring a similar social care cooperative.
- In the London borough of Southwark, Unison and the local authority have agreed a *Residential Care Charter* to improve working terms and conditions for residential care providers. It guarantees payment of at least the London Living Wage, pays for handover time between

⁵³ In 2023 the rLW was £10.90 an hour, compared the UK National Living Wage, which from April 2023 was £10.42 an hour.

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shifts, eliminates the use of zero hours' contracts, unless requested by staff, and provides for free training during working hours. The Council has used the precept on council tax to fund improved conditions.

- Greater Manchester has pledged to fund the difference between the government mandated minimum wage and the Real Living Wage in adult social care.

Beyond pay

Some of the initiatives had gone further than pay, setting minimum numbers of hours of work and other conditions, such as sick pay. Charter initiatives also referenced workers' health and safety. All of these represent the positive promotion of workers' rights and criteria for hours are particularly important to ensure that requirements for the rLW are not achieved by reducing guaranteed hours. Examples include:

- In Greater Manchester Real Living hours (rLH) are now a requirement under the seven pillars of its *Good Employment Charter*, with employees having the right to a minimum of 16 hours of work, should they wish this. Sick pay from day one is also part of the living wage requirement and there are rights to request flexible working, with a response within a month.
- In North of Tyne the *Good Work Pledge* commits signatory employers to paying both the rLW and to guaranteeing rLH.
- In London the *Good Employment Standards* initiative includes sick pay from day one and sets a living hours' minima unless otherwise requested by the employee.
- In Scotland *Fair Work First Guidance* covers investment in workforce development and no inappropriate use of zero hours contracts, and in September 2021 was updated to include the facility for flexible working and the rejection of fire and rehire practices.

4.2 Procurement

The literature review sets out the relevant legislation on procurement, noting an obligation on local authorities to take account of best value and social value duties at pre-procurement stage. There is a distinction between social value and procurement – in the tender process applicants may score highly on social value, but still lose contracts on other criteria, while procurement suggests the need for compliance. *Interviewee A3* stated that procurement had potential to impact employment standards, if delivered in a context where public contracts were not given to organisations that did not promote trade unions and where the promotion of collective organisation was seen as the best way to distribute resources.

While, as discussed below, there is caution about using procurement to improve employment standards there has been progress, as the following examples demonstrate:

- In Wales the SPPP Bill makes changes to the rules on public procurement requiring contracting authorities to carry out procurement in a socially responsible way, to improve the economic, social, environmental, and cultural well-being of their area and to produce annual procurement strategy statements.
- In Scotland the Fair Work First Guidance covers those involved in awarding public sector grants, other funding, and public contracts as well as those who receive funding through public sector grants, sponsorship arrangements with the Scottish Government and/or are involved in the delivery of contracts. They are asked to adopt fair working practices, specifically appropriate channels for effective voice, investment in workforce development, no inappropriate use of zero hours contracts, action to tackle the gender pay gap and create a more diverse and inclusive workplace; and payment of the rLW. In September 2021 the guidance was updated to include the facility for flexible working and the rejection of fire and rehire practices.

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- Legal advice obtained by Liverpool City Council indicated that employment terms could be included in procurement, where it could be linked to best value in the contract, and then justified on a case-by-case basis⁵⁴.
- London has public procurement policies which require that those working on contracts for the GLA must receive at least the London rLW and further calculates social value by the extent to which companies apply its four pillars of good employment.
- In Manchester there have been discussions as to how procurement can be used in supporting the Charter, with the unions arguing that procurement needs to be directly linked to full Charter membership, to give businesses a real incentive to sign up. Here the rLW will be required in contracts from April 2023.
- Newcastle council has signed up to advanced accreditation as set out in the Good Work Pledge charter established by the North of Tyne Combined Authority. This involves applying the rLW to its supply chain, using preferred provider status to those that pay the rLW.

Without devolved powers two councils offered examples of their use of procurement:

- Islington Council in London has inserted, in its contract for the development of the former Holloway Prison site, that 30 per cent of those employed on site are female.
- In Leicester unions are looking to see how procurement could be used to extend the reach of their voluntary initiative with fashion brands to go beyond requirements on garment manufacturers, to include supply chains - hauliers, suppliers, delivery companies and other businesses that engage with the garment industry.

4.3 Building union capacity

Respondents raised issues about the capacity of unions to engage with devolution. However, a number of initiatives support union capacity or work with unions to support projects that improve employment standards or promote alternative models of service provision or publicise employment rights and union value.

- In the North of Tyne the authority is working with teaching unions to provide funding for a social enterprise or cooperative for supply teachers, addressing precarious work with discussion of a model that could be rolled out nationally.
- The Welsh Government has worked in partnership with the Wales TUC on a pilot project in schools aimed at ensuring that the next generation of workers and employers have a better understanding of employment rights, the role of trade unions and the impact of collective voice in addressing issues in the workplace and beyond.
- In Greater Manchester the Charter Board has recognised the need to focus on workers and to better inform them of what the Charter has achieved and in June 2023 will host an *Employment Week*, that will link with unions, to encourage workers to engage with the Charter.

There was also an example from a non-devolved authority;

- In Leicester, COVID-19 led to the authority providing support for a union initiative to address poor working conditions in garment factories. The unions have worked with major fashion brands, concerned for their reputations, to produce a binding sectoral Joint Responsibility Agreement that will improve standards amongst their suppliers. Workplace Support Agreements have been concluded to bring retailers and trade unions together to gain trade union access to the workplaces.

4.4 Key limitations to devolved powers

In both Scotland and Wales the setting up of Commissions to report on fair employment has been the preferred route towards dealing with improved employment standards. However,

⁵⁴ [Linking employment charters to procurement | TUC.](#)

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this reflects the additional devolutionary powers which they have and the geographical and political areas they cover, which permit the time and resources to launch such in-depth investigations. Their principal advantage is that they can develop proposals which are informed, innovative, and which also can withstand the rigour of challenge. Yet devolution settlements themselves are based on constraints and one interviewee described the authority having to 'find ways of pushing without looking like they were challenging employment law (*Interviewee DA8*). It was also argued that the national framework remained too weak:

'If national standards were stronger then there might be more potential, but the issue has to be tackled that way round, from national to devolved. Furthermore, half the population lives outside the devolved areas so even if devolution was effective, they would not gain. Unless more powers are switched to local authorities, then it might make sense' (*Interviewee TU6*).

Overall, the key focus of the devolution deals has been to shift power to the regions so that they can focus on economic growth. Employability, getting people into work and reducing reliance on benefits, are central to the work tasked to the devolved authorities. However, for some interviewees current economic and political models were a key restraint on the potential of devolution for workers, particularly acceptance of the role of the private sector in public service provision. Resources are another constraint on the abilities of devolved authorities to improve employment standards. Westminster had devolved power without the level of budget needed and as a result devolved authorities are making cuts (*Interviewee TU6*). Devolution can make little difference to employment standards within current economic regimes (*Interviewee A3*). Budgets to devolved administrations are not specifically earmarked and thus it was difficult to argue for them to be allocated to areas that might assist in the improvement of employment standards (*Interviewee TU6*).

Collective bargaining

While Charters may articulate the importance of worker engagement and worker voice, these are not necessarily defined in terms of union recognition and collective bargaining and union respondents suggested there is preference to talk about voice and engagement rather than union recognition (*Interviewee TU13*). This is not simply because the charters are conceived as not mandatory, as they do mandate with respect of wages and, in some cases, working hours. Rather it is because recognition and collective bargaining are not articulated as essential to the improvement of employment standards. There is also a view that the focus on the rLW shifts the attention away from collective bargaining and bargaining power; a minimum hourly rate is easier to comply with for employers. Furthermore, there is a blurred definition of what worker voice amounts to. One academic involved in surveying workers on voice commented:

'In the questions on voice, trade unions did not come out strongly. People identified voice in how they were valued and consulted with in the organisation. It was more to do with their psychological safety. How they can share experiences and get a response' (*Interviewee A1*).

In Wales the forthcoming *Social Partnership and Public Procurement Act* offers a commitment to promote fair work with the establishment of a Social Partnership Council, on which trade unions, employers and government will sit, and with a statutory duty on some public bodies to seek agreement with their recognised trade unions, or staff representatives, but trade union recognition and collective bargaining are not included in the Bill and do not form part of the explanatory memorandum. As one interviewee noted, in terms of concrete positive outcomes, it is an environment where trade unions are seen as legitimate partners, has good

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principles and ideas, but the resources are not there (*Interviewee A3*). For one interviewee social partnership was more at a 'symbolic level' (*Interviewee TU15*). Neither social partnership or fair work were defined in law or the current Bill. For another trade union respondent (*Interviewee TU1*) the Bill fell short of an obligation to recognise trade unions and to collectively bargain, limiting the possibilities for challenging unfair employment in a meaningful way, with another describing it as inevitably 'a product of compromise'. The TUC was viewed as:

'the most enthusiastic participant, while employers were dragged along because of their relationship with government. They do not like pro-union policies, and policies focused on specific issues were more difficult. The government is cautious and reluctant to do anything if one side is unhappy. There is an equal promotion of interests, so that, for example, the Know your Rights campaign in Wales became the Know Your Rights and Responsibilities campaign' (*Interviewee TU1*).

The *London Good Employment Charter* does not have voice and representation as one of its pillars, although trade union recognition is considered when assessing the extent to which employers meet the accreditation criteria and according to two interviewees, in practice, it would not award an 'excellent' criterion if employers did not recognise unions (*Interviewees DA6&3*). Its second pillar on work-place wellbeing recommends the implementation of collective mechanisms, either trade unions and/or staff surveys, to obtain workplace feedback on issues important to the organisation.

Greater Manchester's *Fair Employment Charter*, with its seven pillars of good employment, includes engagement and voice. However, its provisions on promoting dialogue between employers and trade unions and giving unions workplace access are not mandatory, even for those employers who are accepted at the highest tier of charter membership.

The North of Tyne *Good Work Pledge* includes effective communications and representation as one of its five pledges, with the aim of ensuring that employees have autonomy and a voice in the running of the business. It requires that its fully accredited members pledge to recognise trade unions. However, to date there are just 51 employers at that level and in almost every case they were already recognising trade unions prior to accreditation.

The *Fair Work Framework for Scotland* similarly states that effective voice is one of its five key principles whose objectives are to advance the interests of workers and to reverse the marginalisation of unions, asserting that strong unions and collective bargaining are a prerequisite for sustained economic and social progress. However, the model of social dialogue promoted falls short of mandatory collective bargaining, although it was stated that it does recognise the legitimacy of the union role and of collective bargaining as a goal (*Interviewee DA8*). From a trade union perspective, it was stated that there was a need to be self-critical, with an interviewee commenting in relation to Scotland:

'We need to be self-critical as unions. We have signed up to a social partnership model as a top-down approach. It assumes common interests. Workers haven't got much from the Fair Work Commission which they would not have got. It has not imposed any big burdens on employers but the Scottish government gets its 'fair work bonus' (*Interviewee TU7*).

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Accreditation

The adoption of soft powers through charters has brought with it the need for accreditation processes. In Greater Manchester the accreditation process requires assessment of eligibility and monitoring of compliance. In North of Tyne there is an accreditation process but, as yet, no subsequent monitoring. In Greater London there is also an intensive accreditation and monitoring process, in relation to good work policies. These processes are resource intensive and demand staff to process applications, examine the detailed documentation required to demonstrate that the employer meets the standards of accreditation and may also require on-going monitoring and review. There was a risk of placing trust in employers that they will comply once accredited (*Interviewee DA5*) and there are often no metrics to evaluate actual improvements (*Interviewees TU3&5*). In most cases representative boards including trade unions assess applications. In each of the three authorities that have adopted accreditation, so far fewer than 250 employers have been fully accredited.

The evidence suggests that accredited employers are more likely to have already been at the standards required prior to their application, suggesting that new groups of workers do not benefit from accreditation and a danger that charters may be reduced to legal compliance. At present there are few cases where accreditation has led to union recognition although in England discussions with two large companies were noted. In Scotland a consciously different route had been taken and had not adopted accreditation, as it was seen as resource heavy and therefore meant that fewer employers could be included (*Interviewee DA8*).

There is a tension between a 'carrot and stick' approach to accrediting employers and some discussion about whether there should be separate accreditation for SMEs and the third sector. In the three English authorities there is a tiered process of accreditation, with supporter organisations that are moving towards accreditation and those fully accredited or having advanced accreditation. There is a debate about the merits of a 'binary' approach to accreditation whereby employers either meet a criterion or do not – more latitude means the introduction of complexity and nuance that allows employers leeway. In Greater Manchester there had been an issue where initially its procurement policy would have been only applied to Charter supporters rather than those fully accredited. It was argued by the authority and the unions that restricting tendering to accredited organisations would seriously reduce the capacity for service delivery. Subsequently there is a move to apply the rLW and five key Charter criteria on a binary basis which means that the assessment is not subjective and is based on proof that either the organisation does meet the standards, or it does not.

Combined Authorities are now developing charters with varying standards. Thus, one issue raised is how far employers straddling charter areas or operating nationally can pick which charter to comply with, whether they can transfer accreditation and finally whether there will be a convergence of charter standards. While a number of respondents stressed that charters had to be tailored to local contexts and local labour market conditions through careful consultation, it was noted that the West of England had adopted the Greater Manchester Employment Charter wholesale.

Enforcement

Unsurprisingly, an essentially voluntarist model, as the charters remain, means that enforcement is a challenge. *Interviewee DA8* was unsure if breaches of contract were policed

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as there was a hesitancy within the devolved authority about there being legal action if they were going beyond the remit. Enforcement again was dependent on resources, and these were limited (*Interviewee DA9*). An additional problem was that in the absence of a trade union footprint:

‘there is no way of enforcing matters; the enforcement agencies have limited resources and individuals are frightened of taking up issues for fear of losing their jobs’ (*Interviewee TU2*).

The lack of compulsion placed upon employers to implement fair work criteria was problematic where enforcement methods were weak (*Interviewee TU15*). Statutory measures were seen as necessary, particularly regarding public procurement. While there is a view that the concept of compliance is sufficient, respondents pointed to a lack of clarity as to whether breaches of contract are policed and ambivalence about legal action. In Scotland as part of the grant monitoring process, the grant recipient should confirm the progress being made on Fair Work First commitments, making contract compliance more visible.

The use of toolkits as a way of measuring compliance with employment standards has been promoted and examples taken from the case studies include:

- A toolkit produced by Manchester Metropolitan University for the Greater Manchester Good Employment Charter⁵⁵ that gives useful advice to other authorities seeking to promote good employment.
- In Scotland, the Enterprise Agencies have promoted a Toolkit for employers to assess fair work (FW) and promote FW action plans, with Audit Scotland also promoting FW in public audits. Investors in People is also building in a FW approach.

4.5 Under-utilisation of power

Political will

The literature review highlights the importance of there being a political commitment to employment standards polices and where devolved authorities demonstrated hesitancy it was seen as due to the absence of political will (*Interviewee DA8*). The lack of formal powers regarding employment mean that levers do not exist so the exercise of powers or the willingness to take measures are dependent on political will. Political will was seen by some respondents as substituting for industrial power and worker participation in the devolution process (*Interviewees TU3&5*). At the same time, for one interviewee, the lack of policy levers could be an advantage, in forcing the devolved authority to innovate (*Interviewee DA9*). The number of local authorities within a devolved administration constrain the ability of that administration to implement change. Additionally, not all had equal capacities nor political will. They had different skill sets and different levels of social capital and these all impacted on the ability of devolved administrations to deliver (*Interviewee TU6*).

In England, good work charters have been the result of strong manifesto commitments in the mayoral elections from 2016 onwards, this was the case in London, Greater Manchester, North of Tyne, with respect to their elected mayors. Similarly, in the case of the devolved governments of both Wales and Scotland, the elected bodies had strong political commitments to improving employment standards. Political commitment from the very top of regional government was a prerequisite. *Interviewee A2* noted that, in Wales, trade unions

⁵⁵ Crozier, S. (2022) *Toolkit and Report Sharing learning from the development of a Good Employment Charter in Greater Manchester*, Manchester Metropolitan University.

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are represented at the highest levels and partnership is key, but the same does not apply in Scotland where the Fair Work Convention is outside of government. Thus, the concept of fair work is embedded in Wales, in a manner that it is not elsewhere. While political commitment stems from devolution, devolution it is not a pre-requisite for action. In Leicester a series of reports on the city's poor working environments, highlighted by COVID-19, led its mayor to champion a new form of engagement to promote better employment standards.

While all the charter initiatives have engaged with trade unions there is variation in the mode of representation and in particular the extent to which the promotion of employee voice facilitated union recognition and collective bargaining. One interviewee described the problem as arising from the conservative nature of the civil service machinery and an inbuilt reluctance to challenge employers and notion that unions were only needed when employers were 'bad' (*Interviewee A3*). An interviewee representing a devolved authority stated that 'trade unions are not for everyone'; 85% of the employers they dealt with were SMES or micros, and unions could scare them. Thus, while the authority required employers to be open-mindedness and positively engage with unions and to 'expect a conversation', they did not feel required to engage more fully (*Interviewee DA7*). It was also felt that there was little understanding of collective bargaining (*Interviewee A3*) and that one reason why trade unions did not appear represented in the devolution process is that they comprised so many different organisations with so many different layers of union presence (*Interviewee A1*).

Relying on political will, particularly in the form of the single figurehead of the elected mayor, benefits from the mayor's capacity to get things approved and in the kudos which working with the mayor is seen to bestow on employers, defined as 'soft power'. Employers promote their profiles in the local press, secure meetings with authority officials and their status is enhanced if there are declared good employers. In a period of tightening labour shortages, this may be seen as attracting job applicants. Without the engagement of the mayors none of the charter initiatives are likely to have come into action. The role of the mayor, not just in initiating but in championing and encouraging employers to join the charter initiatives, is evident in all the examples surveyed. Here the relationship with local councils is crucial – as an interviewee from the North West pointed out, the devolved authority has no power to instruct the councils and if there is political variation between local councils, initiatives will be diluted and fragmented. However, every mayor will eventually have to seek re-election or indeed may decide not to stand again. Where initiatives are too closely identified with one individual then there is always a risk that they be abandoned when there is a change of administration or personnel.

Charters involve a balancing of the views and demands of trade unions and employers, with a demonstrable additional caution over dealings with employers and a more articulated concern to keep them on board by ensuring that the demands imposed on them are not too challenging and 'keep them in rather than outside the tent'. Initiatives of necessity are a product of compromise between political will, trade union aspirations and employer toleration and one issue that arises is whether one party's interests are equally promoted as against the other. From the trade union interviewees there was a strongly held view that the interests of employers were more likely to be considered by the authority. This was particularly the case regarding SMEs, and devolved authority interviewees often expressed the view that requirements for union recognition or collective bargaining were not realistic

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for small and medium sized enterprises. Caution regarding employers also emanates from civil service or officer involvement where there may be conservatism. For instance, where accreditation was based on business support or economic development units, a pro-business mentality may lead to leniency with employers.

Equality

Concrete criteria and requirements on equality have been less evident in the soft measures introduced so far and the interviews did not reveal much engagement on the issue of equality. The London Good Employment Standards promote equality in their responsible procurement policy, in terms of encouraging diversity in employment and working with organisation that promote equality and diversity within their own organisations. The Greater London Good Work Standards includes a zero tolerance approach to all forms of discrimination, harassment and bullying, diversity in recruitment and collection of data on ethnic and disability pay gaps. The other Charters have no similar criteria. In Scotland equal pay is part of the Fair Work agenda, particularly with regard to social care and childcare, but it is unclear how this is monitored. Gender Pay Gap reporting is more stringent than in England, but a recent report highlighted the absence of systematic job evaluation in public services⁵⁶.

While most of the initiatives arising from the devolution deals support inclusive growth in the local economy there are fewer concrete criteria on inequalities beyond statements of commitment in charters and local action plans. The limited range of examples identified in this study include:

- The Greater London Good Work Standard includes diversity and recruitment as one of its four key pillars;
- The Welsh Government has introduced a socio-economic duty utilising the 2010 Equality Act which, for a number of public bodies, requires them to have due regard, when making strategic decisions, to the need to reduce inequalities of outcome resulting from socio-economic disadvantage.
- In Scotland Fair Work First guidance includes action to tackle the gender pay gap and create a more diverse and inclusive workplace.

There are also structural barriers. Political and organisational structures, including charter boards, were seen as insufficiently diverse, and not reflecting the composition of local communities in terms of gender, ethnicity and disability (*Interviewee TU14*).

Procurement

While there are examples of where devolved authorities are using procurement overall, there was ambiguity over the potential of procurement for promoting employment standards. One respondent felt that the potential of procurement in improving employment standards was overstated (*Interviewee TU1*) and that it could not be seen as a stick, particularly in relation to charter membership. There were fears that introducing compliance could be seen as a restriction of competition, for example by limiting the right of charter members located within in the devolved authority to tender for services (*Interviewee DA5*). Procurement is seen as a

⁵⁶ Moore, S., Wakefield, H. and William, L. (2021) *International Mechanisms to Revalue Women's Work: Research Exploring and Evaluating International Mechanisms that Aim to Revalue or Result in the Revaluation of Women's Work*, Scottish Government Social Research Report.

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complex area (*Interviewee DA9*) and there is caution in procurement departments driven by fear of legal challenge (*Interviewee TU10*). There is a belief that there are no legal powers to compel suppliers to sign up to good work standards (*Interviewee DA3&6*). Procurement specialists were focused on the law and their statutory duties and, with limited in-house capacity, there was tension over the powers of the devolved authority and over whether they had power to instruct local councils (*Interviewee TU13*).

In Manchester the authority is starting to use procurement to improve employment standards, but with more than 600 suppliers, together with the resources required, there remain obstacles to overcome (*Interviewee DA7*). There had been some success in getting local authorities and the NHS locally to sign procurement agreements according to *Interviewee TU14*. There was also a view that more could be done in relation to procurement. There was a battle over the tender process with an emphasis on soft measures that limit the improvement of employment standards.

Where there are charters there is a view that involvement with procurement could distract from accrediting good employment criteria. In Wales procurement requirements in publicly funded construction projects and construction supply chains were seen positively, although there was a lack of clarity as to whether statutory minimum standards could extend to 'self-employment.' However, in relation to the Procurement Bill 2022 covering England and Wales it has been confirmed that commissioning authorities will be able to set their own criteria. An interviewee from London raised a related area, as to whether there might be a potential for devolved authorities to use their licencing powers in relation to the night-time economy, to introduce new employment standards to protect the safety of night workers, such as a requirement to pay for transport home at the end of a night shift.

One challenge to procurement policy is the issue of how contracts are monitored to ensure that they do comply in practice. With local authorities engaged in hundreds, if not thousands of contracts, the concerns expressed in relation monitoring are multiplied. There were grey areas in procurement about contract sanctions. fear of LAs being sued and legal pushback (*Interviewee DA8*). There are also capacity issues in relation to procurement with the hollowing out of local government leading to a loss of expertise and focus on cost and quality that may make additional requirements too difficult and time consuming. The Scottish case study found hesitancy on contract compliance, particularly in relation to how breaches are monitored.

A second challenge is the concern as to what is permissible under the law and procurement officers may be conservative and reluctant to challenge. The Scottish case study reports an ambivalence about legal action, with the view that encouraging the concept of compliance is enough with minimal legal risk. There is no clear guidance on how far authorities can go in the exercise of their social value duties and differing legal opinions, although the TUC suggests that there is already sufficient scope in the legislation to permit local authorities to promote employment standards through procurement. *Interviewee DA2* noted that procurement was not embedded into contracts with the devolved authority, as there were questions about legality and compliance with the Public Services Act 2012. While there are grey areas in procurement regulations about contract sanctions, there is also caution because of the potential for legal challenge. While legal advice obtained by Liverpool City Council is positive,

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in London legal interpretations have suggested that procurement rules cannot compel suppliers to sign up to the Good Work Standard although the current legislation states that bidders, if not specifically accredited, can be allowed to provide evidence of meeting an equal standard to the framework.

Reversing privatisation

Bringing contracted out workers back in-house is a key demand on many trade union agendas. TUC policy is that contracting out workers is an unsustainable and highly exploitative model of public service delivery and furthermore that it is poor value for money⁵⁷. There was frustration that many of the devolved authority initiatives are neutral on bringing work back in house, through reversing privatisation or ending contracting out, policies that have had clear impacts on employment standards, particularly amongst women and on equal pay⁵⁸. While there was acknowledgement that pushing up standards can challenge the logic of contracting out, there was no clear preference for public sector provision of services and an equivalence in public and private provision. In Scotland, for example, the Fair Work Commission does not have a position on bringing services back in house, as the strategy is that all jobs should be Fair Work jobs and public money should drive Fair Work outcomes (*Interviewee DA8*). In Wales the discourse is the 'rebalancing' of private and public with the not-for-profit sector also involved as a first step towards its policy for insourcing⁵⁹.

It is clear that unions have had success in bringing workers back in house in health, for example Unite at St Barts Hospital, London. PCS and RMT have similarly been campaigning against the outsourcing of staff, while the CWU has opposed the outsourcing of workers from British Telecoms. In terms of leadership by devolved authorities, Glasgow City Council has brought services delivered by Cordia in-house with Cordia care services now delivered by the council and under the management of Glasgow City Health and Social Care Partnership. Examples include:

- In December 2022 the Wales Government published a toolkit for insourcing⁶⁰. It has linked this to the Wellbeing of Future Generations legislation, identifying insourcing as enhancing local employment conditions.
- In Wales Neath Port Talbot Council has brought indoor leisure services in house after more than 20 years of them being outsourced.
- In Islington, London, social care workers have been brought back in-house although there remain contracts with Care UK.

4.6 Trade union engagement with the devolution processes

Despite the legitimisation they have obtained from many of the initiatives of the devolved authorities, the representation of trade unions on devolved bodies varies and terms such as social partnership and social dialogue are not generally defined. At one end of the spectrum, there is a sense of revived tri-partism. In Greater Manchester, unions are represented on the Board of the *Good Employment Charter*, were involved in its development and are active in

⁵⁷ Dykes, M. (2019) Outsourcing - Five ways to fix it for working families, TUC, <https://www.tuc.org.uk/blogs/outsourcing-five-ways-fix-it-working-families>.

⁵⁸ Moore, S., Wakefield, H. and William, L. (2021) *International Mechanisms to Revalue Women's Work: Research Exploring and Evaluating International Mechanisms that Aim to Revalue or Result in the Revaluation of Women's Work*, Scottish Government Social Research Report.

⁵⁹ [A toolkit for insourcing in Wales | GOV.WALES](#).

⁶⁰ Ibid.

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accreditation and providing information on the suitability of applicants who wish to be accredited. Other boards or steering committees may include a wide range of local stakeholders where unions are just one representative group among many.

Regional and national TUCs are the most enthusiastic partners in devolved structures as they are more directly involved in the devolution structures, with seats on boards and regular engagement between the devolved authority and TUC, for example the quarterly meetings held between unions and the Mayor's office in Greater London. In relation to Wales and its social partnership model, some respondents recognised the potential tensions inherent for example, where the administration funds wholly or in part, trade union staff. These situations can test relationships, particularly in period of high levels of industrial disputes, but they can also provide for new forums and processes through which discussion and negotiation can take place. In some cases, interviewees representing individual trade unions felt that within the devolution administrations there needed to be structures for direct representation, rather than coming primarily through the regional TUCs (*Interviewee TU14*).

Participatory democracy

Trade unions have been involved in the processes that led to the devolution deals, with the unions in Greater Manchester, for example, playing an active role in the development and delivery of the devolved agreement for Greater Manchester. Yet engagement can remain at this technical level only, falling short of engaging with workforces directly. Worker engagement and voice are rarely expressed as being the property of workers themselves, who consequently have mostly been absent from the development of these initiatives. There is a deficit in terms of participatory democracy, particularly in terms of gender race and disability. This required structures that went beyond tokenism, giving unions a status as key stakeholders in the planning and delivery of services. But for one interviewee there was currently a lack of engagement and diversity with a predominance of white men among mayors, local authority leaders and related bodies. The new devolved authorities replicated previous models. For this union interviewee the answer was not in the post of the directly elected mayor but in the setting up of broader assembly modes with diversity and representative democracy (*Interviewee TU14*).

All the charters or other standard setting initiatives focus primarily on employers and were sensitive to the constraints under which employers operate, be they size, finance, resources, or ownership. Thus, the policies incorporate employer voice, and although employer buy-in is indispensable, on its own it not enough. There is a danger that if initiatives are interpreted only through the exigencies of employers, union demands for further improvements beyond the minimum can be lost. While support is often provided to employers to help them reach the standards necessary for accreditation, there is less support to trade unions (and to unions at branch and workplace level) to engage in these processes. The absence of similar levels of focus on workforces, means that workers have a minimal if any role in the advancement of good employment standards. Yet they are the best placed to monitor practice in the workplace and to engage with their employers to maintain or indeed improve employment standards. There is a risk, under the current models, that those employers who sign up are those who already offer the minimum standards required and although their collaboration may shift other employers, there is no evidence of a groundswell of change, in relation to employee voice and representation at work There is also the argument that it focuses

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politicians on a narrow vision of the labour market and provides them with an argument that employers are very willing to promote good employment standards, simply because they engage only with a fairly narrow base of employers, whose existing standards make it easy for them to sign up as good employers. To transform engagement into something more tangible, trade unions need access to the workplace, particularly in the private sector where union membership may be low. As an interviewee noted:

'Greater Manchester has done as much as it could with a technocratic charter, it has done its best, but they have not sufficiently utilised public pressure in the form of trade union members – unions have not utilised their trump card – their members' (*Interviewee TU13*).

The *Greater Manchester Employment Week*, due to be held in June 2023 has recognised that employee voice needs employee awareness through dissemination and communication.

A case study of Leicester has been included in the research, even though it is not the outcome of devolution, because it suggests that there can be alternative ways of promoting workplace level voice, both in the absence of devolved powers and/or where the political will of the devolved authority is not favourable. The work of the trade unions in Leicester in obtaining a commitment from fashion retailers that unions should have access to the supplier workplaces is a different model that promotes employment standards in non-unionised workplaces. The fact that the unions involved have been willing to inform and engage with workers outside the context of a recruitment campaign and through community-based organisers has led to progress for workers, in what have been seen as hard to reach workplaces. The gains in terms of union membership may appear limited but building confidence to challenge poor employer practices in small workplaces throughout the city, is a path to fostering a stronger labour movement.

4.7 Enablers and barriers to union engagement

There is consensus that devolved powers has provided a new legitimisation for unions, something that has been absent in the decade or more of Conservative government in Westminster, however union capacity to respond was questioned.

Capacity

Union capacity was raised in case studies as an obstacle to successful outcomes, regardless of the models adopted. In the Welsh case study, there were acknowledged challenges for trade unions in terms of their physical capacity to engage fully, beyond at the highest levels. Unions had the resources to sit on the boards however, there was less on the ground to ensure worker engagement and there was an absence of systems in place to engage directly with workers. In Scotland fears were expressed that there was an absence of union representatives with capacity for representation at strategic levels and that there needed to be support for this.

Interviewee A2 stated that, unlike in Wales where the powers of the Welsh Assembly were clearly established and where they could be exercised through a Labour government, in England change would have to be bottom up due to the limited powers of the English devolved authorities. The trade union interviews provided very little information as to their active role in established devolutionary structures (as opposed to charter structures). A few referenced meetings with the devolved authority, and the mayor in particular, such as the

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quarterly meetings in London, but there was less evidence of an established structure of engagement at that level. This placed a stronger responsibility on trade unions in England, but there is an issue of capacity, while unions were reasonably well resourced at leadership or officer level there was no clear idea of the role of trade union members and how they can engage within the devolution process. This is particularly the case in relation to their ability to monitor employers in companies without union recognition and here capacity is an issue (*Interviewee TU7*). For one respondent from a devolved authority neither trade unions nor employers had capacity in terms of structures. The trade unions had an insufficient number of people who could sit at the strategic level, as they were industrially focused on negotiations. For this interviewee there was the need for further support to union officials to understand nationally- led conversations (*Interviewee DA8*). An academic working closely on issues of fair employment also questioned the capacity of unions to deliver, in the context of devolution focussed at authority rather than workplace level (*Interviewee A3*). A trade union interviewee similarly stated that there was insufficient education of workers as to what fair work constituted and the conditions for its achievement absent on the ground (*Interviewee TU7*).

It was proposed that unions needed to equip local representatives to respond when their employers applied for charter status (*Interviewee TU13*). However, there was a view that there was a lack of trade union representatives able to work on such initiatives (*Interviewee TU4*). Collective bargaining coverage is now relatively low, not just in the private sector but also in much of the public (or previously public) sector. Lower union membership is not just a problem in terms of organising within the workplace, but more so in seeking to expand beyond those workplaces which already benefit from collective bargaining. Union interviewees either were immersed in their day-to-day work of representing members in the workplace, particularly in the context of industrial disputes, and for them their role in devolution structures was secondary or they might be involved in the structures of devolution but not link this to their work on representing and informing workers in the workplace. Overall, the need for training for union reps, so they have confidence to act on the devolved agenda was emphasised. Alignment with union priorities and their negotiating and organising agendas was raised. At the same time there is no united trade union vision and a need to rebuild relationships between local authorities and multi-union bodies (*Interviewees TU3&5*).

The Leicester case study also raised issues of union capacity. Despite their substantial investment in the garment sector there were insufficient numbers to run large worker engagement projects. Even in large metropolitan areas such as London and Greater Manchester, the issue of capacity was evident. Where Charters presented possibilities for recognition it was not certain that these had been followed up by unions and where SMEs showed interest it was not considered viable in terms of resources. Committing union resources to pursuing good employment goals, in a period when unions are stretched to serve their existing members in a climate of industrial action, is a challenge.

COVID-19 and public health

To some extent COVID-19 has been an enabler in shedding light on employment conditions and standards. The need for businesses to find ways of working within the constraints of lockdowns and the requirements for social distancing and home working, together with the issue of sickness absences and sick pay, resulted in joint working arrangements, where local

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authority, trade unions and employers had to come together to find solutions. The Welsh Government commitment to the nation's health and well-being was instrumental during the COVID-19 pandemic, when social partner engagement was able to deliver a pandemic employment strategy supported by its use of public health regulations, to impose requirements on employers. One union representative spoke of the benefits in the model of social partnership which allowed for the setting out of workplace rules (*Interviewee TU15*). In Scotland it led to Memoranda of Agreements, opening the door for sectoral bargaining around absence management. The Fair Work statement promoted access to sick pay during COVID-19, although employers had argued that requiring them to pay full sick pay during COVID-19 was discriminatory in relation to England. The Fire Brigades Union was able to use Scottish Government health guidance related to COVID-19 to take a successful Employment Tribunal case against the Scottish Fire and Rescue Service, arguing that forcing staff with disabilities to use annual leave or TOIL when shielding amounted to discrimination. COVID-19 arguably opened the door for an element of sectoral bargaining around absence management and unions were effective because there was a crisis, and the Scottish government had the power to intervene (*Interviewee TU7*). For an academic observer COVID-19 has had an even more profound effect. Employee, expectations had changed, and unions were bolder in their demands with an emphasis on work life balance (*Interviewee A1*).

In London, there were regular meetings during the pandemic, particularly around transport. These initiatives may not survive the end of the pandemic and in Scotland unions have opposed the move by the Scottish Government to retire the COVID-19 statement. However, in Manchester, respondents believed that COVID-19 had created a change in worker expectations, with redefinition of the Charter to include sick pay and flexible work effective from April 2023.

5. Conclusions

This study has reviewed the different models that devolved authorities have adopted in promoting good employment standards. The success has been in a universal promotion of the rLW as a minimum standard of pay for workers. Some of the initiatives have gone further, with entitlement to rLH applied, and there have been important advances in relation to the payment of sick pay. However, there is variation in terms of the representation of unions, in the criteria set out for employer compliance and the rigour with which they are applied. Above all the focus on low pay shifts the focus from collective bargaining.

There is a perceived prioritisation of employer needs over those of trade unions and workers. As the interviews demonstrated, devolved authorities were reluctant to place requirements on employers, beyond those which they believed the employers were likely to support. There was also a more nuanced way of supporting employers, recognising the constraints under which they operated and ensuring that devolutionary agendas did not place additional burdens on them. There was less recognition of the constraints under which trade unions might operate. A recent example of the priority accorded employers is the East Midlands combined devolution deal, which proposes a role for the private sector in the eventual governance boards but offers no similar role for the trade unions.

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Interviewees were asked to reflect on what they might have done differently if they were entering into a devolutionary situation today. One view was that they should have been more prepared and have processes set up at a much earlier stage, prior to the devolutionary deal. There was also a view that devolution deals cannot work for everyone, simply because their reach is insufficient. There was a strong focus on cities and an absence of strong regional and regeneration policies which are a condition for improved employment standards.

The economic environment

Unlike the situation in Scotland and Wales, when devolution occurred in a period of rising living standards and with the Westminster government committed to improving employment standards, devolution in England has occurred in a period of austerity, where living standards have fallen and where employment has become increasingly precarious. The fragmentation of services and their privatisation operates as a barrier to the ability of devolved authorities to intervene in employment standards. In the context of limited budgets, even if more powers were devolved, this would not of itself secure improved employment conditions. As one interviewee noted:

You cannot impose a new model in an uneven context, so the devolution of powers is not going to do anything – it is a political struggle. Political will versus economic reality, the economic structure undermines political will. There is not a lack of will, but the serious implications of the economic situation and cuts (*Interviewee A3*)

Dependence on political will

This report has emphasised that policies are highly dependent on *political will* and none of the initiatives identified would have begun without the enthusiastic commitment of political leaderships. Where initiatives are closely identified with one individual there is always a risk that they cannot be sustained when there is a change of administration or personnel. To guard against this happening, initiatives need to develop oversight bodies that have clear mandates from their electorates and that can survive a change in the figurehead. That more can be achieved where there is political will is without question, but devolved models are limited where powers are proscribed and where there are conflicting political stances between the overall Westminster power and the devolved authority. The current government's lack of political will to improve employment standards makes the role of the devolved authorities much more challenging.

Reflecting on devolution

In the case of Wales there is a view that the Welsh Government's actions to support fair work are pushing at the limits of the existing devolution settlement, but also that current economic models, with the increased reliance on precarious forms of work, constrain its potential to improve employment standards; in Scotland critics have raised the question 'devolution for whom?' The conflict between the expressed political direction of the devolved authorities and the positions currently taken by Westminster, as it seeks to constrain labour, creates a battleground that local administrations with limited budgets and powers are not well placed to challenge. Therefore, the call for effective worker voice is central to political agendas. It is only where devolved powers can show the levels of support they have in their communities, that the possibility of a real challenge to austerity can be envisioned. While political commitment is integral to the use of the devolved powers, devolution of itself is not a requirement for better employment standards. In the absence of devolution, important gains can be made. Devolution may assist, but it is not a prerequisite.

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Centring agendas around workers

If good employment standards are to be promoted workers need to be at the centre of identifying what those standards should be and how they should be implemented and enforced. At the moment while tripartite agreements have emerged, there are issues about capacity to inform and mobilise workers at the level of the workplace to exploit opportunities for union access and to ensure compliance. In her research on employment charters and procurement Jenkins raises questions of the social partnership approach:

‘If social partnership is to have any grip on our ambitions for work in Wales, it must be grounded in the power and realities of working relationships which make it impossible for isolated individualised workers to enforce their rights in law, even assuming they know what those rights might be. No legal or contractual right is meaningful in the absence of the power to enforce it, and any such power can be made null and void by a hostile supervisor at workplace level. This is where partnership is played out and can be promoted or undermined; it’s as simple as that⁶¹’.

At the very least training is needed and in terms of equality, expertise on equal pay and job evaluation. Current devolutionary initiatives do not prioritise equality, although the focus on social care is welcome. Training should give union reps confidence to engage politically and to promote good employment standards. Currently available authority resources have focused on engagement with employers, there needs to be a shift from business support to trade union support. The research also points to the need to expand trade union agendas in relation to *health and well-being at work*, so that the workplace can be the focus on improving and maintaining public and community health. This means a renewed focus on sick pay and sick leave and on adaptations to make workplaces fitting places for workers with ill health and disability concerns.

Clarifying procurement policies

While *public procurement policies* may also be a route to good employment standards at present there is no consensus about legal powers and potential. There is confusion as to what is, or is not, permitted and a perceived reluctance from the procurement departments to impose any constraints on potential contractors, for fear of legal challenge. Here trade unions need to press the argument that public money should go to employers who promote good employment and should require of those authorities that claim to want to promote good employment standards that their procurement becomes an effective tool in the guarantee of good employment standards. It should also be argued more strongly that privatisation and contracting have had particular negative impacts on women’s work and that commitments to equality amount to little if this issue is not addressed through bringing work back in house or by, as a minimum, guaranteeing that employment conditions are equivalent to those in the existing public sector.

Promoting collective bargaining

Devolved powers have identified *trade unions as legitimate actors* and have promoted discussion on the *rights of workers to be informed, consulted, and listened to*. It would, however, be wrong to view the existing models as sufficient. The report has highlighted that a major deficit is in the inability of the initiatives to recognise that collective bargaining is the

⁶¹ Jenkins, J. We really need to talk about work ...

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best model of ensuring good employment standards. In part this arises because much of the devolution agenda in relation to good employment standards has focused on poorly paid and insecure work and these are sectors of the labour market where trade unions generally have little power. They are sectors which are largely unorganised and where the obstacles to organisation often appear unsurmountable. This may require of trade unions that they develop different mindsets on how to engage with workers in the improvement of employment standards. It may mean having to look at starting with a different perspective, looking at how to gain access to workplaces, with or without collective bargaining. It may also mean greater engagement in different forums, such as in schools and colleges, in the delivery of basic skills' training and in community organised events. There may additionally be some potential for trade unions to push for union recognition and collective bargaining to substitute requirements for worker voice. Furthermore, it should be remembered that there will be mayoral elections in the coming two to three years and this may provide a fresh opportunity to revisit the programmes of the mayors as they relate to employment standards.

Recommendations

- Devolution is a complex arrangement for which preparation is needed. Trade unions need to prepare well in advance to ensure that they have properly trained representatives who can knowledgeably engage in the processes, including prior to conclusion of the devolution deal.
- Devolution may not suit every local structure and, along with work in delivering effective devolution, trade unions need to campaign on regional and regeneration policies.
- It should be clear that the appropriate channel for worker voice is trade union recognition and collective bargaining and that this is recognised in devolved measures as the most effect route to better employment standards.
- Workers need to be at the centre of defining what good employment standards are and how they should be implemented and enforced. This means that written into devolution plans should be policies on training and education for workers on employment standards and effective communication on the policies of the devolved authority where these are employment related. This could be by means of assemblies, public announcements, through social media and other communication methods.
- Devolution deals have had a limited focus on equality. As the deals get renegotiated unions should campaign for equality measures to be at the forefront of the devolved authority's programme, with clear, measurable targets.
- Training is needed on equality, equal pay, and job evaluation to ensure equality is embedded.
- Resources are often focused on engagement with and support of employers. There needs to be the demand for a shift from business support to trade union support.
- There is the need to expand trade union agendas in relation to health and well-being at work, so that the workplace can be the focus on improving and maintaining public and community health. This means a renewed focus on sick pay and sick leave and on adaptations to make workplaces fitting places for workers with ill health and disability concerns.
- Trade unions need to be confident in advancing the argument that public money should only go to employers that promote good employment. Procurement should

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become an effective tool in the guarantee of employment standards. This means that trade unions will have to find the means of monitoring procurement contracts and the best way of doing this is in the workplace, with representatives able to identify contract omissions.

- Many unions have been campaigning to bring outsourced workers back in house. As many outsourced workers are women and/or from Black and Minority Ethnic backgrounds and as their conditions of work have deteriorated as a result of outsourcing, unions should engage with devolved authorities on ending outsourcing as key to tackling poor and unequal employment conditions.
- Unions will have to explore new ways of engaging with workers to improve employment standards. This may mean the short-term abandonment of strategies that focus on recruitment to campaigns to raise awareness of poor employment standards and working conditions and what unions, in conjunction with public authorities and employers, can do to change this. It means more focus on education, training, and communication in a wide range of different forums.

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Appendix A: Research Methods

In Phase 1 of the study, an examination of the legislation in relation to the devolution of powers, was conducted and key literature covering employment standards and devolution was reviewed (see *Appendix C*). Phase 2 involved semi-structured interviews with key stakeholders, including representatives of Welsh and Scottish and English authorities, trade unions representing public, private and voluntary sector workers in five devolved authorities covering the devolved governments of Scotland and Wales and the devolved powers in the administrations of North of Tyne, Greater Manchester, and London. In addition, we examined initiatives to improve employment standards in Leicester, Yorkshire, and Humberside, and in one London Borough, Islington. This resulted in six case studies which appear as *Appendix B* of this report. Interviews were all conducted online both to make best use of the available time and to have the least environmental impact. Interviews were recorded with the agreement of interviewees, with the aim of finding examples of practice related to improved employment standards. Each interview lasted on average between 45 minutes to an hour.

Questions asked in the interviews included:

- What is your role? What is your remit in terms of devolved legislation?
- What is the potential for devolved legislation in the field of employment?
- Do you have concrete examples of where it has been used, can you outline them?
- Is devolved legislation being fully utilised?
- Are there barriers to using devolved legislation in the field of employment?
- Are there changes in policies that could promote changes in the field of employment?
- What advice would you give union officers in English authorities who want to promote decent work and employment?
- Is there anyone else we should talk to?

In addition, we explored how devolution powers were exercised in relation to employment standards; what was being done to assess and then disseminate both the practices and their outcomes; and how devolved powers were used in relation to contracted-out workers and in the procurement process.

We wish to acknowledge the assistance we had from the TUC nationally, whose officers gave us sight of their literature on devolved authorities and employment standards. They also provided us with information on the existing innovative practices already identified. Most importantly they made initial contact with one regional TUC representative in each of the authorities, informing them of the research and asking for their co-operation when approached by the researchers. From these initial contacts and with the help of the regional TUCs we were able to follow up some 37 potential interviewees. Of these one was no longer in post, in one case after a first appointment had to be cancelled it was not possible to find another within the extreme time constraints of the project and six did not reply. This gave us 29 interviewees, of whom 10 were representatives from the authorities selected, 15 were trade union representatives and there were four academics or from third sector bodies. Table 1 shows this breakdown.

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Table 1: Breakdown of interviewees

Region	Trade union	Authority/Charter representative	Academic/NGO	Total per region
London	3	3		4
North West	2	2	1	5
Wales	3	1	3	7
Leicester	2			2
North of Tyne	3	1		4
Scotland	2	2		4
Yorkshire & Humberside		1		1
Total	15	10	4	29

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Appendix B: The case studies

Wales – Supporting collective models

The Welsh Government may legislate on any area other than where it is reserved to the Westminster government, this includes legislating on the delivery of local services – education and training, fire and rescue services, health services, highways and transport, housing, local government, social welfare, planning (except major energy infrastructure) and water supplies – agriculture, fisheries, forestry, culture, including the Welsh language and ancient monuments, economic development and the environment. However, employment is a reserved matter although the government can indirectly influence employment standards through its powers in relation to economic development, education, and training. It has no specific powers in relation to employment, but it may legislate in areas of its powers that have a consequence for employment standards. The Westminster government retains powers over employment. This case study focuses on the policy of the Welsh Government in moving towards a *Social Partnership and Public Procurement Act*. The case study highlights the key advantages that this initiative would bring but also sets out some of the challenges it poses.

Background

Wales has historically been a place with a high level of support for trade unions with the percentage of trade union members higher than the UK average. Although unemployment has recently fallen, it has not led to corresponding rises in pay. Indeed, there has been an increase in precarious, low paid and casualised employment. The Welsh Government (as with the Scottish) has actively promoted the living wage⁶². Although around 500 employers have now signed up to pay at least that level, around a quarter of jobs in Wales are paid less. In many low paid sectors, there is a lack of opportunity for progression. A recent survey⁶³ found that workers feel they have little voice at work, job security is low, and opportunities for job progression is limited. Work intensity has increased and nearly one in three workers are dissatisfied with their pay.

New responses to labour market challenges

The Welsh Government has a clearly stated commitment to improve living and working standards in Wales. This is demonstrated in a body of legislation, including with the *Well-being of Future Generations Act 2015* and continuing through the establishment of the Fair Work Commission, whose final report, *Fair Work Wales* published in 2019, emphasised the need to promote fair work through support for collective bargaining and union recognition. Thus, the Welsh Government publicly identifies with the promotion of collective solutions to

⁶² Heery, E. Hann, D. and Nash, D. (2022) Political devolution and employment relations in Great Britain: the case of the Living Wage, *Industrial Relations Journal* 51:5, 391–409.

⁶³ Huxley, K. Davies, R. Felstead, A/ and Jenkins, J. (2022) *WTCU Fair Work Survey 2022: Short report*.

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problems of low pay and poor working conditions. The *Social Partnership and Public Procurement Bill* which comes into law in 2023 is a part of its response to the Commission report. This will require the establishment of a Social Partnership Council on which employers, trade unions and government will sit. It will impose a statutory duty on some public bodies to seek agreement, with their recognised trade unions, or staff representatives, in setting out their well-being objectives and a consequent statutory duty on the government to consult with the social partners.

The Bill also makes changes to the rules on public procurement requiring contracting authorities to carry out procurement in a socially responsible way to improve the economic, social, environmental, and cultural well-being of their area. They will be required to produce an annual procurement strategy, adding a degree of transparency. Contract management duties that oversee that the contract conditions are complied with will be required in all public works contracts worth more than £2 million and if organisations depart from these management duties they must state why and how. In addition to the social partnership proposals, in 2022 the Welsh Government utilised the provisions in the Equality Act 2010 to introduce a socio-economic duty which requires a limited number of public bodies to have due regard, when making strategic decisions, to the need to reduce inequalities of outcome resulting from socio-economic disadvantage.

Outcomes

The body of law outlined above shows the direction that the Welsh Government is moving in and there have been some identifiable successes. The promotion of social partnership by the Wales Government has legitimised trade unions in Wales in a way that is absent from the UK national stage. Trade unions are recognised as a key element in delivering on the Welsh Government's well-being agenda, as defined in the Well Being of Future Generations Act.

In relation to the real living wage the Welsh government has applied it to registered workers in care homes and domiciliary care, in both adults' and children's services as well as to personal assistants funded through a local authority direct payment. It has worked in partnership with the Wales TUC on a pilot project in schools aimed at ensuring that the next generation of workers and employers have a better understanding of employment rights, the role of trade unions and the impact of collective voice in addressing issues in the workplace and beyond.

Challenges

Despite this positive groundwork by the Welsh Government, there are some limitations to a successful implementation. The first has been in the government's ability to set out clear definitions of what is meant by fair work and social partnership. The *Fair Work Wales* report had a clear definition of fair work: 'where workers are fairly rewarded, heard and represented, secure and able to progress in a healthy, inclusive environment where rights are respected' and linked it to collective bargaining, stating that 'recognition of a trade union for collective bargaining is both a route to, and a key indicator of, fair work'. By contrast fair work is not defined in the Bill nor is social partnership. The Bill is a product of compromise, both in

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relation to what the trade unions wanted and what employers were prepared to accept, but also a compromise in relation what the Welsh Government believed its powers permitted. Furthermore, the legislation applies only to public bodies and the public sector. Its procurement proposals are meant to drive some private sector change but on a limited scale and it cannot effectively challenge employment practices in the private sector.

While the model for Social Partnership is recognised as offering a more favourable environment for fair employment, the absence of an obligation to recognise trade unions and to collectively bargain hinders the possibilities for challenging unfair employment in a meaningful way.

Similarly on procurement, while the Bill represents a major step forward, the Wales TUC favours a mandatory Fair Work standard that all companies that are awarded public contracts should comply with and that these should include an obligation to collectively bargain and trade union access to the workforce. Thus, while the Welsh Government shows a strong commitment to promoting good employment standards, it remains cautious in not wishing to overstep the limited powers that devolution offers.

Commentary

The Welsh Government's work on employment standards adopts an innovative approach by situating fair work within the context of well-being, thus linking work to a wider agenda that includes the promotion of good health for the nation. This focus on health was instrumental during the COVID-19 pandemic when social partner engagement was able to deliver a pandemic employment strategy supported by the Welsh government's use of public health regulations to impose requirements on employers.

Without political commitment from the very top of government, the Wales agenda would not be delivered. It has found a new way of engaging with employers and trade unions, through the social partnership model and this legitimizes the unions as bodies with a statutory role in the promotion of fair work. The government has worked to balance the views and demands of both parties although there is more caution over its dealings with employers and a more articulated concern to keep them on board by ensuring that the demands imposed on them are not too challenging.

From the trade union perspective, the new direction adopted by the Welsh Government provides opportunities but also challenges, both in terms of their physical capacity to engage fully beyond at high level. There is less in place on the ground to ensure workplace engagement in promoting collective voice and particularly within the private sector, the legislation offers limited scope. Unions need to show that they can deliver concrete and positive outcomes through the process of social partnership; they need to be upfront in explaining where there are weaknesses and need to explore different ways to engage with workers who otherwise will be excluded from this new agenda.

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The focus on procurement, by placing a statutory duty on contractors, is potentially a key to delivering fair work (including collective bargaining) although the systems of monitoring and assessing may be limited by capacity issues.

Wales has adopted a different way of promoting fair work. In part this is because it has more powers than the English authorities who have powers only in five areas and have no fiscal powers. The Wales model shows that more can be achieved where there is political will but also shows that this by itself may be insufficient in the devolved model where powers are significantly proscribed and where there are conflicting political stances between the overall Westminster power and the devolved authority.

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Scotland – Fair Work

The powers devolved to the Scottish Government include law making powers over agriculture, forestry and fisheries, consumer advocacy and advice, economic development, education and training, elections to the Scottish Parliament and local government, some aspects of energy, environment, fire services, freedom of information, health and social services, housing, justice and policing, local government, planning, sport and the arts, tourism. There are also powers in relation to aspects of welfare benefits, energy, equality legislation, taxation, and transport. Equality legislation, employment law and industrial relations and data protection are among the areas reserved to the Westminster Parliament. Employment tribunals will be devolved to Scotland, but this is unlikely to be in force until 2025 and will not include the devolution of employment law. This case study focuses on Fair Work in Scotland, an approach that rejects accreditation, but has taken particular action on payment of the real Living Wage (rLW) and social care. The *National Care Service: Fairer Scotland Duty Assessment* Bill will include Fair Work as a guiding Principle of a national care service (NCS) with ethical commissioning strategies a key tool for ensuring Fair Work, but more importantly aims to embed sectoral and collective bargaining in social care. There is further scope in the FWC's recommendation to suspend 'non-committal tendering frameworks' in social care and the call, in its report into Social Care in Scotland, for commissioning practices to set out minimum contract standards and sector level engagement between purchasers, providers and those who deliver social care services.

Background

Fair Work is the Scottish Government's strategic foundation, with the Fair Work Framework established to achieve this goal by 2025. The Fair Work Convention (FWC) was set up in 2015 and is an independent advisory body to the Scottish Government with equal numbers of employer and union members, employer, and union co-chairs. Its remit was to define, advise on and promote Fair Work. The Fair Work Framework was published by the FWC in 2016 and includes five key principles: effective voice, respect, security, opportunity, and fulfilment⁶⁴. This framework is to be used as best practice guidance and to identify areas for development. The 'Fair Work First' policy initiative was introduced in late 2018 extending fair work criteria to a range of public sector contracts.

The Scottish model rejects the English approach based on charters and accreditation. It was argued that this was a binary approach focussed on numbers of employers that does not produce the necessary scale. Scotland's focus is on recalibration through economic development, inclusive growth and incentivising good work through the direct workforce and procurement and involving a wider range of actors. There is strong commitment to the rLW, accredited through the Scottish Living Wage Accreditation Initiative and the Living Wage Foundation and promoted by the government funded Poverty Alliance.

The objectives of FW are described as being to 'advance the interests of workers and unions in a 'voluntarist' context beyond statutory minima and to 'reverse the 'marginalisation' of unions, on the basis that strong unions and collective bargaining are a prerequisite for

⁶⁴ Scottish Government (2021). Fair Work Action Plan. Available at: <https://www.gov.scot/publications/fair-work-action-plan/>.

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sustained economic and social progress'. Having effective voice means that all workers should be able to have a say in how work is organised and run. Fair Work First recommends employers use appropriate channels for employee voice including trade union recognition⁶⁵. One critique cites disputes across the public and private sector as evidencing the absence of social partnership⁶⁶.

New responses to labour market challenges

In 2021 the Scottish Government and the Convention of Scottish Local Authorities (COSLA) issued a joint statement of intent outlining how they would work together to ensure improvements in publicly funded adult social care. This includes the development of a minimum standards' framework for terms and conditions and a minimum standards' framework for effective voice, supporting an effective collective bargaining role in the sector. Local health and social care partnerships would transfer funding via local authorities to care providers.

The Fair Work First Guidance represents the Scottish Government's flagship policy for promoting high quality work. It is not mandatory but applies to those involved in awarding public sector grants, other funding, and public contracts as well as those who receive funding through public sector grants, sponsorship arrangements with the Scottish Government and/or are involved in the delivery of contracts. They are asked to adopt fair working practices, specifically, appropriate channels for effective voice; investment in workforce development; no inappropriate use of zero hours contracts; action to tackle the gender pay gap and create a more diverse and inclusive workplace; and payment of the rLW. In September 2021 the guidance was updated to include the facility for flexible working and the rejection of fire and rehire practices. The Scottish Business Pledge consists of 10 actions, with three core pledges for businesses on payment of the rLW, use of zero-hour contracts and action to address the gender pay gap.

Scottish Government guidance states that payment of the rLW to workers on public contracts can be applied by all Scottish public contracting authorities. It is possible to require the rLW to be paid to workers on public contracts, where:

- Fair Work First practices, including payment of the rLW, is relevant to how the contract will be delivered;
- it does not discriminate amongst potential bidders;
- it is proportionate to do so; and
- the contract will be delivered by workers based in the UK.⁶⁷

While these provisions can be included in tenders, the score that they attract compared to other criteria, may vary and not be sufficient to make a difference in outcomes.

⁶⁵ Fair Work Convention (2016). Fair Work Framework. Available at: [Fair-Work-Convention-Framework-PDF-Full-Version.pdf](#).

⁶⁶ Gall, G. (2021) Fair Work in Scotland – a critical assessment, published by The Jimmy Reid Foundation.

⁶⁷ <https://www.gov.scot/policies/public-sector-procurement/fair-work-in-procurement/>.

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Equal Pay is part of the FW agenda particularly with regard to social care and childcare and raising the pay of systematically under-valued workers. The agenda pushes meaningful GPG reporting and is publishing a report on older women workers.

Outcomes

For some interviewees, Fair Work is seen as being based on social dialogue, a process of negotiation through which the parties reach agreement, rather than social partnership which aims to bring together government, trade unions and employers. In this way they believed that it recognised the legitimacy of the union role and of collective bargaining as a goal. The focus on social dialogue was seen as part of a wider Scottish tradition, with not everyone comfortable with partnership. The definition of social dialogue is a tri-partite relationship between unions, government, and employers. The Enterprise Agencies have promoted a Toolkit for employers to assess FW and promote FW action plans, with Audit Scotland also promoting FW in public audits. Investors in People are also building in a FW approach. COVID-19 in Scotland codified some aspects of work with employers via Memoranda of Agreements and opened the door for sectoral bargaining around absence management. The Fair Work statement particularly promoted access to sick pay during COVID-19, although employers argued that requiring them to pay full sick pay during COVID-19 was discriminatory in relation to England. The FBU used Scottish Government health guidance related to COVID-19 to take a successful Employment Tribunal case against the Scottish Fire and Rescue Service, arguing that forcing staff with disabilities to use annual leave or TOIL when shielding amounted to discrimination. However, the SG now wants to retire the COVID-19 statement, which the STUC opposes.

The [Fair Work Convention's 2020 'Fair Work in Scotland'](#) report found⁶⁸ that pre-COVID-19 the proportion of people earning less than the real living wage had decreased, the overall measure of employment security had improved along with levels of participation in involuntary non-permanent work and involuntary part-time work having reduced. Gender and ethnicity pay gaps had narrowed and collective bargaining coverage increased. However, trade union membership had declined, there had been no improvement in access to flexible working; no improvement in the number of illnesses caused by work, an increase in the use of zero hours contracts and decrease in the effective use of skills in the workplace along with a reduction in workers' participation in workplace learning. It has been suggested that there is no evidence that FWF is responsible for any of these outcomes⁶⁹.

Challenges

Issues were raised about the capacity of both unions and employers in terms of established structures, compromising effective social dialogue. It was suggested that unions had insufficient numbers of officials who could sit on bodies at the strategic level, and that their industrial focus led to concentration on negotiations; there needed to be support for officers to understand nationally led conversations. There had been use of the Union Modernisation

⁶⁸ <https://www.fairworkconvention.scot/greater-commitment-to-progress-is-needed-if-scotland-is-to-achieve-its-ambition-of-being-a-fair-work-nation-by-2025/>.

⁶⁹ Gall, Op.cit.

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Fund to provide some support and continued support for Union Learning in Scotland has been seen as a success. Alignment with union priorities and their organising agenda was raised. Additionally, it was felt there was insufficient knowledge among workers of what Fair Work is and conditions for its achievement were absent on the ground.

Hesitancy on contract compliance, seen as reflecting political will, but also grey areas in procurement about contract sanctions, remains. Enforcement is a challenge, one commentator highlighted the lack of compulsion placed upon employers to implement fair work criteria; and that statutory measures are necessary, in particular regarding public procurement⁷⁰. Other interviewees pointed to a lack of clarity as to whether breaches of contract are policed and ambivalence about legal action, although there is a view that encouragement of the concept of compliance is enough. The Scottish Government's Fair Work First policy requires appropriate channels for effective voice, such as trade union recognition, investment in workforce development, no inappropriate use of zero hours' contracts, action to tackle the gender pay gap and create a more diverse and inclusive workplace and payment of the rLW. The Scottish Government's Fair Work First policy requires appropriate channels for effective voice, such as trade union recognition, investment in workforce development, no inappropriate use of zero hours' contracts, action to tackle the gender pay gap and create a more diverse and inclusive workplace and payment of the rLW. It has a central monitoring system on grant awards, with the aim that over time contract compliance is more visible so that breaches will be flagged in the system.

There is recognition that collective bargaining leads to positive outcomes and that if terms and conditions are pushed up the logic of outsourcing disappears. The FWC does not have a position on bringing services back in house, as the strategy is that all jobs should be FW jobs and public money should drive FW outcomes. However, the aim to improve employment standards leads to a logic of bringing work back in-house, an example is in the case of Cordia staff which Glasgow City Council brought back in-house in 2018. This followed on from industrial action by Cordia workers.

Commentary

The Scottish Government is constrained by the devolution settlement, respondents talked about having to find ways of pushing without looking like it is challenging employment law. It has led the government to look at soft measures, such as the Fair Work Guidance and the Fair Work Commission as a route to delivering improved employment standards. There is a critique of a consensus approach based on social dialogue rather than one that rooted in collective bargaining and neutrality (thus far) and on the meaning of 'employee voice'. As in other case studies the limits of devolution within the current economic model were raised, and dangers of a preoccupation on further powers without asking the question 'devolution for whom?', something that may reflect political leadership.

While conditionality of funding in social care means organisations will not get funding from the Scottish Government without paying the rLW, staff turnover in the sector is said to be

⁷⁰ Gall, *Ibid.*

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over 30% with over 20% of jobs unfilled and services collapsing. Thus, while the imposition of the rLW has brought some benefits to workers in low paid sectors, the gap persists between what it offers and what workers need to encourage them to remain in employment, in particular in sectors of work that are highly stressful and where the overall employment package is poor. Extra government funding for social care and childcare was crucial and has ensured delivery at a minimum level, but those above the minimum are squeezed.

The use of a private consultancy on the introduction of the National Care Service engendered disappointment. UNISON is opposed to the transfer 70,000 staff into a National Care Service on the basis that it will diminish local authority power. On the other hand, the Bill makes funding conditional on meeting FW standards, embedding sectoral bargaining in procurement with care registration conditional on a commitment to collective bargaining. Sectoral bargaining in social care would cover 440,000 workers. The application of Agenda for Change for social care and associated job evaluation would address pay and conditions, but the funding of wage increases is a major issue. There is also a question of expertise, including in terms of job evaluation, and the erosion of industrial democracy in public bodies, although respondents point to the recent return to national bargaining in the FE sector.

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Greater Manchester – A Charter for change

In Greater Manchester, as with all of the English devolved authorities, the range of powers available through its devolved settlement is significantly more limited than in the case of Wales and Scotland. Greater Manchester was the first of the English authorities to conclude a devolution deal in 2014 and now has had six devolution deals, each involving a further transfer of power to the authority. It initially had powers over transport, business support, and adult education. In 2015 health and social care was devolved. It also gained responsibility for the Adult Education Budget. Andy Burnham, its elected mayor, came into office in 2017. Later devolution deals have given the authority control over the police and fire service and have strengthened its role in the delivery of support to the long term unemployed and those with health conditions, to enable them to access employment. This represents the highest range of powers currently available to any English authority. But it falls far short of what might be needed to deliver any real changes in existing employment standards and has been hindered by budget cuts. This was a rationale for the promotion by its mayor of Good Employment Charter as this is a vehicle to address specifically the issue of improving employment standards, even though it has to be on a voluntary basis. This case study looks at the origins of the initiative, how it was developed into a working policy and at the way in which it involved trade unions from the start. The main focus of the study is on the criteria adopted by the Manchester Charter on Representation and voice.

Background

Almost 1.5m people are economically active in the Greater Manchester area, but there is a lower economic activity rate of 75% compared to 79% nationally. Additionally, the jobs available are more likely to be low paid and there are much higher levels of long-term sickness, factors feeding the lower economic activity rate. In 2017 Andy Burnham was elected as its new mayor with a manifesto commitment to improve working conditions, to tackle poor wages and zero hours' contracts, to bring new jobs and skills, and to engage with trade unions. This could best be achieved through the adoption of a Good Employment Charter.

New responses to labour market challenges

The Good Employment Charter was developed during two rounds of public consultation, with the aim of building a consensus that could sustain its activities. The first task was to identify what 'good' employment looked like and to do this a 'Setting the Standards Working Conference' was convened, involving a wide range of stakeholders. This led to the acceptance of seven characteristics as defining fair employment. Trade unions were involved from the start and the regional TUC helped shape the Charter and has representation on its board. The Charter now has a tripartite board which steers the direction of the work of the Charter team. The charter's seven characteristics cover: 1. Secure work, 2. Flexible work, 3. Pay, 4. Engagement and voice, 5. People management, 6. Recruitment, and 7. Health and wellbeing. Employers are accepted as supporters or members. Supporters must demonstrate that they are seeking to work towards meeting the seven criteria while those who wish to be accredited as members must meet all the criteria.

On *Engagement and voice* supporters must, *where possible*, build effective employee engagement activity with support from relevant professional bodies. They must commit to have a conversation with unions, facilitated by the Charter Unit. Accredited members must

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go further; they must demonstrate that they engage positively with trade unions, including: - Allowing access to the workplace by trade union organisers. - Making new staff aware of potential trade union membership. - Voluntarily recognising a trade union(s) where possible. - Providing adequate facilities and time for trade union duties, training, and activities. - Not seeking to derecognise a trade union(s) or dismantle collective bargaining machinery. - Implement collectively agreed terms and conditions. - Take part in collective bargaining arrangements where they exist. - Implement collectively agreed norms in the sector where possible. The requirements are not mandatory but indicate that representation and voice should involve trade unions.

The Charter now operates in a labour market which is tighter and where employers are more aware of the need to be seen as 'good' to attract staff. Thus, the Charter has focused on a 'leadership scheme' aimed at improving employer skills. The Charter Board has recognised that there is an equivalent need to focus on workers and to better inform them and in June 2023 intends to host an Employment week to disseminate the work on the Charter and to get workers to better engage with it.

The extent to which Charter supporters can access procurement has been under discussion, with unions arguing that there would be no incentive for companies to proceed to full membership if they obtained no procurement advantages, thus full membership should be seen as bringing positive benefits.

Outcomes

The Charter aim was not to sign up as many employers as possible but to accept into membership only those who had been assessed through a rigorous process of meeting all the criteria. Thus, a maximum of ten applications are progressed each quarter. Supporter members are checked annually and if not seen to be moving towards member status can have their supporter status removed, although to date this has not happened. However, in cases where there is an industrial dispute this could result in an accreditation being delayed. The charter creates political leverage and unions can play a role in rejecting applications from employers whose practices conflict with the charter's key principles, for example when there is a collective dispute with their workforce on issues relating to the charter criteria, or providing further intelligence about whether employers are meeting the criteria. Additionally, as the Charter evolves, it has expanded its competences. Living hours' are now a requirement under the seven pillars and employees have the right to a minimum of 16 hours of work, should they wish this. Sick pay from day one is now part of the living wage requirement and there are rights to request flexible working with a response within a month. Unique to Manchester's model is the degree of evaluation built into the programme. Manchester Metropolitan University has already produced two in-depth reports which assess what has been achieved while pointing to some of the challenges faced⁷¹.

The Greater Manchester devolution deal devolved responsibility for social care This led to the creation of a Health and Social Care Partnership with a set of plans, one of which covers employment and consists of four priorities: helping leaders, carers, and volunteers to

⁷¹ Lupkin, B. Crozier, S. et al. (2021) The Greater Manchester Good Employment Charter, Evaluation, Interim report Phase One, Manchester Metropolitan University [GM Charter Evaluation Interim Report June 2021 \(1\).pdf](#); Phase Two (2022) [GEC-EVALUATION-PHASE-2-FINAL-REPORT.pdf](#).

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develop, supporting staff, apprentices, and people on placements, improving the offer of employment, and filling difficult roles. Under this, staff have been paid at the rLW and this policy is now supported by all 10 councils that were committed to commission social care provision based on the rLW by April 2023. This will be required in contractual renewal and contingency funds made available for those with contracts.

In relation to adult learning, the Adult Education Budget which was devolved to the authority has been operational since 2019/20. Its focus has been on reducing the number of adult education providers through an extensive round of consultation. The focus has been on the provision of training that updates skills after career breaks or redundancy.

A Working Well policy is aimed at addressing high and persistent levels of worklessness due to ill health. When set up in 2014 it initially worked with 5,000 people with long-term health condition, primarily poor mental or physical health, with a plan to increase this number to 50,000. A major issue identified was the waiting times for treatment and support. The policy has allowed for the pooling of budgets and resources across the authorities within Greater Manchester. It now has a health fund aiming to help people in work at risk of leaving their jobs. A specialist employment advice service is planned for people with learning disabilities and autism, along with a programme for people in low paid self-employment and the gig economy. A report by the Local Government Association⁷² found that the success of the Manchester plan had been in testing initiatives but that its employment support services have been constrained due to cuts in funding.

Challenges

The charter is designed to respond to developments and changes. COVID-19 had created a change in worker expectations, particularly in relation to flexible work and sick pay and consequently the pay characteristic has been redefined to include sick pay, the real living wage, real living hours and flexible work from day one, effective from April 2023.

But there are other challenges. The Charter could be described as a provincial effort to voluntarily get employers to sign up, but it does not have legal force and therefore remains a weaker tool, dependent on employer good will. It also inevitably focuses on employers and their responses, there is no corresponding focus on trade union organisations.

Trade union recognition is one of the criteria that define employee voice, but it is only one way to define engagement, the voice criteria can be met even where there is no recognition, since trade unions are not always seen as relevant, particularly in the case of small or micro businesses. Thus, while the Charter encourages a conversation with unions, it does not necessarily translate into union recognition. There is also a view that it can be a validation of existing practice and does not go as far as the unions locally would have ideally wanted. There is a preference to talk about voice and engagement, rather than trade union recognition.

⁷² Local Government Association (2020) Experiences of employment and skills devolution: Greater Manchester Combined Authority, [Experiences of employment and skills devolution: Greater Manchester Combined Authority | Local Government Association](#).

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Commentary

The Manchester Charter is the result of a lengthy period of planning, bolstered by a high level of political support. It has a clear accreditation and monitoring programme, but is reliant of a relatively high level of funding. It can measure outcomes in terms of the number of employers who have signed up, either as supporters or members and the number of the former who move up to the member category. It promotes collective bargaining, while not making this a requirement of membership. In terms of procurement the Charter is seen as having some influence but there is a caution in relation to what can be achieved through linking procurement to Charter compliance. The Charter is conceived as being flexible and inclusive. But it is a tool to promote among employers and not workers so that union demands for further improvement to employment standards beyond the minimum can be lost in the focus of the initiatives on employers to improve.

However, the right of unions to have access to workplaces that have been accredited could be valuable, but union capacity is also a challenge in some sectors, those that are unorganised or where workplaces are small. Access can be a tool, but the extent to which it is followed up is still problematic. There is also a challenge of capacity in relation to procurement. There are insufficient resources to carefully monitor the large number of procurement contracts. If an employer seeking accreditation was at the same time the focus of a trade union recognition campaign, then the access rights could be valuable. Public pressure, which was the initial basis for having a Charter, has not been sufficiently utilized and unions have not used their members.

The Good Employment Charter is seen as a model and some authorities recently have looked to adopt it. The Charter Unit engages widely with those authorities interested in taking a similar proposal forward, but the model that it supports is based on a tailored programme for a specific area. The Charter is shaped to respond to the specific needs of Greater Manchester. A toolkit produced by Manchester Metropolitan University for the Greater Manchester Good Employment Charter gives useful advice to other authorities seeking to promote good employment but makes it clear that there is no single model, and each must adopt their policies and criteria to the local situation⁷³. The specific politics of Greater Manchester, along with the history of the labour movement locally, have shaped the characteristics of the Charter and may not be directly transferable. What can be transferred is the model of how they went about setting up a charter, the time that was taken to ensure that it had sufficient buy in and the level of engagement with employers, trade unions and other stakeholder institutions. The Charter Unit is relatively well funded (with seven members of staff) and it requires this level of financial support to deliver a charter modelled on Manchester. Where there are limited resources then different ways of organising need to be explored.

Crozier, S. (2022) *Toolkit and report Sharing learning from the development of a Good Employment Charter in Greater Manchester*, Manchester Metropolitan University.

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North of Tyne - Pledging good work and union recognition

The North of Tyne devolution deal came into operation in 2017. It provided for a directly elected mayor who acts as Chair to the new combined authority. It established an Inclusive Growth Board, devolved the Adult Education Budget, provided funding for pilot projects aimed at getting people into work. It also gave powers in relation to land purchases, low-carbon energy policies and established a Joint Committee to exercise transport functions. In relation to transport, the deal contained no new powers, functions or funding. A new deal proposed at the end of 2022 will see the formation of a new combined authority covering Newcastle, Gateshead, North Tyneside, Sunderland, South Tyneside, County Durham, and Northumberland. It will involve the transfer of more funds from central government, with a focus on economic growth and regeneration, adult education and skills and sustainable transport.

The case study from the North of Tyne authority focuses on the *Good Work Pledge*, launched in November 2020 by the Mayor, as part of his manifesto commitment prior to election. The study shows how political will was crucial to the initiative and how it is located within the history of labour in the North East.

Background

The North East of England has been an industrial heartland with a strong tradition of trade union organisation and right up to around the turn of the Century, had the highest union density in both the public and private sectors⁷⁴. However, the region was badly hit during the Thatcher years, when established industries were decimated. There is a legacy of skills' deficit and deindustrialisation and a lack of investment in skills (*Interviewee D2*). A 2021 paper written by its current mayor Jamie Driscoll⁷⁵ cites low productivity, the worst healthy life expectancy in England and widespread deprivation. Around 15% of the workforce currently earns below the Living Wage Foundation rates.

Powers are devolved in so far as they support investment, job creation and skills. A 2004 study of the Northern TUC (NTUC) found that while it was engaging in the emerging devolved structures, it faced challenges in engaging with the emergent institutional structures particularly in relation to the interaction between the North East's particular legacy of tripartite corporatism and the more pluralist modes of regional development governance emerging in the English regions.

The Autumn 2022 budget statement included expansion of devolution for the NE with additional powers related to transport. The Northern TUC argues that additional powers in relation to transport are essential in the promotion of good work policies. By 2024 the process

⁷⁴ Peter O'Brien, Andy Pike and John Tomaney (2004) Devolution, the Governance of Regional Development and the Trades Union Congress (TUC) in the North East Region of England, *Geoforum* 35(1), 59-68.

⁷⁵ Regional wealth generation Focusing on local wealth creation to level up the North Jamie Driscoll October 2021, Royal Society of Arts.

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of devolution will have been extended, through the bringing together Labour led North Tyne (Labour led) and Tees Valley (Conservative led)

New responses to labour market challenges

The Good work pledge North of Tyne was endorsed by the Northern TUC and launched in November 2020. It was part of the mayor's manifesto commitment to eliminate low wages for the region, end poverty pay and provide workers with work which can maintain them and their families. It is seen as a 'soft' power, there is no legal compulsion on employers to comply, but their reputations are enhanced if they do, and they are more likely to meet criteria for funding or on procurement. The pledge is based around five principles – 1. Valuing and rewarding the workforce; 2. Promoting health and wellbeing; 3. Effective communications and representation; 4. Developing a balanced workforce; and 5. Social responsibility. It sets down their clear commitments to have zero-tolerance on exploitative employment practices and to ensure that employees have autonomy and a voice in the running of the business. What is unique about the Good Work Pledge is that it commits signatory employers to paying not just the rLW, but also to offer rLH, as promoted by the Living Wage Foundation.

As with most good work charters, signatory employers agree to adhere to employment standards that extend beyond the legal minimums, joining up as Standard or Advanced members. Standard members must pledge to take action that will move them up to advanced accreditation, based on trade union recognition, so such organisations must have recognition and structures.

Outcomes

Every application submitted for the Good Work Pledge is subject to assessment by NTCA. To date 77 organisations have signed up and of these 51 have reached advanced accreditation including: Northumbrian Water, Northumberland County Council, Newcastle College, KPMG, Metro Radio, and Capita.

Challenges

The initiative is encouraged by the mayor who is clearly a key figure in delivering the good work pledge and getting employer support. It is heavily reliant on the political commitment of the administration and the challenge is to create a structure which is representative and embedded, regardless of its political face. It will need workers to be part of the process so that there is industrial power where there is no political relationship. Turning this commitment to the promotion of good work into a movement which embraces all the labour force in all its diverse manifestations is the key to keeping the policies effective. The unions argue that there is the need for a united union vision, along with the need to rebuild relationships between local authorities and multi-union bodies.

Commentary

The good work pledge has been a response to the specific economic and social challenges of the North of Tyne. Although its charter method is like that in other authorities it is unique in its requirement that advanced accreditation must come with union recognition and not just living wages but living hours. The model of engagement, however, is like that of other Charters, with a high level of advance preparation, an active steering board and a system of

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assessment and accreditation. The focus on worker engagement comes through its commitment to advance union organisation, promoting collective bargaining and organising.

The role of the mayor in the initiative is central, the policies are both driven by and visible through the engagement of the mayor. They reflect a strong political commitment to promote good work. There are measurable outcomes, the number of employers accredited at standard and advanced level are published, along with their names, and there is monitoring, and assessment built into the process, but there is an absence of metrics to evaluate improvements.

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Leicester – Through crisis to access

Crisis can be the catalyst for new ways of working and can be a positive motivation for change. A study of trade union action in the garment industry of Leicester is a good example of what can be achieved whenever a problem is acknowledged, it is accepted that the customary ways of organizing simply cannot be effective in relation to that problem and that without union access to workplaces, workers cannot end exploitation.

Background

There is a long history of garment making in Leicester, going back into the 19th century, and of female employment. Today there are estimated to be 1,000 to 1,500 factories operating in the town, employing around 10,000 workers. These are small workplaces but are a vital source of employment for those who work in them. But is it an industry that has long been challenged by the lack of modernisation in the sector and competition from emerging markets, with lower labour costs. In the last couple of decades there have been several damning reports on working conditions in the sector. A 2019 ground-breaking report from *Labour Behind the Label* set out clearly how, in the absence of effective regulation, the current model of fast fashion promoted poor labour standards.

The COVID-19 pandemic added to this when, just as most of the rest of the country was coming out of the first lockdown, Leicester was put into an additional lockdown in June 2020 and was not taken out of this until June 2021. Leicester had been the city with the longest lockdown in the UK and its garment industry was highlighted as one of the principal reasons for its imposition.

While Leicester's garment industry was identified as problematic, existing enforcement agencies had claimed that there were no problems in the sector. The poor working conditions prevalent did not match of the definitions of modern slavery on which enforcement was focused and a TUC report on the industry noted that the GLLA Leicester taskforce had found no breaches of employment rights in the sector⁷⁶. Enforcement agencies were in any case poorly resourced and could not police the large number of workplaces that there were.

New responses to labour market challenges

The trade unions recognised that if there were to be changes then there had to be a new way of organising, to promote collective voice in workplaces that were not trade union organised and indeed might never be. They had to find a way to gain access to workplaces, to audit conditions, support workers with grievances and to eliminate poor working conditions. The route to this was to seek the collaboration of the large fashion retailers that were concerned that their reputations were being damaged due to their involvement with factories with poor working conditions.

Organised through the Midlands TUC, the unions joined forces with the Apparel & General Merchandise Public Private Protocol (AGM-PPP) that brings together retailers, unions, statutory agencies, and NGOs to explore improving the textile sector. At a meeting, facilitated by the City Mayor, the AGM-PPP and the trade unions agreed to a system of Workplace Support Agreements to bring retailers and trade unions together to promote trade union

⁷⁶ *Leicester Garment Industry, Developing a ground-breaking partnership Accord for the sector* (2020).

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access. Unions argued that to challenge poor working conditions they needed the retailers to provide a list of all suppliers, to secure them right of access to the workforce prior to trade union membership, and finally to source only from factories who permit full independent trade union access. One trade union and one retailer are paired together and then cover several suppliers. The trade union and the retailers agreed to fund two outreach workers (located in a community centre) who would access the workplaces to challenge poor employment standards. The unions are now pressing for is a binding sectoral agreement, a Joint Responsibility Agreement.

Outcomes

Successful initiatives are those that subject to monitoring and assessment. In Leicester, the fashion retailers and the unions came together twelve months after the system of Workplace Support Agreements was introduced to discuss what had been achieved. They reported that workplace access for the unions has given them a better understanding of the industry and with that a better way of promoting worker voice.

Over time the unions have found that they are dealing with increasing issues of worker rights and this in turn has led to workers finding their voices and challenging employer bad practices. Although small in numbers, some workers have joined unions – something that the unions did not anticipate and did not organise around this.

Challenges

The sector is shrinking, some retailers have gone bankrupt, the number of jobs in the industry is declining. But if this model is successful, it could be rolled out to other cities or even in other country environments. The retailers whom the unions are dealing with are in many cases multinationals, with suppliers not just in Leicester, but worldwide.

The main challenge to this is capacity. Trade unions simply do not have the numbers it needs to run large projects such as these. But thinking outside the box means that capacity can be utilised more effectively. In Leicester they have begun thinking about how to use procurement as a way of targeting not just the garment manufacturers but the wider supply chain.

Commentary

The Leicester case study highlights many of the key themes identified in this report. The action taken was in response to the specific challenges in relation to the unorganised nature of the sector, poor working conditions and a need to engage through alternative channels. The unions found new ways of engaging, not as they would traditionally do, in bargaining with the direct employer, but through finding other allies who also needed to promote an alternative dialogue with the factories. They carefully planned and developed a coherent strategy, progressing through stages.

But they did not lose sight of the need to promote workforce voice and to engage collectively. Importantly the unions in Leicester recognised their areas of weakness, in particular their capacity to organise and took steps to address this in a new way. They assessed what was possible, monitoring and assessing and could point to definable outcomes. They also are

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looking to future strategies, on procurement as a way of extending their effectiveness beyond the initial areas of work.

Leicester also shows the role of local administrations in aiding this engagement, but it also demonstrates that this engagement does not necessarily mean that the authority needs to play a central role. While political will was present, in the need for the City to respond to its poor image, it was not the sole determinant of success.

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London – Exploring new paths at regional and local level

The Greater London Authority was established in 1999 and the first elections for the mayor and the assembly were held in 2000. Its mayor has powers over transport, housing, economic development, planning, environment, policing and fire and rescue. The mayor is required by law to produce strategies in various other areas, and these include skills and health inequalities. However, as there is no executive responsibility of these areas, they are reliant on informal ‘soft’ powers. This case study focuses on London’s policies aimed at promoting good employment standards through its mayor’s policy aim to create a living wage city. It contrasts action at the level of the devolved authority with the powers at local authority level which may complement the former or may indeed offer other avenues to make improvements in employment standards. Additionally, the case study looks at how, alongside this policy, there can be other initiatives which are aimed not just at tackling low pay, but at promoting collective organisation.

Background

London’s economy has grown over the last three decades, with two million workers being added to the labour market. However, many of its industries have been in decline, in particular manufacturing. While there has been a growth in jobs in the professional services, a significant proportion of London’s labour force is excluded from these new jobs through lack of skills and qualifications. London contains both the highest paid workers in the UK, but also has high numbers of low skilled, low paid workers, who face the double challenge of working for low pay in a city where costs are very high.

New responses to labour market challenges

The 2016 election manifesto of Sadiq Khan, London’s mayor, contained a pledge to make London a Living Wage city. This led to the adoption in 2019 of the *London Good Employment Standards*, which accredits employers based on four pillars: Fair pay and contracts; Workplace well-being; Skills and progression; and Diversity and recruitment. Of these, only the first is mandatory. All accredited employers must pay the Living Wage Foundation London Wage. The standard was initially focused on larger employers, but more recently a pared down scheme for micro employers (10 or fewer employees) has been launched. This still requires payment of the living wage, but the other three pillars have been adapted to reflect the more limited resources of these employers. The four pillars do not include one on voice and representation, which is subsumed under the workplace well-being pillar, although trade union recognition is considered when assessing the extent to which employers meet the accreditation criteria.

A more recent GLA focus on the gig economy has looked to developing a new charter scheme not based on accreditation but where union recognition and worker dialogue are an essential criterion for the assessment of good employment standards. *The Good Work Charter for the Gig Economy*, which will be launched in 2023, is the outcome of detailed research, including in-depth interviews with stakeholder groups, followed by a round of consultation that included the trade unions, with the aim of understanding the challenges faced by Londoners in this type of work and how union recognition and workforce dialogue could be effectively bolstered. Although this initiative builds on the good work charter it has an added element to

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include dialogue and transparency, building the obligation to consult with trade union representatives into the charter itself.

Outcomes

Some 117 employers have been accredited, employing around a quarter of a million workers. These, of course, represent only a small proportion of London's labour force but it is believed that the numbers and coverage will increase. The accreditation process is quite rigorous, officers from the GLA are assigned to work with applicant employers to encourage them to take the appropriate actions to meet the four pillar standards. In cases where there is a current industrial dispute accreditation is likely to be delayed until the dispute is resolved. The mayor has a stated commitment to work with unions and they were involved in the drawing up of the standards and, while there were regular meetings during the COVID-19 pandemic, the standards are directed towards employers, and are primarily organised to meet their concerns with regard to costs, administration and resources required.

Procurement policies take account of the obligation to pay the London Living Wage and those working on procurement contracts for the GLA and its organisations must receive at least that rate and the extent to which the four pillars are in place is used in the calculation of social value.

These are policies advanced by the devolved, the Greater London Authority. But it operates alongside local authorities who may have their own policies to promote higher employer standards. Local authorities also have a role in procurement, as well as in licencing businesses, presenting alternative routes to encourage improvements in employment standards. For example, Islington Council has inserted into its procurement in construction contract for the development of the former Holloway Prison, that 30 per cent of those employed on site are female. Social care workers have been brought back in-house although there remain contracts with Care UK.

London's standards have a specific focus on diversity and equality, reflecting the mayoral commitments and the diversity of the city itself. The responsible procurement policy promotes diversity amongst suppliers, but also encourages them to employ a workforce that is representative of the diversity of London's population and provide services that are inclusive. The authority seeks to work with organisations (and their supply chains) that have a good track record and can clearly demonstrate promoting equality and diversity within their own organisations.

Challenges

The process of accreditation is labour intensive. The unit responsible consists presently of just six staff and given the degree of investigation that is required of every employer applicant, there is a limit as to how many can be signed up. It is also the case that many of the employers who have been accredited would more likely already have recognised trade unions, so that accreditation may lead to less movement to better standards, as these minimum standards would already have been met. It is in sectors such as hospitality and retail where challenges remain. The GLA covers an area that contains 33 local authority areas, 32 boroughs and the City of London. Their political leaderships differ, although in relation to GLA recommended policies authorities generally engage, regardless of their political leadership.

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There is also the issue of trade union capacity. Particularly in the absence of real breakthrough successes, it is difficult for over-stretched unions to commit resources to follow up employers who have been accredited but who do not recognise unions where there is no compulsion on them to do so. In a period of intensive industrial action, particularly in the public sector, there can appear to be a contradiction between the policies that the local authority promotes and its role as an employer.

In relation to procurement one challenge is that imposing standards does come at a cost either to employers or to the local authority. In the absence of a legal sanction there are limited levers that can be used, particularly since the authorities remain concerned that they should operate within the legal limits permitted.

Commentary

The scale and complexity of London's economy imposes specific challenges and the nature of its industries, comprising a large finance and technology sector at one end of the scale and micro businesses employing one or two staff at the other, means that it is difficult to develop a model for improving employment standards that responds to these differing needs. Of key importance in London has been the role of the London mayor and the manifesto commitment in 2016 to set some basic standards that employers would be encouraged to comply with. On the issue of procurement there has been limited effort in promoting good practice and in encouraging boroughs to use procurement to improve employment standards.

The London model has some similarities with that of Greater Manchester. It has a dedicated team of officers and an accreditation scheme, which while less prescriptive does require a monitoring process which limits the number of employers who can reach the accreditation standard. Furthermore, the scheme will require the re-accreditation of current accredited employers and the fact that the accreditation is time based is both a strength, as it imposes a requirement to continuously monitor, but it inevitably limits the number of new employers that can be entered into the scheme.

The London scheme goes further than that of some of the other case study authorities in its inclusion of sick pay from day one and on setting living hours' minimum, unless otherwise requested by the employee.

The policies on procurement are guided by social policy, employment – how suppliers treat their staff; and environment – whether they operate in an environmentally positive way. The requirement to pay the London Minimum wage both in 1st and 2nd tier contracts is challenged by legal interpretations which mean that the procurement rules cannot compel suppliers to sign up to the Good Work Standard although they can request proof of reaching an equivalent standard.

Appendix C: Reviewing the literature on devolution and employment standards

The role of devolved authorities

Published academic research has focused on how devolutionary powers have been used in practice and what they have achieved. Schmuecker (2009) looked at how employment powers might effectively be used in devolved administrations, drawing on documentary sources and a series of case study visits to seven sub-regional and local partnerships with a role in the devolved delivery of employment policy⁷⁷. The research pointed to the role of the Westminster government as key in making devolved governance approaches work. Atkinson⁷⁸, in relation to the Scottish employability policy, found a strong focus on an area-based approach to tackling poverty and deprivation, highlighting the Scottish Government's anti-poverty framework of 2008 which stated that 'by far the most frequent route out of poverty for working age adults is through well paid and sustainable employment'⁷⁹. Atkinson found that this provided local authorities with a significant degree of autonomy in how they would deliver outcomes, with, however, the Scottish Government retaining a key governance role.

A similar connection between devolved first tier powers and local authorities was found in the English regions, with a notable increase in partnership relationships. Atkinson's research concluded that 'administrative devolution for the British nations can thus serve to create additional opportunities and routes to devolve employment policy, in contrast to the assumption that might be made around this simply adding another complicating factor or layer to the equation'. However, later research suggests that the Westminster government remains important, in supporting the devolved administrations and the partnerships, by responding to the policy initiatives promoted by these administrations. In relation to employment, local discretion has been used in only a relatively limited way in the British context⁸⁰. Sandford, using the example of the Greater London Authority's 2019 *Skills and Employment Call for Action*, notes that while it set out a clearly-reasoned proposal for a "devolved holistic skills and employment system" the proposed functions are located in a number of agencies and bodies, each with distinct funding streams; and potentially with distinct legal foundations. The report notes 'granting a recipient authority legal powers to act in this area and devolving an existing function to them, are two separate matters, and the former does not automatically imply the latter'⁸¹.

Limited outcomes?

In relation specifically to the employment charters which many of the MCAs had adopted, they are vulnerable to political changes while all the time having to work to keep employers on board⁸². Scepticism has been noted in relation to the concept of good work procurement,

⁷⁷ Schmuecker K Eds. (2009) *Devolution in Practice: Public Policy Differences within the UK* (London: IPPR).

⁷⁸ Atkinson, I (2010) *Governance structures and the devolved delivery of employment outcomes*, Dept Work and Pensions Research Report No 678.

⁷⁹ Scottish Government (2008). *Achieving our potential: a framework to tackle poverty and income inequality in Scotland*, Scottish Government, Edinburgh.

⁸⁰ Sandford, M. July 2021, *The mechanics of devolving power*, LGIU.

⁸¹ Ibid.

⁸² Dickinson, P. (2022) *Review of Employment Charters in the English Mayoral Combined Authorities*, ReWAGE, Universities of Warwick & Leeds.

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expressing the view that the *Social Value Act 2012* had not promoted those organisations with a social ethos, but instead been reduced to a numbers game of the most jobs rather than the best and therefore unlikely to deliver work quality gains for employees⁸³. Focusing specifically on Greater Manchester, an independent prosperity review⁸⁴ found that, in relation to adult skills and education, progress had been limited, in part due to the legal barriers experienced in the transfer of budgets, a situation finally resolved in 2019. In relation to the creation of apprenticeships there was no evidence that the Apprenticeship Grant for Employers scheme (part of the original 2014 devolution deal) had led to a net increase in apprenticeship starts.

What kind of work?

Much of the discussion of levelling up has been, as the TUC has commented, aimed simply at the creation of new jobs, rather than a focus on ‘existing work that is low-paid and insecure’⁸⁵. Where better jobs have been defined, they, as a minimum, include, wages, employment quality, education, and training, working conditions and a right to representation at work, with a House of Commons research briefing defining ‘bad work’ as where the above dimensions are absent or weak⁸⁶.

A review by Sissons et al. of devolved regional good work initiatives in six city-region case studies in 2019⁸⁷ identified two axes to the ‘good jobs framework’. The first distinguished between policy agendas aiming to create more high-quality jobs (i.e., ‘create more good jobs’) and ones aiming to improve the quality of existing jobs in local labour markets (i.e., ‘make bad jobs better’). The second axis identified whether policymakers look to adopt standard-setting mechanisms, like wage floors (minimum and living wages) and other institutional mechanisms (like trade union recognition) or use more sector-oriented programmes and/or intermediary organizations (labelled as ‘programmatic’). This analysis of devolution policies in city-regions relating to good jobs illustrated the dominance of ‘programmatic’ policies aiming to increase more ‘good’ new jobs rather than improve the quality of existing jobs. None of the English city-regions investigated had, as their aims, systematic interventions promoting minimum standards like wage floors or union recognition, despite all six of their chosen case studies having large segments of low-wage labour markets. Their conclusion was that there were constraints on the capacity of city-regions to shape policies on minimum employment standards, where these standards (for example, the National Minimum Wage) are set nationally.

Green et al. suggest that the choice of hard and/or soft policies for good jobs relates to debates about enforcement of rules for good jobs, and who is responsible for enforcement (the state, employers, other stakeholders). They argue the need for a well-resourced enforcement body and robust social licencing and procurement rules in supply chains, to ensure responsible business, supported by a Ministry for Employment and Social Affairs,

⁸³ Harrison, D. and Edwards, (2018) Making Procurement Work for All Procurement practices as a route to fulfilling work in North East England Dr Deborah Harrison, November.

⁸⁴ Greater Manchester: Independent Prosperity Review Background Paper.

⁸⁵ Dobbins, T (2022) *Good work: policy and research on the quality of work in the UK*, Research Briefing, Commons Library Research Briefing, 6 June 2022.

⁸⁶ Ibid.

⁸⁷ Sissons, P. (2020) Making progress? The challenges and opportunities for increasing wage and career progression, Work Foundation Centenary Provocation Papers.

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together with a dedicated social partnership body, such as the Low Pay Commission, to review workers' rights.

The impact on 'women's work'

In terms of equality, Parkin points to differences of approach in Scotland, compared to Wales. She suggests that while Scotland has continued to have a commitment to gender mainstreaming, there is evident resistance in committing fully to the strategy. In contrast the Welsh government, has a specific gender mainstreaming horizontal theme and a crosscutting theme team offering guidance through the life cycle of funded projects⁸⁸.

Johnson et al. found that campaigns to raise standards in public contracts for domiciliary care had only limited effects on standards across the sector, in which low wages, zero-hours contracts and weak career paths predominate and had not yielded significant gains in terms of union membership. They viewed the positive ripple and spill-over effects of wages' gains at the bottom as limited. Furthermore, where local authorities were under significant financial pressure due to budget cuts, there was little room for greater gains⁸⁹.

Research on the evaluation of women's work for the Scottish Government found that privatisation and the contracting out of public services have had adverse outcomes for women, who form the majority of the workforce in public services. Privatisation has removed women from collective bargaining coverage and the ability to use equal pay legislation to address pay inequality⁹⁰. Wages are dependent on contractual terms under outsourcing⁹¹. The funding level of the contract will also be crucial. Unrealistic contracts mean downward pressure on wages and conditions, which are largely determined by contract value. The EHRC found that high levels of competition drive pay downwards at early stages in the tendering process and when contracts are due for renewal. Good procurement practice is thus crucial and Scottish legislation, allowing public bodies to specify the Living Wage, is potentially very important.

Moore's investigation of the UNISON Ethical Care Charter (ECC), which called for the introduction of the Living Wage, sick pay and paid training and an end to zero hours contracts in care work, found that where the charter had been adopted, it was the result of clear political commitment⁹². The strongest determinant of the successful integration of good work frameworks into procurement processes was committed leadership, including individual 'champions' – notably elected political leaders, good working relationship between unions and local government procurement officials⁹³. Where the ECC had been effectively implemented, that political affirmation was concretely reinforced by financial commitments from central or national budgets. Where this had not been possible, implementation was

⁸⁸ Parken, A. (2019) Equality and devolution in Wales: a distinct approach?

⁸⁹ Johnson, M. Rubery, J. and Egan, J. (2021) Raising the bar? The impact of the UNISON ethical care campaign in UK domiciliary care, ETUI.

⁹⁰ Moore, S., Wakefield, H. and William, L. (2021) International mechanisms to revalue women's work: research – a report for the Scottish Government <https://www.gov.scot/publications/international-mechanisms-revalue-womens-work-research-exploring-evaluating-international-mechanisms-aim-revalue-result-revaluation-womens-work/>.

⁹¹ Equality and Human Rights Commission (EHRC) (2015) The Invisible Workforce: Employment Practices in the Cleaning Sector August 2015. Available at: <https://www.equalityhumanrights.com/en/publication-download/invisible-workforce-employment-practices-cleaning-sector>. Accessed 30.6.21.

⁹² Moore, S. An Evaluation of UNISON's Ethical Care Charter, University of Greenwich.

⁹³ TUC *Linking employment charters to procurement Opportunities and challenges September 2022*.

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more fragile⁹⁴. Harrison and Edwards' work on procurement reported similar findings⁹⁵. Research on trade union campaigns, to improve wages and working conditions for outsourced care workers, found that it had successfully built alliances with national employer representatives⁹⁶.

While the legal responsibility for securing equal pay for work of equal value resides with employers, recent research finds that trade unions have a critical role to play. It suggests that systematic knowledge and understanding of equal pay law and principles is arguably lacking in parts of the trade union movement, where education and training is required. Existing equal pay legislation is not being fully utilised as a vital tool to help women achieve equal pay for work of equal value and close the GPG, whether through collective bargaining, legal action, but also through the design of gender-neutral Job Evaluation Schemes. Expertise in job evaluation has eroded leading to outdated pay evaluation systems.

The merits of collaborative initiatives

Parken argues that Wales has been advantaged through high levels of community collaboration. Macbride-Stewart and Parken⁹⁷ found that the introduction of a COVID-19 employer risk assessment tool for all workplaces, had been developed collaboratively with unions, clinicians, and equality organisations. Initiatives were more likely to have positive outcomes where there was collaboration and social partner engagement and was identified as a key feature in developing Welsh equalities' legislation and over-coming resistance to change. Parken et al.⁹⁸ suggest that it was collaboration between the Welsh Government, the Wales Trades Union Congress (WTUC) and the Equal Opportunities Commission (EOC) that was at the heart of a three phase Close the Pay Gap Campaign between 2001 and 2007.

If progress on addressing work quality problems requires mutual engagement by a range of stakeholders, a combination of hard and soft measures is required at different levels (the workplace and beyond) and a well-made public policy makes a difference to gender segregation within the workplace, particularly when a gender mainstreaming approach is adopted and employers can work in conjunction with supporting partners⁹⁹.

Despite this evidence, much of the literature reviewed makes little or no reference to trade unions or their activities (for example, Atkinson,¹⁰⁰ Harrison and Edwards,¹⁰¹ OECD¹⁰²).

⁹⁴ Moore, S. Op. Cit.

⁹⁵ Harrison, D. and Edwards, P. Making Procurement Work for All Procurement practices as a route to fulfilling work in North East England.

⁹⁶ Johnson, M. Rubery, J. and Egan, J. Raising the bar? The impact of the UNISON ethical care campaign in UK domiciliary care, ETUI.

⁹⁷ MacBride-Stewart, S and Parken, A (2021) Future trends and inequalities in Wales (futuregenerations.wales). Cardiff: Future Generations Commissioner for Wales (full report).

⁹⁸ Parken, A., Rees, T. and Baumgart, A. (2009). Options for an Equal Pay Duty for Wales: Research and Policy Review Cardiff: Welsh Assembly Government, <https://gov.wales/sites/default/files/statistics-and-research/2019-07/080214-options-equal-pay-duty-en.pdf>.

⁹⁹ Parken, A. and Ashworth, R. (2018) From evidence to action: Applying gender mainstreaming to pay gaps in the Welsh public sector, *Gender, Work and Organisation*, pp.1–20.

¹⁰⁰ Atkinson, I (2010) Governance structures and the devolved delivery of employment outcomes, Dept Work and Pensions Research Report No 678.

¹⁰¹ Harrison, D. and Edwards, P. (2018) Making Procurement Work for All Procurement practices as a route to fulfilling work in North East England.

¹⁰² OECD (2022) Integrating Responsible Business Conduct in Public Procurement Supply Chains: Economic Benefits to Governments, OECD 2022.

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Alternatively, the focus of research has been on employer actions in response to devolution, for example, Gibb et al.¹⁰³ and Goberman and Hauptmeier¹⁰⁴, whose research on employer organisations reported a new focus within devolved contexts and one that might be more sympathetic to labour interests, as these regional employer organisations developed as lobbyists within the devolved institutions.

¹⁰³ Gibb, S., Ishaq, M., Collins, C. (Ed.), Pautz, H. (Ed.), & Stuart, F. (Ed.) (2016). 'Decent Work': The Employers' View. (UWS-Oxfam Partnership, Collaborative Research Reports Series, Decent Work in Scotland: Thematic Report 2). UWS-Oxfam Partnership.

¹⁰⁴Goberman, L. and Hauptmeier, M. (2022) Employers' Organizations and the Territorial Divergence of Employment Relations in Wales, Scotland, and Northern Ireland, in [Contemporary Employers' Organizations – adaptation and resilience](#).

Appendix D: Empirical case studies reviewed

<i>Study</i>	<i>Geographical coverage</i>	<i>Brief description</i>
Atkinson, I. (2010) Governance structures and the devolved delivery of employment outcomes, Dept Work and Pensions Research Report No 678.	Spread across Great Britain	Case study visits to seven sub-regional and local partnerships with a role in the devolved delivery of employment policy, together with interviews.
Future of Devolution and Work Commission: Interim Progress Report.	Wales	A representative survey of 1000+ workers in Wales together with interviews trade union officials across a range of sectors in the Welsh economy.
Dickinson, P. (2022) Review of Employment Charters in the English Mayoral Combined Authorities, ReWAGE, Universities of Warwick & Leeds.	London, Greater Manchester, Liverpool, West of England, North of Tyne, and West Yorkshire.	Interviews with leads in six Mayoral Combined Authorities that had had adopted charters
Gibb, S., Ishaq, M., Collins, C. (Ed.), Pautz, H. (Ed.), & Stuart, F. (Ed.) (2016). 'Decent Work': The Employers' View. (UWS-Oxfam Partnership, Collaborative Research Reports Series, Decent Work in Scotland: Thematic Report 2). UWS-Oxfam Partnership.	Scotland	Eight in-depth semi-structured interviews with employers from both the public and private sectors, and with managers and human resources staff from both sectors
Gooberman, L. and Hauptmeier, M. (2022) Employers' Organizations and the Territorial Divergence of Employment Relations in Wales, Scotland, and Northern Ireland, in <i>Contemporary Employers' Organizations – adaptation and resilience</i> .	EOs operating exclusively in Scotland, Wales, or Northern Ireland	Interviews with representatives from 41 employers' organisations
Green, A. E., & Sissons, P. Fair work in the foundational economy: a review of evidence. Bevan Foundation. May 2021. https://www.bevanfoundation.org .	West Mids Combined Authority; Greater Manchester, Liverpool City Region; Leeds City Region; Sheffield City Region; Tees Valley.	Reviewed devolved regional good work initiatives in six city-region case studies in 2019.
Harrison, D. and Edwards, P. (2018) Making Procurement Work for All Procurement practices as a route to fulfilling work in Northeast England	North East	A total of 32 participants from 19 organisations from a range of sectors including local authority procurement teams, higher education procurement, social housing, construction, health and social
Hughes et al. (2017) Good jobs in Greater Manchester: the role of employment charters. Inclusive Growth Analysis Unit.	Scotland, Oldham, Salford, Worcester, Croydon, and Birmingham	Interviews with individuals involved in the Charters
Johns et al. (2019) Decent work: Harnessing the power of local government. IPPR North.	Manchester, Liverpool	Interviews with local politicians
Johnson et al (2021) 'Raising the bar? The impact of the UNISON ethical care campaign in UK domiciliary care'. <i>Transfer: European Review of Labour and Research</i> . 2021;27(3):367-382.	Unison ethical care campaign	Case study five interviews with UNISON officials at national, regional, and local level together with six interviews with local commissioners in the North of England and London, together with one provider.
Moore, S. An Evaluation of UNISON's Ethical Care Charter Professor Sian	Southwark, Islington, Wirral, Reading, Renfrewshire, Lancashire, Camden,	Case studies based upon interviews with local authority commissioners and managers (18)

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Moore Work, Employment and Research Unit, University of Greenwich.	Cormac, Cornwall, Julian Support, Norfolk	providers (9), homecare workers (11) and local UNISON reps (13).
Parken, A. and Ashworth R. (2019). 'From Evidence to Action: Applying Gender Mainstreaming to Pay Gaps in the Welsh Public Sector'. <i>Gender Work and Organisation</i> , 25 (5), 1–20.	Wales	Three case studies with employer interviews

Appendix E: Current elected Metro Mayors within the devolved administrations¹⁰⁵.

<i>Administration</i>	<i>Current Mayor</i>	<i>Political affiliation</i>
Cambridgeshire & Peterborough	Nick Johnson	Labour
Greater Manchester	Andy Burnham	Labour
North of Tyne	Jamie Driscoll	Labour
South Yorkshire	Oliver Coppard	Labour
Tees Valley	Ben Houchen	Conservative
West Midlands	Andy Street	Conservative
West of England	Dan Norris	Labour
West Yorkshire	Tracey Brabin	Labour

¹⁰⁵ Stanford, M. (2022) Directly elected mayors, House of Commons Library Research Briefing, November 2022.

Devolution and Employment Standards

References

- Atkinson, I. (2010) *Governance structures and the devolved delivery of employment outcomes*, Dept Work and Pensions Research Report No 678.
- Ayres, S. Flinders, M and Sandford, M. (2018) 'Territory, power and statecraft: understanding English devolution, *Regional Studies*, Volume 52, 2018 - Issue 6: Labour, Work and Regional Resilience.
- BEIS (2021) Evaluation of Devolved Institutions Final Report BEIS Research paper number: 2021/024 [Evaluation of devolved institutions \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/971222/evaluation-of-devolved-institutions-final-report.pdf).
- Bivand, P. Bell, L. Vaid, L. Whitehurst, D. and Wan, K. (2010) *The impact of devolution: employment and employability*, Joseph Rowntree Foundation.
- Ceri Hughes, Donna-Louise Hurrell, Emily Ball & Tom Skinner (April 2017) *Good jobs in Greater Manchester: the role of employment charters*.
- Chaney, P. (2004) 'The Post-Devolution Equality Agenda: The Case of Welsh Assembly's Statutory Duty to Promote Equality of Opportunity' , *Policy and Politics* 32(1): 37-52.
- Chaney, P. (2009). *Equal Opportunities and Human Rights: The First Decade of Devolution, Manchester, Equality and Human Rights Commission*.
- Cook, Phillip and Clinton, Nick, (2005) Visionary, precautionary and constrained 'varieties of devolution' in the economic governance of the devolved UK territories, *Regional Studies* 39, 437–451.
- Devolution of powers to Scotland, Wales and Northern Ireland*, Published 18 February 2013, Last updated 8 May 2019.
- Crozier, S. (2022) *Toolkit and Report Sharing learning from the development of a Good Employment Charter in Greater Manchester*, Manchester Metropolitan University.
- Dickinson, P. (2022) Review of Employment Charters in the English Mayoral Combined Authorities, *ReWAGE*, Universities of Warwick & Leeds.
- IGN (2020) *IGN index of fair employment charters*.
- Dobbins, T (2022) *Good work: policy and research on the quality of work in the UK*, Research Briefing, Commons Library Research Briefing, 6 June 2022.
- Dykes, M. (2019) Outsourcing - Five ways to fix it for working families, TUC, <https://www.tuc.org.uk/blogs/outsourcing-five-ways-fix-it-working-families>.
- Equality and Human Rights Commission (EHRC) (2015) *The Invisible Workforce: Employment Practices in the Cleaning Sector* August 2015. Available at: <https://www.equalityhumanrights.com/en/publication-download/invisible-workforce-employment-practices-cleaning-sector>.
- Evans, D., Smith, K. and Williams, H. (2021) *The Welsh Way: Essays on Neoliberalism and Devolution*, Cardigan: Parthian.
- Future of Devolution and Work Commission: Interim Progress Report*.
- Gibb, S., Ishaq, M., Collins, C. (Ed.), Pautz, H. (Ed.), & Stuart, F. (Ed.) (2016). 'Decent Work': The Employers' View. (UWS-Oxfam Partnership, *Collaborative Research Reports Series, Decent Work in Scotland: Thematic Report 2*, UWS-Oxfam Partnership.
- Goberman, L. and Hauptmeier, M. (2022) Employers' Organizations and the Territorial Divergence of Employment Relations in Wales, Scotland, and Northern Ireland, in *Contemporary Employers' Organizations – adaptation and resilience*.
- Greater Manchester Combined Authority (2020) *have your say on how your buses are run*, Consultation Document.
- Greater Manchester: Independent Prosperity Review Background Paper.
- Green, A. E., & Sissons, P. Fair work in the foundational economy: a review of evidence. *Bevan Foundation*. May 2021. <https://www.bevanfoundation.org>.
- Harrison, D. and Edwards, P. (2018) *Making Procurement Work for All Procurement practices as a route to fulfilling work in Northeast England*.
- Heery, E. Hann, D. and Nash, D. (2020) Political devolution and employment relations in Great Britain: the case of the Living Wage, *Industrial Relations Journal*, 51:5, September 2020, pp. 391-409.

Devolution and Employment Standards

- Hughes et al. (2017) Good jobs in Greater Manchester: the role of employment charters. *Inclusive Growth Analysis Unit*.
- Hurrell et al (2017) *Local employment charters: case studies from the UK*.
- Ifan, G. Siôn, S. and Wincott, D. (2022) Devolution, independence, and Wales' fiscal deficit. *Industrial Relations Journal*, Special Issue on Matthew Taylor's Report on Modern Working Practices, 49(6): 399-553. 2018.
- Jenkins, J. We really need to talk about work ...
- Johns et al. (2019) Decent work: Harnessing the power of local government. *IPPR North*.
- Johns, M. (2021) Northern Mayors, 100 days of a new term, *IPPR North*.
- Johnson et al (2021) 'Raising the bar? The impact of the UNISON ethical care campaign in UK domiciliary care'. *Transfer: European Review of Labour and Research*. 2021;27(3):367-382.
- The Labour Party (2022) A New Britain: Renewing our Democracy and Rebuilding our Economy Report of the Commission on the UK's Future.
- LGA Briefing (2022) *Levelling up white paper*, 4 February 2022.
- MacBride-Stewart, S and Parken, A (2021) Future trends and inequalities in Wales (futuregenerations.wales). *Cardiff: Future Generations Commissioner for Wales* (full report).
- McCrudden (2004), *Using public procurement to achieve social outcomes*.
- McIntyre, S. Mitchell, J and Roy, G (2022) Careful what you wish for? Risk and with Scottish Tax Devolution, *The Political Quarterly*, pp 1-9.
- Moore, S. (2017) An Evaluation of UNISON's Ethical Care Charter Professor Sian Moore *Work, Employment and Research Unit, University of Greenwich*.
- Moore, S., Wakefield, H. and William, L. (2021) *International Mechanisms to Revalue Women's Work: Research Exploring and Evaluating International Mechanisms that Aim to Revalue or Result in the Revaluation of Women's Work*, Scottish Government Social Research Report.
- O'Connell, C. (2009) The place of equal opportunities in the devolution settlement: a legal analysis, *Equality and Human Rights Commission*.
- OECD (2022) *Integrating Responsible Business Conduct in Public Procurement Supply Chains: Economic Benefits to Governments*.
- Parken, A. (2019), Equality and devolution in Wales: a distinct approach? *Cardiff Business School*.
- Parken, A. and Ashworth R. (2019). 'From Evidence to Action: Applying Gender Mainstreaming to Pay Gaps in the Welsh Public Sector'. *Gender Work and Organisation*, 25 (5), 1–20.
- Parken, A., Rees. T. and Baumgart, A. (2009). Options for an Equal Pay Duty for Wales: Research and Policy Review Cardiff: Welsh Assembly Government, <https://gov.wales/sites/default/files/statistics-and-research/2019-07/080214-options-equal-pay-duty-en.pdf>.
- Sandford, M. (July 2021), The mechanics of devolving power, *LGIU*.
- Sissons, P. (2020) Making progress? The challenges and opportunities for increasing wage and career progression, Work Foundation Centenary Provocation Papers.
- Schmucke K Eds. (2009) Devolution in Practice: Public Policy Differences within the UK (*London: IPPR*).
- Scottish Government (2008). Achieving our potential: a framework to tackle poverty and income inequality in Scotland, *Scottish Government, Edinburgh*.
- Stanford, M. (2022) Directly elected mayors, House of Commons Library Research Briefing, November 2022.
- Tomaney, J. (2016). Limits of devolution: Localism, economics, and post-democracy. *Political Quarterly*, 87(4), 546–552. doi:10.1111/1467-923X.12280.
- TUC (2022) *Linking employment charters to procurement Opportunities and challenges*, September 2022.
- TUC (2022) *The Procurement Bill – Committee stage briefing*.
- Wales TUC (2022) *Briefing: Social Partnership and Public Procurement Bill*.