

# Becoming a Fair Work Nation

## Citizens Advice Scotland consultation response – 23 December 2021

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*Scotland's Citizens Advice Network is an essential community service that empowers people through our local bureaux and national services by providing free, confidential, and independent advice. We use people's real-life experiences to influence policy and drive positive change. We are on the side of people in Scotland who need help, and we change lives for the better.*

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### Summary

- Citizens Advice Scotland (CAS) welcomes the Scottish Government's support for improving working practices across Scotland. Progress on equal employment access and pay for women, minority ethnic, and disabled workers is welcome, as is the commitment to introduce a requirement on public sector grants recipients to pay at least the real Living Wage to all employees by summer 2022. These actions will improve working conditions for many.
- However, the majority of people CAB see every day do not work in the sectors supported by the most ambitious Fair Work plans. They will instead be in low-paid and insecure work, often facing violations of very basic employment rights. For these people, the first step to a Fair Work Nation must be better enforcement of their already-existing rights.
- Advice services like CAB play an important role in informing people about their employment rights, giving them a more effective voice in challenging unfair work practices. This is particularly necessary for low-paid jobs where union membership is likely to be less concentrated.
- In 2020-21, Scotland's Citizens Advice Bureau (CAB) network gave 74,994 pieces of employment advice to clients – 8% of all advice provided across the network last year – making employment the third most popular advice area, behind social security and debt advice.

## CAS is calling for:

- A three-pronged approach to ensuring fair work in low-paid sectors, covering:
  - A preventative strand focused on awareness-raising for individuals and employers, working with schools and job centres to ensure those entering the workforce are fully informed of their rights and entitlements, and with enterprise bodies to ensure new employers understand their responsibilities.
  - An easy process, anonymised if necessary, where employees, employers, and witnesses can report concerns that result in swift investigative action.
  - A strong approach to enforcement when non-compliance is found, with responses guided by the severity and impact of the non-compliance.
- Adequate funding for employment support and wider advice services.
- A holistic view towards supporting fair work, in particular by providing a strong social security system and other policies to tackle the rising cost of living, in order to give people the security to challenge poor working practices without facing poverty.

## FAIR WORK IN YOUR SECTOR

### 1. What is the main sector you work in or represent?

- Administrative and support service activities

### 2. What are the main opportunities for adopting fair work practices in your sector?

Scotland's Citizens Advice Network is an essential community service that empowers people through our local bureaux and national services by providing free, confidential, and independent advice. We use people's real-life experiences to influence policy and drive positive change. We are on the side of people in Scotland who need help and we change lives for the better.

Citizen's Advice Scotland (CAS) is responding to this consultation on behalf of our clients, rather than as an employer ourselves. The need for employment advice has seen a significant rise

during the pandemic.<sup>1</sup> In 2020-21, Scotland's Citizens Advice Bureau (CAB) network gave 74,994 pieces of employment advice to clients – 8% of all advice provided across the network last year – making employment the third most popular advice area, behind social security and debt advice.<sup>2</sup> This is a marked increase from 2019-20, where employment ranked fourth in terms of the most popular advice area and accounted for only 5% of all advice given.<sup>3</sup> Since April, employment advice has now stabilised again at a pre-pandemic level of 4% of all advice. Employment advice has also been highly represented in search terms on CAS's Advice for Scotland website, which in 2020-21 saw an almost 40% increase in users compared to the previous year. Among all advice searches, not only for employment issues, 'redundancy' was the most common search term during 2020-21 and 'furlough' was the sixth.<sup>4</sup>

CAS welcomes the Scottish Government's support for improving working practices across Scotland. Progress on equal employment access and pay for women, minority ethnic, and disabled workers is welcome, as is the commitment to introduce a requirement on public sector grants recipients to pay at least the real Living Wage to all employees by summer 2022.<sup>5</sup> These actions will improve working conditions for many.

However, the majority of people CAB see every day do not work in the sectors supported by the Scottish Government's most ambitious plans. They will instead be in low-paid and insecure work, often facing violations of very basic employment rights. For these people, the first step to a Fair Work Nation must be better enforcement of their already-existing rights.

Advice services like CAB play an important role in informing people about their employment rights, giving them a more effective voice in challenging unfair work practices. This is particularly necessary for low-paid jobs where union membership is likely to be less concentrated. CAB can also offer holistic advice to a person facing employment issues, allowing them to carry out income maximisation checks to improve the person's financial situation outside of work, and the local knowledge and face-to-face support of a CAB can be a great comfort for clients in times of stress.

The below cases from CAB across Scotland illustrate some of the fundamental employment issues our clients seek advice on every day.

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<sup>1</sup> "Employment" is used throughout this consultation response but should not be read as excluding those who are classified as workers, contractors, or self-employed. The term is used to capture any advice issues concerning work.

<sup>2</sup> Citizens Advice Scotland, [Annual Data Report \(2020/21\)](#).

<sup>3</sup> Citizens Advice Scotland, [Advice in Scotland 2019-20](#), page 6.

<sup>4</sup> Citizens Advice Scotland, [Annual Data Report \(2020/21\)](#).

<sup>5</sup> Scottish Government, [Consultation on Scotland Becoming a Fair Work Nation](#), October 2021, page 7.

*A South of Scotland CAB reports of a client who received no written statement of employment terms when they started their job in 2018. Client is now facing transfer to a new employer (who has also not yet provided a written statement of her employment terms). Client is struggling to enforce her rights under TUPE regulations without a written contract.*

*A West of Scotland CAB reports of a client whose employer (a large bank) refused to pay them during a period of long-term illness. Client had been off sick at the start of 2021 with a medical condition. Later in the year he was again unable to work, this time due to stress, and was signed off work by his GP for six to eight weeks. During this second period of illness his employer changed his working hours to zero and he received no pay. Client had no income while off ill and was eventually forced to resign to seek other work.*

*An East of Scotland CAB reports of a client whose employer, a construction company, went into liquidation. Client attempted to claim JSA but was told he had no National Insurance contributions from his three years of employment. Client's payslips all showed deductions for these, suggesting the employer made the relevant deductions but never paid these to HMRC. Client is also due wages and holiday pay prior to his redundancy and is worried he will be facing a long battle to get paid the money owed to him.*

*An East of Scotland CAB reports of a client who was only paid furlough pay despite working full-time. The client's wage slip also showed incorrect hours. When client challenged his employer on this, the employer offered to make up the difference in cash.*

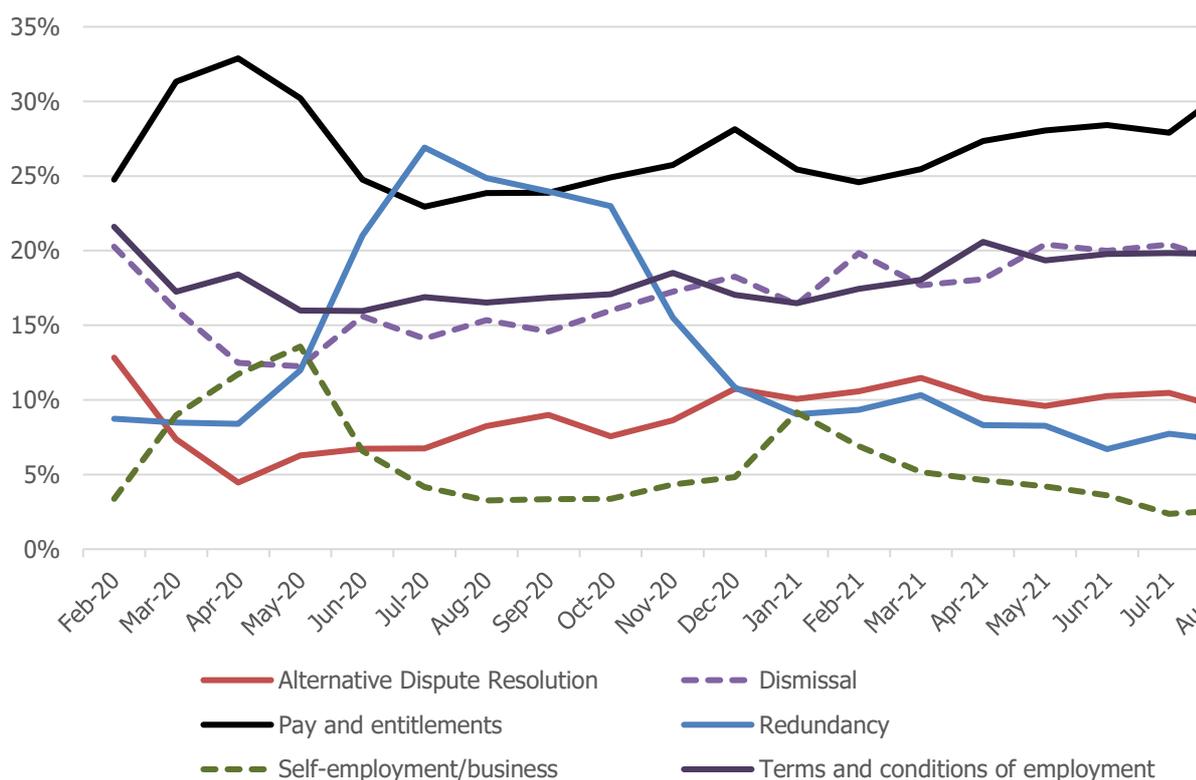
Clients facing these kinds of fundamental problems will often present with complex employment issues. Someone who is being paid below the minimum wage, for example, will almost always present at CAB with other breaches of their employment conditions, suggesting deliberate negligence or wilful ignorance by employers rather than one-off "accidents". Breaches of basic requirements like the issuing of payslips also greatly reduces the ability for enforcement of labour rights if a client does not know their wage breakdown, their hours worked, their tax contributions, or the deductions made for things like tied accommodation.

The prevalence of basic employment rights issues is confirmed by analysis of advice code data across the CAB network. The six most common employment advice codes – "Alternative Dispute Resolution"; "Dismissal"; "Pay and entitlements"; "Redundancy"; "Self-employment/business"; and "Terms and conditions of employment" – reflect fundamental aspects of a client's employment.<sup>6</sup>

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<sup>6</sup> All figures are based on advice code data. These are recorded by advisers every time advice in relation to a particular topic is issued. All figures are expressed as percentages of their "parent" advice code category: e.g., Pay

**Chart 1. Top 6 most common Employment advice codes (Feb 2020–Sept 2021)**



**Table 1. Top 6 most common Employment advice codes (Feb 2020–Sept 2021, selected data)**

	Feb-20	Mar-20	Apr-20	May-20	Jan-21	Sep-21
Alternative Dispute Resolution	13%	7%	4%	6%	10%	8%
Dismissal	20%	16%	12%	12%	16%	18%
Pay and entitlements	25%	31%	33%	30%	25%	32%
Redundancy	9%	8%	8%	12%	9%	10%
Self-employment/business	3%	9%	12%	14%	9%	3%
Terms and conditions of employment	22%	17%	18%	16%	16%	19%

Tracking variations in these codes over the past 18 months also demonstrates the impact of the pandemic on the type of employment advice CAB clients have required:

- Both the initial lockdown in March 2020 and the second lockdown in January 2021 led to a spike in advice on pay and entitlements (likely reflecting requests for information on furlough and other entitlements when businesses shut) as well as self-employment advice (reflecting the increase in people considering self-employment after job losses

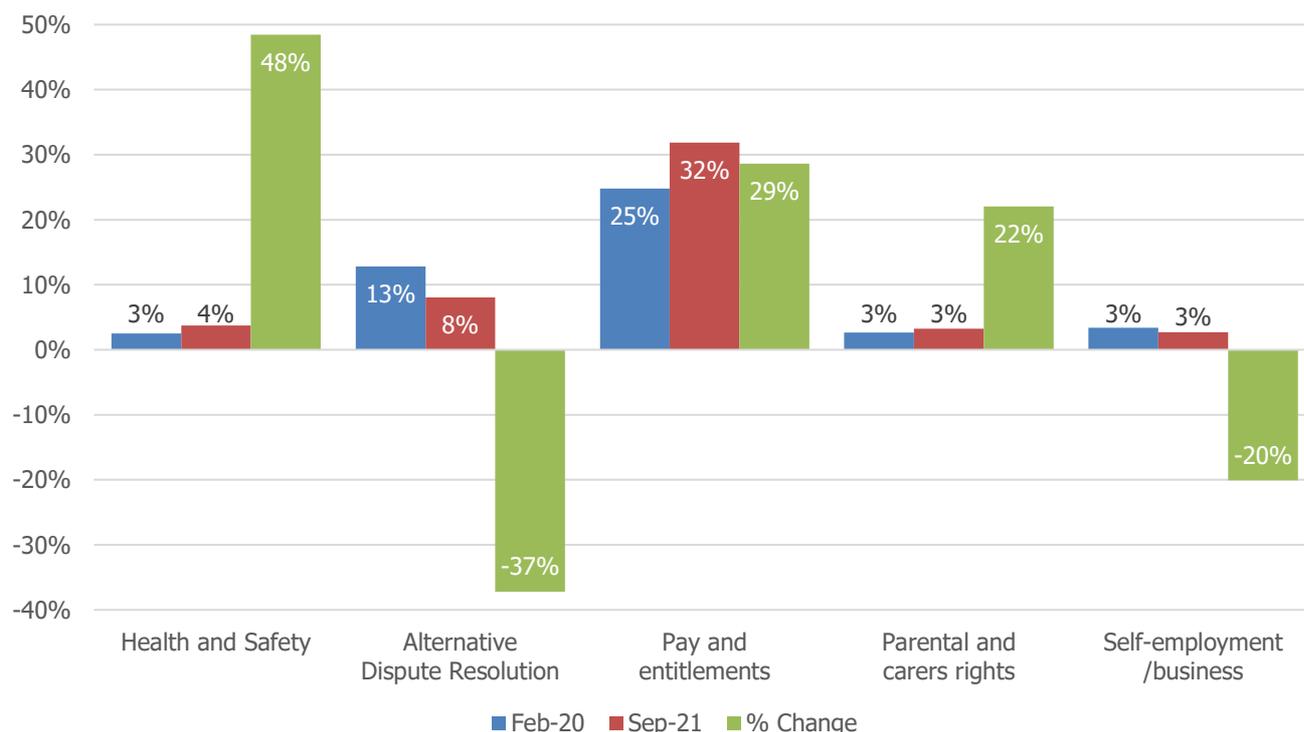
and Entitlements advice is expressed as a proportion of all Employment issues. This allows for more effective comparisons between quarters when overall numbers of clients fluctuate and/or there are changes in advice provision (e.g., the shift to telephone and email at lockdown).

caused by lockdown). However, while self-employment advice has fallen back below pre-pandemic levels, pay and entitlements advice has continued to climb, currently sitting at nearly the same level as the first lockdown.

- Redundancy advice saw a 237% spike during the middle of the pandemic, from 8% of all employment advice in April 2020 to 27% in July 2020. This had restabilised to pre-pandemic levels of 7% of all employment advice in August 2021, although the end of furlough has led to an increase to 10% of all employment advice in September 2021.
- Advice on 'Dismissal' fell during the early stages of the pandemic but has steadily climbed since May 2020, now sitting at pre-pandemic levels (around 19-20% of all employment advice).
- Alternative Dispute Resolution saw a sharp fall from 13% of all employment advice in February 2020 to 4% in April 2020 and currently sits at only 8% of all employment advice in September 2021.

We can also see the lasting impact of the pandemic on employment advice needs by comparing the biggest changes from pre-pandemic advice need to advice given in September 2021.

**Chart 2. 5 largest changes to employment advice codes across the pandemic (Feb 2020 compared to Sept 2021)**



**Table 2. 5 largest changes to employment advice codes across the pandemic (Feb 2020 compared to Sept 2021)**

	Feb-20	Sep-21	% Change
Health and Safety	3%	4%	48%
Alternative Dispute Resolution	13%	8%	-37%
Pay and entitlements	25%	32%	29%
Parental and carers rights	3%	3%	22%
Self-employment /business	3%	3%	-20%

The most significant increases – Health and Safety (48% increase), Pay and Entitlements (29% increase), and Parental and Carers Rights (22% increase) – reflect changes to working life caused by the pandemic. The ongoing risk of COVID transmission explains the increased focus on health and safety at work, while the increase in advice on entitlements and rights may reflect broader shifts in employment such as homeworking which will have left many workers uncertain of their rights.

*An East of Scotland CAB reports of a client whose employer will not allow her to take her legal right to paid time off after testing positive for COVID. Client's employer told her that she is not entitled to sick pay for the first three days as the matter comes within company sick policy. CAB advised the client that this was incorrect and they have a right to Statutory Sick Pay for 11 days starting from the day they tested positive. Client's employer is a private company contracted to a public sector body.*

*A South of Scotland CAB reports of a client currently on maternity leave who has received little support from her employer on preparing to return to work. Client contacted her employer in the summer asking for flexible working in terms of a change of shift pattern and fixed days. Client has then sent repeated follow-up emails and calls but has received no response.*

*An East of Scotland CAB reports of a client who has been unable to return to work after suffering COVID. Client's employer is supportive but there is little guidance for how to manage the situation for either the client or the employer. Employer has talked about ending employment in passing and client is concerned that they may lose their job even though they are keen to return to work when well enough. The employer had furloughed the client after full contractual sick pay ended but as the scheme ends soon, the client will need move to half pay until the longer term situation is clear.*

### 3. Please explain how you think these opportunities can be maximised in your sector?

CAS's recommendation would be to dedicate resources to a three-pronged approach:

1. A preventative strand focused on awareness-raising for individuals and employers, working with schools and job centres to ensure those entering the workforce are fully informed of their rights and entitlements, and with enterprise bodies to ensure new employers understand their responsibilities.
2. An easy process, anonymised if necessary, where employees, employers, and witnesses can report concerns that result in swift investigative action.
3. A strong approach to enforcement when non-compliance is found, with responses guided by the severity and impact of the non-compliance.

Some of these suggestions, such as improvements to enforcement, remain reserved to Westminster, and in other areas the Scottish Government has already shown progress, such as the Union into Schools initiative which helps raise awareness of workplace rights among young people.<sup>7</sup> However, as already noted, the majority of clients CAB see for employment advice work in low-paid sectors that receive less direct benefit from current Living Wage initiatives. The Scottish Government must explore how it can better support awareness-raising of its Fair Work strategy in low-paid sectors, ensuring that the benefits of fair work policies are equally distributed across the work force.

In this light, strengthening advice services should be seen as a crucial part of any Fair Work strategy. Employment-related advice is underfunded and unionisation remains low in minimum wage roles, reducing the amount of support available to people seeking to enforce their rights.<sup>8</sup> For that reason, advice services like CAB often fill the gap left by other forms of employment support, while also offering face-to-face contact and holistic income advice to any client seeking support.

One CAB adviser who specialises in employment work told us that CAB frequently make up for limits to the employment support available from other services. "Legal Aid in employment cases

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<sup>7</sup> Scottish Government, [Fair Work Action Plan: Annual Report](#), March 2021, page 16.

<sup>8</sup> For example, IPPR Scotland, [Delivering a fair work recovery in Scotland: Securing a living income for all](#), August 2021 states that only half of all workers in Scotland had a union or employee association at their workplace, and even fewer were part of a union themselves (page 19). These figures were lower for young people, who are more likely to be in low-paid and insecure work: only 37% of young workers have a union or employee association at work; 61% are paid less than the real living wage; and 9% are on zero hours contracts – all substantially worse figures than the national average (page 28). Retail and hospitality jobs are also more likely to have low pay and no union representation (page 35).

is not provided other than in a very few discrimination claims”, the adviser said.

“Even ‘no-win, no-fee’ arrangements are rare because of the limited levels of compensation awarded by Tribunals in most cases.” While some CAB have the funding and resources to offer support up to and including representation at Employment Tribunals, others can go no further than helping in the preparation of ET1 forms. This creates a “postcode lottery” in terms of the level of employment support people can access from CAB in different parts of Scotland.

*A South of Scotland CAB reports of a client pursuing a constructive dismissal case at the Employment Tribunal. Client cannot afford legal representation. At the preliminary hearing, the Employment Tribunal judge suggested the client contact CAB for assistance as the client was incapable of representing himself. CAB adviser notes that while CAB are happy to provide support, these types of employment cases are complex and time-consuming, suggesting a real gap in the employment support available to people on low incomes.*

Adequate provision of advice services is crucial for ensuring low-paid workers have an effective voice at work. CAB help people understand and enforce their rights in the absence of other support, and through initiatives like the CAB advisers’ Employment Specialist Forum and Inverness Badenoch and Strathspey CAB’s Fair Work in Action Project the network is always looking to strengthen its employment advice provision.<sup>9</sup> Without the availability of free advice and support to enforce the minimum rights of the lowest paid, more progressive improvements to fair work will be held back.

In terms of more specific recommendations, one low-paid area of the economy the Scottish Government should focus on is the Social Care sector. CAB frequently report of clients working in the care sector facing violations of their basic employment rights.

*An East of Scotland CAB reports of a client who has worked as a carer for the same employer for 18 years. Client is on a zero hours contract but regularly works 25-30 hours per week caring for the same clients, with her weekly rota almost identical week to week. Client is now applying for maternity leave and has been told by her employer she is not entitled as she is not an employee. Client is concerned that she will not have enough support when her child is born.*

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<sup>9</sup> The Employment Specialist Forum is a regular meeting for CAB advisers across the network who specialise in employment work. The Forum allows advisers to share knowledge across the network and identify national trends in employment advice. The Fair Work in Action Project aims to provide mentoring, support, and up-skilling to the wider CAB network in order meet the increased demand from clients who have employment (or work equality rights) issues including due to the impact of COVID-19. Priority is given to CAB’s who currently have no dedicated paid employment specialist and will provide advice, information and/or as required direct support and assistance to bureau staff and volunteers via a dedicated helpline and e-mail portal as well as through additional engagement and training events. The project started on 1<sup>st</sup> April 2021 and will run to March 2023.

*An East of Scotland CAB reports of a client dismissed via text message. No disciplinary process had taken place prior to this text. Client is a Senior Carer working in a care home and has been employed for more than 6 years.*

While the Scottish Government's commitment to paying above the real Living Wage for social carers is welcome,<sup>10</sup> the above cases suggest that carers still face more fundamental breaches of their employment rights. The Scottish Government should prioritise stronger protection of social care workers through its conditionality requirements for public funding and the contracting of care services, ensuring that their entire working conditions are consistent with Fair Work principles.

While the majority of CAB clients do not work for the public sector, we have also seen some cases of employees of local authorities facing poor working practices.

*An East of Scotland CAB reports of a client who is unable to work due to a health condition that prevents the client undertaking heavy lifting. Client has requested early retirement on health grounds from his employer, a local authority, but this has been denied. Client is still awaiting a decision from the employer as to whether his employment will be terminated.*

*A West of Scotland CAB reports of a client facing redundancy as a result of a council-wide restructure of school staff. Client fears that she will not be successful in applying for the new roles created by the restructure and that any other job offer would entail a financial loss.*

*A South of Scotland CAB reports of a client who has been accidentally been overpaid for nearly a year by their employer, a local authority. Employer had paid the client at a full-time rather than pro-rata rate, which was reflected on the client's payslip and employee portal. Employer is now seeking recovery of the entire overpayment of around £4,000 before the end of the financial year. Client is worried these deductions will be unaffordable but has so far been unable to negotiate with their employer.*

So far as possible the Scottish Government should extend its Fair Working principles to local authorities to ensure there are no gaps in the implementation across the public sector.

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<sup>10</sup> Scottish Government, [Scottish Budget 2022-23](#), 9 December 2021, commits to paying social care workers £10.50 per hour.

## 4. What are the main challenges to adopting fair work practices in your sector?

### Difficulties enforcing employment rights

The main challenge facing CAB clients is their relatively weak position in securing their employment rights. Low-paid workers are less likely to be in a union, meaning they have less support in enforcing their rights at work, and those on insecure contracts will also be less confident in enforcing their rights because of the risk of lost hours and income. Low rates of social security support and rises to the cost of living also mean people will remain in unsuitable work over attempting to survive on Universal Credit (UC).<sup>11</sup>

Currently, responsibility for enforcement is disproportionately on the shoulders of individual workers. This disregards the power imbalance between workers and employers and potentially undermines good employers by making it too easy for bad employers to “risk” breaches without consequence. The harm and severity of a breach should be considered not just in terms of the number of offences or workers affected – or the amount of money involved – but in terms of impact on individuals and the knock-on effects of illegally low wages and other malpractice on living standards and health.

One employment specialist CAB adviser we spoke with questioned the effectiveness of current enforcement mechanisms, noting that where a client is not paid the minimum wage they have two options: they can either take the matter to the HMRC compliance team for enforcement; or the individual can make a request for ACAS early conciliation and then submit a claim to the Employment Tribunal. Cases can only go to the HMRC compliance team where non-payment of the minimum wage is the only head of claim. In reality, it is likely that someone receiving the incorrect rate of pay will also have other significant breaches of their rights, meaning they will have to opt for the Employment Tribunal and their case will not be publicised. As such, the “Naming Scheme” list that HMRC produce for breaches of the minimum wage is incomplete, ultimately reducing the incentive for employer compliance.

When clients go to enforce their Employment Tribunal award, they encounter additional difficulties. Enforcement through Sheriff Officers comes with an upfront cost that clients on low pay are unlikely to be able to afford. The alternative is to use the Employment Tribunal Penalty Enforcement scheme, where the employer will be told to pay the award or face an additional fine from the Government. Our CAB adviser reports that in practice these penalties are not enforced, leaving the client without redress.

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<sup>11</sup> See further Citizens Advice Scotland, [“I am constantly penny pinching.” Research into Living on Universal Credit during the Pandemic](#), 6 September 2021.

*A South of Scotland CAB reports of a client who has been told he has to pursue his ex-employer through the Sheriff Court and Sheriff Officers. His ex-employer has transferred all his assets to his wife, making recovery difficult. Because of the client's debts (which are largely a result of non-payment of wages), he cannot afford more outlay than the £100 he has already spent trying in vain to recover the £5200 that he is owed. This has left him with no effective remedy to the breaches of his employment rights.*

Our CAB adviser suggested that breaches of the minimum wage be given similar enforcement to the HMRC's Statutory Payment Dispute Team. In cases where statutory wages such as Statutory Sick Pay and Statutory Maternity and Paternity Pay are not paid correctly, the HMRC takes over enforcement and can even directly pay the employee the wages owed if the employer is insolvent. This is particularly important where a company may be declared insolvent and "phoenixed" by an employer to avoid paying these liabilities. Our CAB adviser tells us enforcement in these cases is significantly quicker and more effective for clients than the current routes for recovering below-minimum wages.

CAS is encouraged to see the UK Government's recommitment to creating a single enforcement body,<sup>12</sup> a move we supported in the initial consultation in 2019.<sup>13</sup> In particular, the expansion of the enforcement body's remit to cover entitlement to holiday pay and statutory sick pay without having to go through a lengthy employment tribunal process would help answer some of the issues raised by our adviser above. However, a timescale for the rollout of this body is still forthcoming, as are any funding commitments to ensure it is more effective than the existing system.

CAS would encourage the Scottish Government to liaise with the UK Government to ensure it prioritises and properly funds the single enforcement body to ensure workers' rights are made accessible and enforceable as soon as possible, as well as expanding enforcement and prosecution against employers who repeatedly breach workers' rights.

## **Exploitation of people subject to immigration control**

One group who face particular vulnerability in their working conditions are non-UK citizens. These people can face language difficulties understanding and exercising their rights, as well as direct discrimination from employers. CAB have reported a number of cases where non-UK nationals have faced breaches of their employment rights, some in relation to pay.

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<sup>12</sup> Department for Business, Energy, and Industrial Strategy, [Establishing a new single enforcement body for employment rights: Government response](#), June 2021.

<sup>13</sup> Citizens Advice Scotland, [Good Work Plan: establishing a new Single Enforcement Body for employment rights consultation](#), October 2019.

*A West of Scotland CAB reports of an Iranian client who was refused statutory entitlement to holiday pay and statutory sick pay for just under two years. Client was ultimately dismissed for refusing to accept cash-in-hand payments below the National Minimum Wage and refusing to commit benefit fraud. As she was dismissed before the two-year mark, client does not have full protection of employment law. Client says she is one of a number of Iranian nationals who have been exploited by this employer.*

*An East of Scotland CAB reports of a client who had unexplained deductions taken from her wage. Client suspects that her employer is discriminating against her as an EU national because he does not expect her to understand her employment rights.*

In cases where CAB have reported explicit racial discrimination or harassment, the employees are also likely to be in low-paid and precarious work, showing how poor quality work overlaps with other breaches of employment rights.

*An East of Scotland CAB reports of a client facing harassment from his direct manager. Client works in a hotel kitchen but is currently on sick leave. The manager has been accused of breaching health and safety rules, discriminating against non-UK staff, and using inappropriate language. Client says non-UK nationals have all been given reduced hours while UK staff have been returned to work fully. The business has also suggested that redundancies are forthcoming but client believes they are cutting hours to wait and see if employees will resign first.*

It is also worth noting how poor work intersects with immigration-related restrictions on social security. Low levels of social security support mean people will put up with poor working conditions just to remain in employment. For people subject to immigration control who have no recourse to public funds, this impact is magnified as they rely solely on their employment for income.

*A West of Scotland CAB reports of a client with a young daughter facing financial difficulties. Client and his wife are both on Tier 4 visas and have no recourse to public funds. Both clients work at an airport and are set to be made redundant as a result of COVID-19. Client is very concerned about how they will manage after their redundancy begins and are concerned they will not be able to pay rent next month.*

The impact of No Recourse to Public Funds rules will grow as we move further away from Brexit and more EEA nationals lose their rights to social security support. However, even EEA nationals who have applied for the EU Settlement Scheme (EUSS) and should accordingly have protected employment rights are facing difficulties due to low knowledge among employers about the retained workers' rights.

*An East of Scotland CAB reports of a client who has a long-term pending EUSS application. Client has worked with the same employer for over five years but, despite guidance that no retrospective right to work checks are needed, the client is being pushed by his employer to provide his EUSS share code. Client is worried the delays with his EUSS application will lead to him losing his job.*

*An East of Scotland CAB reports of a client who works for an employer with a large EU citizens workforce. Client said that there were 20 people dismissed from work as they have not provided proof of EU Settlement Scheme status. The employer then placed a deadline of early August for staff to share their EUSS confirmation. Client was not aware that if someone has got pending EUSS application their rights can still be protected.*

## **Pandemic changes to working**

The other challenge facing employees is the change to working patterns following the pandemic. CAB reported of a number of cases during the pandemic where clients faced practical difficulties with homeworking arrangements.

*An East of Scotland CAB reports of a client facing problems as a result of homework arrangements. Client works for a call centre and reports that there was a known IT problem that led to phone calls not being patched through. Employer is refusing to accept these IT problems as the reason for interruptions in the client's work and is beginning disciplinary proceedings against the client and a number of her colleagues. Client is now looking to leave her job early to avoid the disciplinary process being marked on her employment record.*

CAB have also reported a number of cases where people have been denied the option of homeworking, even where it would benefit their work-life balance. This has again hit people with children and caring responsibilities hardest, mostly women, as they face difficulties arranging alternative care arrangements while at work.

*An East of Scotland CAB reports of a client who is being denied the opportunity to work from home despite having childcare responsibilities. The client's employer denied her request to be furloughed as they have advised furlough is only for use when jobs are at risk and have further denied her right to work from home. Client points out that boss's wife is the Finance manager and they have allowed her to work from home and use an office laptop.*

*A North of Scotland CAB reports of a client facing redundancy if she does not return to work from her office. Client is a single parent and is struggling to organise childcare while schools remain closed.*

*An East of Scotland CAB reports of a client struggling working from home. Client started a new job during the pandemic and has had to juggle this with home-schooling her children. She feels that her children are suffering as a result of her work and has been given a mental health diagnosis. She is considering leaving her job and claiming social security to reduce the stress.*

As pandemic restrictions continue to lift and offices reopen, CAS will continue to monitor the impact of home-working arrangements on our clients across Scotland.

## **5. Please explain how you think these challenges might be overcome, including your ideas on any specific interventions and support needed in your sector?**

Primarily, low-paid workers need better support when seeking advice and support enforcing their employment rights. As explained in response to Question 3, advice services such as CAB should be seen as a vital component of giving workers an effective voice in their employment.

In terms of support for those subject to immigration control, provision of adequate support to those with No Recourse to Public Funds will help reduce the risk of exploitation of migrant workers who rely solely on their wages to make ends meet. In this light, CAS is keen to monitor the impact of the Scottish Government's Ending Destitution Together strategy in protecting the incomes and rights of all workers in Scotland.<sup>14</sup> EEA nationals would also benefit from a public campaign to reinforce their rights to employers, helping ensure they do not face discrimination or dismissal because of misunderstandings around their right to work.

As a cornerstone of Fair Work, the Scottish Government should encourage worker-led decision-making for the introduction of post-pandemic working flexibilities. While the Scottish Government is right to invest in the promotion of flexible working,<sup>15</sup> any shift to these arrangements must not reproduce barriers to accessing employment, particularly for women. Employees should so far as possible be able to choose whether they take on home-working or continue to come into the office, with the acknowledgement that for some home-working may not be suitable, for example if they have caring responsibilities at home.

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<sup>14</sup> Scottish Government and COSLA, [Ending Destitution Together: A Strategy to Improve Support for People with No Recourse to Public Funds Living in Scotland 2021-2024](#), March 2021.

<sup>15</sup> See, for example, Scottish Government, [A Fairer Scotland for Women: Gender Pay Gap Action Plan Annual Report](#), March 2021, pages 20–21, which set out a series of measures that support and encourage flexible working.

## FAIR WORK IN THE CURRENT ECONOMIC CONTEXT

### 6. What do you believe are the barriers to delivering Fair Work given the current economic challenges in Scotland?

#### The pandemic and the end of furlough

Scotland's economy relies on agriculture, hospitality, tourism, and the arts more than the UK average, meaning it has been particularly vulnerable to the impact of COVID-19 over the past year.<sup>16</sup> This is visible in rural areas, where agriculture and tourism are key parts of the local economy, but Scotland's largest cities would also normally employ huge numbers of workers to cater for holidaying tourists in the high season.

The impact of the pandemic on people's employment has been visible across the CAB advice network. In a representative poll of CAB clients carried out in October 2020, 60% of clients in employment reported that their employment circumstances had changed since the start of the pandemic. This included clients who sought advice for issues other than employment. Within this group, 75% reported having lost their job as a result of the pandemic (although 13% had since found a new job or were now self-employed) and 25% were still in employment but had been furloughed. Younger clients in employment were more likely to say their employment circumstances had changed as a result of the pandemic (16-34, 67%; 30-49, 59%; 50-64, 33%; 65+, 38%).<sup>17</sup> This matches recent Scottish Government figures which show unemployment rates among young people to be more than twice that of other age groups.<sup>18</sup>

While the furlough scheme was successful in helping people keep their jobs during the worst of the pandemic, CAB have reported of clients facing reduced hours and threats of redundancy as the scheme was withdrawn. This may suggest a longer impact on the labour market as companies readjust to the economic situation without the support of the furlough scheme.

*An East of Scotland CAB reports of a client who has been told, along with her colleagues, that they must accept a new contract or accept voluntary redundancy. Contract changes include alterations to working hours and shift patterns. Employer has only given the workforce a few days to consider the offer.*

<sup>16</sup> ONS, [Labour Market Profile – Scotland](#).

<sup>17</sup> Citizens Advice Scotland, Understanding Citizens Advice Bureau client experiences of advice provision during the COVID-19 pandemic, 9 December 2020.

<sup>18</sup> Scottish Parliament Information Centre (SPICe), [Labour Market update](#), November 2021, which shows 9.2% youth unemployment between July and September 2021 compared to 2.6%-4.1% for other age groups.

*An East of Scotland CAB reports of a client whose working hours were reduced by her employer without discussion or negotiation. However, other workers appear to have had their hours increased. Client is now being pressured by her employer to sign a backdated contract confirming her new hours.*

For some businesses the pressure of the pandemic has been compounded by issues like the fuel crisis and the lack of delivery drivers, both of which drive up their business costs.

*A North of Scotland CAB reports of a client whose hours were significantly reduced at the end of the furlough scheme. Her employer's business has suffered from the pandemic, as well as the ongoing fuel and delivery driver crisis. Client is now having to claim UC to make up her income. Client has no digital access so is concerned about difficulties they may face maintaining their claim.*

A weaker job market can perpetuate other types of discrimination in terms of who can find employment. One CAB told us of a client with mental health issues who has been unable to find work due to stigma around his condition.

*An East of Scotland CAB reports of a client struggling to find work due to his mental ill-health. Client has been applying for jobs over the past six months but has not been offered any interviews, which he believes is a result of stigma around his mental health condition. Client has tried seeking further support from his Jobcentre but has so far been unsuccessful securing additional volunteering or training.*

Another CAB told us of a client who had been employed on a false apprenticeship so that the employer could pay a substantially lower wage.

*A South of Scotland CAB reports of a client whose son was employed on a false apprenticeship. Client's son was dismissed after taking absence due to COVID and subsequently discovered that there was no paperwork in place for their apprenticeship. This means the employer was able to pay the client's son a lower wage without securing the employment qualification.*

Neither case can be explained solely by labour market difficulties. But it is worth acknowledging that where good, secure, and well-paid jobs are scarce, it will be people in weaker positions – those with disabilities, health conditions, non-UK nationals, and those at the start of their careers – who will disproportionately bear the brunt of unemployment or poor work. As the Fair Work Nation Consultation acknowledges, the disability employment gap grew during the

pandemic, suggesting that the pandemic's impact on the labour market has not been evenly distributed.<sup>19</sup> A strong economy is needed to ensure equal access to the labour market for all.

## Rises in the cost of living

While the pandemic has often been portrayed as a time where people have saved money by cutting down on travel expenses and leisure activities, those on low-incomes have seen their outgoings increase significantly. More time spent at home has meant increased expenditure on food, utilities, and home entertainment,<sup>20</sup> and those living in rural communities have reported increased costs from relying on deliveries for groceries and other essentials.<sup>21</sup> Debt was also the second most common advice area across the CAS network in 2020-21, accounting for 10% of all advice, suggesting that people's incomes will continue to be impacted by the pandemic even after restrictions fully lift.<sup>22</sup>

The Scottish Government should remain aware of the impact of rises in the cost of living on workers' abilities to seek redress for their rights. In circumstances where employment may be the only way for workers to remain able to pay their essential bills, any increases to this pressure will reduce their likelihood to challenge poor working practices. Recent actions such as committing to doubling the Scottish Child Payment by April 2022 will help in this regard, but more expansive thinking to tackle housing costs and high fuel bills, in particular, would help reduce this financial pressure.

Housing affordability remains a key concern for CAS, given what we know about the rising cost of rent. Scottish Government figures suggest that on average between 2015/16 to 2017/18, 27% of Scottish private sector tenants' net income was spent on rent<sup>23</sup> but for those on the lowest incomes private sector rents can be up to almost 60% of net household income.<sup>24</sup> Similarly, average weekly social sector rents have increased more than twice as fast as inflation over the most recent five years that data is available for.<sup>25</sup> The growth in the private rented sector and short-term lets market; the number of empty homes; changes to housing benefit and a decrease in social housing stock from its peak all contribute to a squeeze on the affordable housing supply in many parts of the country.<sup>26</sup> Whilst there are some welcome

<sup>19</sup> Scottish Government, [Consultation on Scotland Becoming a Fair Work Nation](#), October 2021, page 9.

<sup>20</sup> Resolution Foundation, [Pandemic Pressures: Why families on a low income are spending more during Covid-19](#), January 2021.

<sup>21</sup> Citizens Advice Scotland, [Briefing for Westminster debate on unfair delivery charges](#), 9 December 2020.

<sup>22</sup> Citizens Advice Scotland, [Annual Data Report \(2020/21\)](#).

<sup>23</sup> Scottish Government, [Social tenants in Scotland 2017](#), 16 April 2019.

<sup>24</sup> Office for National Statistics, [UK private rented sector: 2018](#), 18 January 2019.

<sup>25</sup> Scottish Government, [Social tenants in Scotland 2017](#), 16 April 2019.

<sup>26</sup> Institute for Fiscal Studies, [The cost of housing for low-income renters](#), October 2017.

measures in place such as Discretionary Housing Payments and the recently-announced COVID Tenant Grant Fund, affordability remains a significant problem in many parts of Scotland.

In terms of fuel costs, the latest figures from the Scottish Government showed that 24.6% of households in Scotland were in fuel poverty even before COVID-19 took hold. Among those 613,000 households, more than half found themselves in extreme fuel poverty.<sup>27</sup> The fall-out from the pandemic is only expected to make this situation worse, with Scottish Government estimates suggesting that the rate of fuel poverty in Scotland could increase by as much as 18% in 2020.<sup>28</sup> Increases in the wholesale cost of gas, proposed changes to the default tariff cap and costs associated with supplier failures are also currently expected to place an upwards pressure on consumers' energy bills until at least April 2024. Data from the Citizens Advice Network in Scotland for September 2021 already shows a rise in demand for energy debt advice (a 5% increase since August 2021 and 53% since February 2020), whilst pages related to energy efficiency have been the most frequently viewed of the energy-related pages on our Advice for Scotland website since July 2020. Providing targeted support to ensure people can meet their fuel bills will greatly alleviate pressure on people's incomes.

### **Cuts to social security**

Just over 463,000 people in Scotland are currently on Universal Credit (UC).<sup>29</sup> However, compared to its value when UC was introduced in 2013, its basic allowance is now worth around a tenth (11.5%) less in real terms.<sup>30</sup> This low rate of social security support can cause real problems for people's standard of living. A recent survey of CAB clients who sought UC advice between March and December 2020 found that, among unemployed clients who relied solely on the basic allowance of UC for their income:

- 77% said UC was inadequate for their needs.
- Almost two in three had to cut down on heating (63%) and electricity or gas (61%) while on UC.
- Two in five (41%) went without essentials to cover their bills.
- Over a third (36%) had to borrow money in order to pay for essentials.

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<sup>27</sup> Scottish Government, [Scottish house condition survey: 2019 key findings](#), 1 December 2020.

<sup>28</sup> Scottish Government, [Scottish House Condition Survey: additional analysis](#), 3 September 2020.

<sup>29</sup> DWP, Stat Xplore, September 2021.

<sup>30</sup> Citizens Advice Scotland, [MP Briefing on Fall in UC Real Terms Value since 2013](#), 10 February 2021

- One in five unemployed people said they had gone without something altogether (for example, giving up using their heating or electricity and gas entirely) since their UC claim began – more than double the proportion of employed people we surveyed.<sup>31</sup>

Low social security support impacts fair work in two ways. First, a low rate of social security means people will be more willing to accept poor working conditions in order to top up their income. A strong social security system will give people more confidence to challenge poor employers, safe in the knowledge that they will not face immediate poverty should their employer illegally dismiss them.

Second, on the scale of the national economy, weak social security support also harms economic growth. People on low incomes spend their money in their local communities, meaning any cut to social security is a cut to some of the most deprived local economies.<sup>32</sup> Understood in this way, a strong social security system also supports local businesses and local economies, ensuring employers are able to grow, recruit new workers, and offer better working conditions.

## Brexit

In September 2020 CAS published its research into the impact of Brexit on Scottish communities.<sup>33</sup> This research consisted of qualitative research amongst EU nationals, UK nationals and Scottish based businesses across three different geographic case study areas: Glasgow, Aberdeenshire, and the Highlands.<sup>34</sup> Although the report was published in September 2020, evidence was gathered before the pandemic and should be understood in this context.

<sup>31</sup> Citizens Advice Scotland, [Five People, Five Reforms: Strengthening Universal Credit after the Pandemic](#), January 2022.

<sup>32</sup> See, for example, Zara Canbary and Charles Grant, [The Marginal Propensity to Consume for Different Socio-economic Groups](#), Brunel Economics and Finance Working Paper No. 1916, October 2019. See also House of Lords Economic Committee, [Employment and COVID-19: time for a new deal](#), 14 December 2020, para 85: "We heard that higher spending on social security can serve as an effective economic stimulus which would help people through the crisis and support the recovery. Thomas Pope, Senior Economist at the Institute for Government, said, 'people on low incomes tend to have a much higher marginal propensity to consume out of their income, so, if you give them more income, they are more likely to spend it. It is certainly not an ineffective form of stimulus' Helen Barnard, Director of the Joseph Rowntree Foundation, said, 'the stimulus effect of social security spending is better than the stimulus effect on demand of things like tax cuts.'"

<sup>33</sup> Citizens Advice Scotland, [Impact of Brexit on Scottish communities and their advice needs now and in the future](#), September 2020.

<sup>34</sup> 24 EU nationals were interviewed, with 8 from Glasgow, 9 from the Highlands and 7 from Aberdeenshire. 29 UK nationals/participants took part in focus groups, with 10 from Glasgow, 10 from the Highlands and 9 from Aberdeenshire. Business participants were either small (0-49 employees) or medium (50-249 employees) sized enterprises. There were two Glasgow based businesses interviewed, 5 Highland based businesses interviewed, and 2 Aberdeenshire based businesses interviewed.

The research found that for individuals surveyed:

- Both UK and EU nationals were concerned that Brexit would lead to further increases in the cost of living. Participants felt that the costs of goods and services would increase after the UK left the customs union, as a result of many UK businesses relying upon trade with EU customers.
- Participants within the rural case study areas were specifically concerned about the impact that an increased cost of living may have on their local area. Participants in Inverness stated that the cost of living within the Highlands was already more expensive than elsewhere and that this was due to businesses placing additional costs on delivery to rural areas. This could worsen if Brexit resulted in an increased cost of living.

In terms of direct impact on the labour market, some EU nationals, including long term resident EU nationals, stated that the increased cost of living had caused them to consider leaving the UK. While the research does not stratify out these individuals' employment circumstances, they do point to a wider risk of EU workers moving out of the UK as a result of Brexit and leaving a gap in the workforce.

For business participants, the research found that:

- Business participants shared similar sentiments with regards to the potential for increased costs after Brexit, stating that increased costs in the supply chain would result in increased costs for consumers and a resulting decrease in profits.
- Some businesses reported a drop in sales as a result of Brexit. They felt that the uncertainty around Brexit resulted in people cutting back their expenditure and avoiding making long-term financial commitments. One business stated that the loss of sales resulted in company directors reducing their salaries.
- Business participants who exported to the EU reported a significant reduction in both sales and their ability to export, and business participants operating within the tourist industry reported a reduction in both EU visitors and financial earnings, which they attributed to Brexit.
- A small proportion of businesses reported that they had changed their operations as a result of Brexit, with some attempting to make cost savings by shopping around for different suppliers or having discussions with their accountants. Business participants who currently relied on trade with European suppliers or customers raised concerns over the uncertainty within the Brexit process and stated that this had led to difficulties in developing their future business plans.

- Business participants also expressed concerns that funding and grants that are available to businesses through EU initiatives would no longer be available, limiting their growth opportunities.
- UK nationals and businesses situated within Highland and Aberdeenshire reported that a lack of EU workers had already caused local businesses to experience difficulties in filling certain roles. They felt that businesses may experience difficulties in recruiting new staff and may even cease operating. In the event Brexit leads to significant staff shortages within rural areas, the sustainability of local economies could be detrimentally impacted. Local rural economies throughout Scotland are less diversified than those of larger towns and cities and may therefore be more vulnerable to any adverse effects of Brexit.

These instabilities may already have had a knock-on effect on the labour market in certain regions and industries. One business within the construction industry stated that they had seen a significant decrease in the demand for their housebuilding services and had accordingly reduced the size of their workforce. This was attributed to a decrease in people making long-term financial commitments such as taking out a mortgage on UK properties.

## **7. What do you believe are the opportunities for delivering Fair Work in the current economic climate in Scotland?**

Recent changes to the Taper Rate and Work Allowances for those with children or Limited Capability for Work will allow those on the lowest incomes to remain supported by the social security system for longer. This is particularly important in Scotland where additional benefits like the Scottish Child Payment are passported from eligibility for UC, meaning entitlement can be vital for accessing wider financial support. However, only around two fifths (38%) of people on UC in Scotland will benefit from changes to the Taper Rate, and even fewer will benefit from the Work Allowance increases since Work Allowances were removed to those without children or Limited Capability for Work in 2016. For the remaining 284,000 people on UC in Scotland who are not in work, their incomes will see no change from the October Budget.

With this in mind, the Scottish Government should consider whether there are other ways to determine eligibility for additional benefits like the Scottish Child Payment. When the standard allowance of UC was cut by £20 a week in October 2021, an estimated 4,000 households with 8,000 children lost eligibility for UC and consequently also lost access to passported benefits.<sup>35</sup> Changing the statutory underpinning of these top-up benefits would allow the Scottish

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<sup>35</sup> Scottish Campaign on Right to Social Security (SCoRSS), [Briefing: Cancel the £20 cut to Universal Credit and Tax Credits](#), 9 September 2021.

Government to decouple eligibility from reserved benefits and ensure additional support is always targeted at those who need it.

The announced increase to the National Living Wage in April 2022 will also help the lowest paid – albeit still falling below the Real Living Wage standard which the Scottish Government’s Fair Work Action Plan supports. However, with National Insurance set to increase at the same time, as well as a projected increase to the Energy Cap, many of the lowest paid will see their cost of living rise significantly over the next year. It is imperative any Fair Work Nation plans remain ahead of increases in the cost of living to ensure people do not face in-work poverty.

## **FURTHER ACTIONS TO DELIVER FAIR WORK**

### **8. Please set out any further actions you think the Scottish Government should take to deliver Fair Work for everyone. This may include for example any further support you think is needed.**

As stated in response to Question 3, CAS believes the Scottish Government could do more to improve the working standards of care workers and other public sector employees (for example, those working for local authorities) who are often in low-paid and precarious work. Additional support for non-UK nationals, including a proactive information campaign for employers about their responsibilities to EEA nationals, would also support many of the clients CAB see every day.

In terms of wider support for low-paid workers, the Scottish Government should be proactive in its actions to drive down the cost of living. In terms of housing costs, the Rented Sector Strategy provides an opportunity for the Scottish Government to tackle housing arrears at source by making housing more affordable across Scotland.

Similarly, although reserved powers over energy markets and energy prices rest with the UK Government, the anticipated publication of the Scottish Government’s fuel poverty strategy by the end of this year provides an opportunity for it to set out how it will respond to current and future challenges. In particular, further clarity on the delivery model for the annual Warm Home Discount rebate is urgently required from the Scottish Government to provide certainty for consumers, participating energy suppliers, and community-based grass-roots organisations whose delivery of, for example, energy advice relies on funding from Warm Home Discount Industry Initiatives.<sup>36</sup> The Scottish Government should also reconsider its proposal to pay Cold Weather Payments at a fixed annual rate instead of payments being triggered by low

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<sup>36</sup> Citizens Advice Scotland, [Mind the Fuel Poverty Gap: Warm Home Discount in the Scottish context](#), July 2020.

temperatures, as this approach cannot be scaled with the extent of the actual need for additional heating in cold weather.<sup>37</sup>

## **9. Please set out any other actions you think are required to deliver Fair Work for everyone, including who should take this action.**

As stated in response to Question 4, poor enforcement of employment decisions is the key barrier our clients face in protecting their rights. The UK Government must prioritise its introduction of a single enforcement body and ensure sufficient funding is available to make investigations effective.

### **FAIR WORK AND EMPLOYMENT POWERS**

## **10. If Scotland had full control over employment law, which issues would you like to see addressed as a priority in order to deliver fairer work in Scotland?**

As stated in response to Question 4, poor enforcement of employment decisions is the key barrier our clients face in protecting their rights. If employment matters were fully devolved to the Scottish Parliament, CAS would prioritise improvement of the enforcement of employment rights, both at a tribunal level and through proactive investigations into poor employers.

Crucially, the benefits of a single enforcement body can only be realized if the body is established with a view to enhancing employment rights compared to the current system, not as a cost-cutting measure focused on short-term efficiencies. Even if all current tools were at the disposal of a single enforcement body, there would still be no effective enforcement of tribunal awards and no direct powers over company director disqualification (other than specific EAS powers over running employment companies).<sup>38</sup> Should employment law be fully devolved, the Scottish Government should take a proactive and holistic look at existing rights and enforcement mechanisms to ensure fair work is delivered to all.

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<sup>37</sup> Over the past eleven years, for example, consumers in off-gas rural areas of Scotland have received up to 245% more in cumulative support under the Cold Weather Payments scheme than they would have received under the Scottish Government's proposals for the replacement Low Income Winter Heating Assistance.

<sup>38</sup> See further Citizens Advice Scotland, [Good Work Plan: establishing a new Single Enforcement Body for employment rights consultation](#), October 2019.

## FURTHER IDEAS

### **11. What is the most important thing that you or your organisation can do to help Scotland become a Fair Work Nation?**

As stated in response to Questions 2 and 3, CAS plays an important role in giving workers an effective voice, particularly in low-paid and precarious work where unionisation may be low, as well as offering more holistic advice on income maximisation, benefit entitlement, and debt support. CAS will continue to provide this essential service to everyone who seeks our advice, be that at a CAB, through our national helpline, or via our website. CAS will also continue to gather data on employment issues in order to inform policy progress towards Scotland becoming a Fair Work Nation.

CAS is keen to support initiatives that could use our expertise in other ways. Angus CAB, for example, have been involved in a local project to help ensure young people nearing school leaving age are aware of their employment rights. This was centred around information sessions at local high schools on minimum wages and rights at work. Due to the pandemic the initiative did not progress but Angus CAB are keen to expand this work to help make young people at school, colleges, and universities aware of their basic rights in the world of work. Ensuring young people and education leavers aware of their rights, at as early an age as possible, is crucial if Scotland is to become a Fair Work Nation.

### **12. Please use the box below to tell us about anything else relevant to Scotland becoming a Fair Work Nation and any further ideas you might have on the action that will be needed to achieve this.**

n/a

#### **For questions or further information, please contact:**

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