

Fair work in the foundational economy: what should be done

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Summary

This report summarises the key findings from engagement with workers and employers in three sectors of the foundational economy, along with analysis of key data and a review of evidence of effective interventions. The project was funded by the Welsh Government's Foundational Economy Challenge Fund.

It has found widespread poor quality work, including low pay (sometimes below the legal minimum), high levels of work intensity (often without legally-required breaks), significant job insecurity and considerable work-related stress and illness.

To achieve its objective of greater fairness at work, the Welsh Government along with others will need to take concerted and bold action. This report makes recommendations for interventions in addition to the introduction of legislation on social partnership.

Overall approach

It is critical that the overall approach to fair work is right and that it builds on the expert conclusions of the Fair Work Commission. We recommend that:

- The Welsh Government implements the Fair Work Commission's recommendations in their entirety as a matter of urgency.
- The Fair Work Commission's definition of fair work be included in all future Welsh Government policies and legislation that affect employment.
- All organisations receiving public funds should be required to work towards fair work practices and to be able to demonstrate they are doing so.
- The proposed social partnership council establishes sector agreements which set out minimum standards and mutual responsibilities of employers, worker organisations and government.
- the Welsh Government adopts a whole system approach to fair work, co-ordinated through an Office for Fair Work located in the First Minister's office.

Fair work through business support

Low pay and other poor conditions at work often reflect business models that are focused on driving down costs. The Welsh Government could use its economic development powers to help drive up job quality. We recommend:

- Extending the Economic Contract to funding provided by the Development Bank for Wales and to all Business Wales support, including support for tourism.
- Expecting local authorities, city deal bodies, county joint committees and other bodies that support businesses to apply similar fair work obligations.
- Establishing a 'fair work innovation fund' to encourage improvements in job design.
- Agreeing minimum standards of fair work recognized by sector-specific accreditation e.g. 'Fair Work Retailer'.
- Establishing local or regional sector networks to enable employers to work together to increase fairness at work and improve management practices.

Fair work through learning and skills

Workers with skills to do the job are more productive while managers with human resources training treat workers fairly and in compliance with the law. Workers who are aware of their rights are more likely to report abuses. We recommend that:

- Wales TUC and Welsh Government establish an ongoing 'know your rights' campaign, targeted at young people in or about to enter the workplace.
- The Welsh Government should require providers of work-based learning (traineeships and apprenticeships) to ensure learners know their rights and have the opportunity to join a trades union.
- Personal Learning Accounts should include a minimum core of learning opportunities and that they are part of a defined progression pathway so that learners can move on.
- The proposed sector groups should explore incentives for better management training and investigate introducing degree apprenticeships in management.

Fairness when workers are sick

Workers face severe pressure if they are ill from the combination of inadequate or no sick pay and tough sickness absence targets. Some workers attend work, putting the public and clients at risk. We recommend that:

- The Welsh Government explores the use of its public health powers to provide adequate compensation for sick workers in high-risk occupations / sectors.

Fair work towns and communities

Local action can play an important role in increasing fairness at work through their leadership and setting of voluntary standards. They also provide local services that support workers. We recommend that:

- Public service boards increase 'fair work' through local action, including becoming Living Wage places, use of responsible procurement, and working with local businesses.
- The Welsh Government should reform its childcare offer so that:
 - childcare is available from nine months of age and is open to parents who work short or irregular hours, who are seeking work or who are in training;
 - gaps identified in holiday and after-school care are filled.
- Funding for non-commercial bus services that serve routes to and from places with large numbers of low-paid workers is increased.

Fair work through worker action

Workers themselves, and their representative organisations, can and should take action either individually or collectively. Many workers simply leave poor quality jobs, while collective organisation and bargaining is a highly effective way of improving conditions. We recommend that:

- Sector forums should establish progression pathways, with employers, employees and training providers working together.
- All bodies in receipt of public funds should allow unions to access workers.
- Sectoral agreements establish ways to grant unions access to workplaces.
- We recommend that the trades unions develop virtual environments where workers can exchange experiences and build solidarity.

1. Introduction

The question of fairness at work has been a concern of many people and organisations for some time, reflecting the large number of low-paid workers and issues about hours of work and risks to health in the workplace. The Welsh Government shares the concern about fair work and has established several groups including most recently the Fair Work Commission. It is now proposing a new social partnership act to increase fair work, along with other measures.

The Welsh Government's interest in fair work has been paralleled by an increase in interest in the foundational economy. These are a wide and diverse range of economic activities that meet people's everyday needs, including the provision of food, education and social care. Often overlooked in economic development, these sectors provide a large number of jobs – jobs which are also often low paid and insecure.

The Welsh Government established a Foundational Economy Challenge Fund in 2019 to encourage innovation in the sector. The Bevan Foundation was awarded a grant to explore ways in which the foundational economy could be developed whilst at the same time increasing fairness at work in key foundational activities. We decided to focus on three key foundational sectors: retail, hospitality and social care. Together these sectors employ approximately 320,000 people in Wales, with the majority of workers in them earning at or below the real Living Wage. The project ran from January 2020 to March 2021, with the main activity taking place between March 2020 and March 2021.

The project had to adapt to restrictions on business activity as a result of the pandemic. Many retail and hospitality businesses were closed for much of the duration of the project, while social care and those retailers which remained open were operating under severe pressure. We are grateful to those workers and employers who shared their time with us despite the challenges they faced.

This report draws on our findings from the following:

- An analysis of data on business and employee characteristics in the foundational economy;¹
- A review of evidence on effective action to increase fair work in retail, social care and hospitality²
- A survey of a random sample of 250 employees via SurveyMonkey's audience feature.
- Interviews with 24 workers, 10 employee representatives and 6 employers, presented in three sector case studies.^{3 4 5}

In addition, we monitored developments in the labour market from April – October 2020,^{6 7} engaged with employers and employees in a wide range of activities during Living Wage Week 2020, submitted responses to consultations on social partnership,⁸ and organised a webinar on the topic. We also undertook unpublished reviews of trends and employer practices in each of the sectors we considered.

This report brings together this wealth of evidence to provide a rapid insight into fair work in the foundational economy and, crucially, makes recommendations to the Welsh

Government, public bodies, employers and trades unions for action to improve the quality of work.

We recognize that direct powers over employment are not devolved, although the Welsh Parliament's related powers, in particular the Well-being of Future Generations Act, do provide a basis for some interventions. In addition, the Welsh Government can also take action to create an economic environment in which fair work is the norm, through its powers over skills, economic development and public health, and via its leadership and example.

2. The foundational economy

There has been considerable policy interest in the foundational economy in Wales. The foundational, or everyday, economy consists of those goods and services that are essential to everyday life, and ranges from the supply of water and electricity, to education and social care, to the production and distribution of food and clothing. Recently, the supply of leisure services, including cafes and bars as well as personal services such as hairdressing, have been seen as part of the foundational economy.

In many ways the consideration of the foundational economy as a separate entity is artificial. The production and distribution of most foundational goods and services depends on inputs from a wide range of other sectors. This includes physical goods produced by manufacturing as well as knowledge-based inputs from business services. The importance of inputs from the rest of the economy can clearly be seen in the example of residential social care: the sector could not function without equipment such as pressure-relieving mattresses, hoists and wheelchairs or without scientific research and the manufacture of medicines, to name just two. Nevertheless, the recognition of the economic importance of sectors such as social care, retail, energy and utilities and hospitality is welcome.

The foundational economy has an important role in the Welsh economy and labour market, accounting for around 40 per cent of all employment in Wales. Within the foundational economy, around four out of ten jobs are in the public sector (primarily education and health). Of the rest, i.e. mainly private sector foundational economy, businesses mostly serve local populations. Employment is therefore relatively evenly distributed across Wales, which means it has an especially important role in local labour markets especially where major employers are largely absent.

The foundational economy has several distinctive business and workforce characteristics. These are the context in which employee terms and conditions are determined and are explored further below.

2.1. Business characteristics

The foundational economy is characterized by a relatively large number of businesses and small workplaces. In 2019 there were 10,115 accommodation and food business and 9,725 retail businesses in Wales.⁹ There were fewer businesses in health and social care, with the available statistics including a range of other types of health care businesses as well as social care.

Most foundational economy businesses are relatively small, with the number of workers per workplace being below average. All sectors considered in this report had a greater proportion of their employees in workplaces with fewer than 25 employees than the Welsh average. Of these, food and beverage service stand out with 70 per cent of workers in small workplaces, followed by non-residential social work activities at 56 per cent and retail at 46 per cent.

The three sectors considered in this report are sizeable parts of the Welsh labour market, providing a total of 205,000 jobs in 2019.¹⁰ There are important differences between the sectors, and even within them.

2.1.1. Retail

Retail is the largest of the three sectors being considered, providing approximately 120,000 jobs in Wales in 2019.¹¹ Total employment has fallen by 13,000 since 2015 – equivalent to a fall of nearly 10 per cent. Most of the decline has been in full-time rather than part-time jobs. The impact of the pandemic on employment in the sector remains to be seen.

Supermarkets¹² dominate retail employment, accounting for 42 per cent of all jobs.¹³ Two other retail sectors account for a further one in ten jobs each – non-specialised stores and specialised clothing stores. Supermarkets and much of the rest of the sector are owned by large, GB-wide businesses such as Tesco, Asda, Wilko, Next and Primark. The rest of the retail sector is very diverse, with no single sector employing more than 5,000 people, and is more likely to be independently-owned.

Within retail, just under half of employment (46%) is in workplaces with fewer than 25 employees.

2.1.2. Hospitality

Hospitality industries account for a slightly smaller number of jobs than retail, employing 117,000 people in 2019. The sector grew rapidly between 2015 and 2019 with a net increase in 26,000 jobs. Employment in all types of hospitality businesses increased over this period, with restaurants enjoying the greatest increase. The impact of the pandemic on employment in hospitality remains to be seen.

Within hospitality, the restaurant sector is the largest employer, accounting for 41 per cent of all hospitality jobs. Service of beverages and hotels are smaller in employment terms, accounting for 25 per cent and 18 per cent of jobs respectively, while the rest of the sector accounts for relatively few jobs.

Although several large groups dominate the hospitality sector, workplaces themselves are mostly small. In food and beverage service, more than 70 per cent of jobs are in workplaces with fewer than 25 employees.

2.1.3. Social care

The social care sector has slightly fewer employees than the other two foundational sectors, with 88,000 employees in 2019. Contrary to some views that the sector is expanding, employment in the sector as a whole was unchanged between 2015 and 2019. Within social care, falls in employment in residential nursing care and in residential and non-residential care for elderly and disabled people were offset by increases in 'other social work activities without accommodation'.

Like other foundational sectors, an above average proportion of employment is in small workplaces - 41.4 per cent of employment in residential social care is in establishments

with fewer than 25 employees as is more than half (55.6 per cent) of employment in non-residential social care.

A distinctive feature of social care is its ownership structure. Whereas retail and hospitality businesses are almost entirely privately owned, the social care sector comprises a mix of public sector, third sector and independently-owned organisations, the latter being by far the largest.¹⁴ As with retail and hospitality, the independent sector comprises large, GB-wide companies as well as smaller businesses. There are important differences in the composition of their workforces and terms and conditions of work depending on business ownership.¹⁵

2.1.4. Business practices

The idea of the high performance workplace (HPW) brings together a number of business practices known to improve productivity and performance. Overall, eight per cent of Wales' businesses can be classed as HPWs. Within wholesale and retail, and hotels and restaurant sectors a broadly similar proportion of workplaces are high performance. However there is less task variety and discretion in these sectors than in others.

In terms of training, retail, accommodation and food service stand out as low-training sectors. More than eight out of ten employees in these sectors had not received training in the previous three months. As might be expected, there are higher levels of training reported in social care workplaces.

2.2. Workforce characteristics

The foundational economy, and the three sectors considered here in particular, have a very different workforce to the labour market as a whole. Employment in these sectors is strongly associated with having a majority of women workers, a youthful age profile, a predominance of part-time working and high employee turn-over.

2.1.5. Part-time working

Part-time work is relatively common in parts of the foundational economy, with a slight majority of workers in the retail (52.8 per cent) and food and drink service sectors (52.7 per cent) working part-time. In social care, the proportion of part-time workers is lower than in retail or food and drink at 38.3 per cent of employees in residential care and 30.9 per cent in non-residential care but it is nevertheless above the all-economy figure. It is worth noting that there are variations within social care with the ownership of the care business.

2.1.6. Gender and age profile

Women make up the majority of the workforce in all the sectors and comprise around four-fifths of the workforce in human health and residential care. The foundational sectors also have a youthful profile: in food and drink services more than 40 per cent of the sector workforce is under 25 and retail and residential care also have comparatively high employment of under 25-year-old workers.

2.1.7. Job tenure

Job tenures – the length of time an employee is in a role - in parts of the foundational economy tend to be comparatively short. More than a third of workers in food and drink service have been with their employer for less than a year, while in accommodation services the figure is 24.3 per cent, and in residential care it is 22.5 per cent. Tenures are longer than average in general human health and non-residential social care.

2.2. Conclusion

The foundational economy is important in the Welsh economy both in terms of the number of jobs within it and the number of businesses trading. The foundational economy is very diverse and almost all elements have strong links with suppliers of goods and services in other parts of the economy. Within the foundational economy, while there are some similarities between foundational sectors, there are also striking differences between and even within them. There is therefore a question about the relevance of considering the foundational economy as a single entity.

In terms of the workforce, retail, hospitality and to a lesser extent social care all have disproportionately female and young employees, with an above average proportion working part-time. Staff turnover in retail and hospitality is well above average. Workplaces are typically small, and are not notable for using high performance practices, other than above average investment in in-work training in social care.

This landscape of small workplaces, with a high turnover of disproportionately part-time workers is the context for increasing fair work, and makes doing so exceptionally challenging.

3. Fair work

There are many different definitions of good, fair or decent work, whether developed by governments, academics or workers' organisations. The Fair Work Commission in Wales considered the many alternatives and identified the following characteristics of fair work:

- fair reward;
- employee voice and collective representation;
- security and flexibility;
- opportunity for access, growth and progression;
- safe, healthy and inclusive working environment,
- legal rights respected and given substantive effect.

This section of the report summarises the key findings from our analysis of data and our survey and discussions with employees and considers their implications for increasing fairness at work in Wales.

3.1. Fair reward

The Fair Work Commission identified 'fair reward' as one of the key features of fair work. Many consider pay, and particularly the hourly rate of pay, to be the main if not only element of fairness of reward. However, our findings suggest that the question of fair reward is more complex than the hourly rate.

3.1.1. Getting paid

Employers have a legal obligation to pay their employees the correct amount and on time. Yet in our survey of workers, a quarter of respondents reported a problem with their pay in the previous three years, with the most commonly reported issues being late pay, not being paid for all hours worked or at the correct rate, and incorrect deductions being made. Problems with getting paid were less common in our discussions with workers, with not being paid for hours worked being the main issue especially in the hospitality sector.

Being paid the sum due and on time is such a fundamental aspect of the employer-employee relationship that it is often overlooked in fair work policies, yet our findings suggest that it is an obligation that is not being met for a substantial minority of workers.

3.1.2. Pay rates

Pay is often seen as the most important aspect of fair reward. The main focus of concern in debates about pay is usually hourly rates, with campaigns such as that for the real Living Wage or for pay increases reinforcing the emphasis on hourly pay.

Our analysis of data from the Annual Survey of Hours and Earnings showed that median weekly and hourly earnings across many of the foundational economy sectors were significantly lower than the median for all sectors. In retail, hospitality and social care the majority of workers within these sectors earned less than the real Living Wage.

In our survey, workers in all three foundational sectors said that pay was the top issue. Discussions with workers confirmed the importance of pay to the most of those interviewed. We heard many examples of workers struggling to make ends meet, often relying on top-ups from Universal Credit or support from friends and family to get by. We also heard from workers whose pay was below the legal minimum, usually because they undertook unpaid work such as travelling between social care clients.

Increasing hourly pay rates is therefore a vital first step towards ensure fair reward and fair work, although it is not the only change needed to ensure fairness.

3.1.3. Total reward

We found that workers' experience of pay was more nuanced than simply the headline hourly rate. What mattered to workers was their total remuneration, which included a myriad of different issues such as bonuses, being paid during breaks, being paid enhanced rates for Sunday or bank holiday working and having access to a company sick pay scheme.

The benefit to workers of these additional elements of remuneration can be considerable, and can sometimes exceed the value of an uplift in hourly pay rates. We learned of examples of employers offsetting pay increases from the introduction of the NLW with reductions in other employee benefits, so that workers were not better off. For example, cutting an employee's paid break of 30 minutes a day loses a worker on the National Living Wage (NLW) a total of £22.27 a week. This compares with an increase of £21.83 a week that a full-time employee would gain from an increase from the NLW to the real Living Wage. The same changes could occur if the drive to increase the number of businesses paying the real Living Wage is not accompanied by action to protect other employee rewards.

3.2. Job security

The Fair Work Commission recognises the importance of job security in their definition and indicators of fair work, although it features less often in wider policy debates. If it is considered at all, it is usually in the context of whether hours of work are guaranteed. There are several different aspects of job security: that associated with employer changes that might result in redundancy; the potential loss of employment through dismissal; and the uncertainty of hours of work.

We found that all three types of insecurity were of very considerable concern to employees, ranking only just behind pay, as the issue of most overall concern to workers. We also heard from workers themselves about the damaging effects of insecurity on their well-being.

3.2.1. Insecure hours of work

Insecure hours of work are more common in some foundational economy sectors than in the wider labour market. In the social work sector, more than one in ten workers is not on a permanent contract, with nearly the same proportion being on temporary contracts in food and drink service. Zero hours contracts were also more common in parts of the foundational economy than other sectors, with around 10 per cent or more of workers in

accommodation, food and drink service and in residential care being on zero hours contracts compared with the all-economy average of 2.5 per cent.

While temporary and variable hours contracts in theory offer flexibility to employees as well as to employers, in practice workers described that it meant that they were rarely in control of their work pattern. Instead, they felt that their working hours were at the behest of their employer irrespective of their own circumstances. Some suggested that 'flexibility' enabled their employer to make considerable – and arguably excessive – demands on their time, insisting on long shifts and compulsory overtime sometimes at short notice.

3.2.2. Protection from unfair dismissal

Workers were also concerned about and even fearful of the risks of disciplinary action and dismissal. Their concerns varied across sectors: in social care, workers were worried about the consequences of inadvertently failing to comply with 'The Code',¹⁶ for example making a cup of tea too hot for a care home resident. In retail and hospitality workers feared dismissal for 'offences' including joining a trades union, reaching the age at which a higher minimum wage had to be paid or exceeding the company sickness absence threshold.

The relatively short job tenure of employees in foundational economy sectors compared with the whole workforce means that a large proportion of workers in these sectors have limited protection against unfair dismissal. In food and beverage services, nearly six out of ten employees have been in their role for less than two years and so do not have protection against unfair dismissal, with 44 per cent of employees in accommodation services also having worked for their employer for less than two years. Only in non-residential social care do workers have longer than average job tenure and therefore have some redress.

3.2.3. Redundancy

Inevitably we found that some workers were concerned about the future of their industry as a whole, in particular wondering if their employer would recover from the pandemic. A quarter of workers in our survey said they were fairly or very worried about the future of their job. Some workers in our interviews were also concerned about changes to workers' terms and conditions as businesses recovered, with worries about short-term sacrifices made by employees during the pandemic becoming a permanent reduction in terms and conditions. Some trades unions pointed to 'fire and re-hire' practices being adopted in other parts of the foundational economy and noted that it could become widespread.

It is possible to see a vicious circle in which job insecurity creates a workforce that is relatively inexperienced, which receives limited training and in which there is high turnover. Their inexperience and lack of training results in tasks being closely defined and supervised, which in turn contributes to a large number of exits either through dismissal or resignation. The resulting high turnover is then managed through temporary and variable hours contracts, which begins the cycle again.

3.3. Worker wellbeing

The combination of low pay and job insecurity coupled with significant job intensity has a severe impact on workers' wellbeing. In our survey, 21.5 per cent of workers reported that they felt very or extremely stressed as a result of their work. Our discussions with workers highlighted the issues in more depth.

3.3.1. Workplace risks

In all three sectors, we heard that workers could be at real risk of harm from the people they served. We heard of workers being subjected to verbal abuse, threats of violence and actual assaults from their clients and customers, be they residents in care homes, shoppers in supermarkets or patrons at bars and restaurants. Their contact with a large number of people meant that workers in these sectors are at heightened risk of contracting infectious diseases, as the above average mortality from Covid-19 amongst workers in social care, retail and some food industries demonstrated.

It appears that measures to protect workers were often weak. Across all three sectors, we heard that being headbutted, sexually harassed or verbally abused were regarded by managers as 'part of the job' and 'entirely expected'. The management actions we heard about seemed to be ad hoc responses to specific crises rather than addressing the underlying causes or introducing effective or lasting prevention measures.

That said, we found that employee's views of the response to Covid-19 at their place of work were generally more positive. By the time of our survey, shortages of personal protective equipment (PPE) appeared to have been resolved, with 55 per cent of social care workers saying they had all the PPE they needed and 36 per cent saying they had most of the PPE needed. However we heard of specific examples in retail and hospitality where employees considered that more could be done to enforce requirements such as social distancing and wearing face coverings.

3.3.2. Work organisation

Our evidence suggests that the way in which work is organised can create or exacerbate health and safety risks. We heard about the impact of working long shifts, often without legally-required breaks, on workers' wellbeing, with extended hours being common in social care and in hospitality. The intensity of work was also an issue raised by workers, notably in retail, with reductions in the number of employees resulting in an increase in workload for remaining workers. Workers in many roles, and especially in retail, felt that increased work intensity and high turn-over of staff made them feel dispensable and invisible, creating additional stress.

Most workers reported receiving minimal support for their health and wellbeing by management. We heard about some unsympathetic responses to requests for changes to work patterns, and that most workplaces did not provide any workplace-based services. There were some exceptions, with one worker in each of social care and retail reporting that their employer had provided support services that they had accessed and found helpful. This demonstrates that good employers can provide assistance to their workforces if they wish.

3.3.3. Sick pay

In the UK, around a quarter of workers do not have a company sick pay scheme and so rely on Statutory Sick Pay (SSP) if they are unable to work.¹⁷ While no sectoral figures are available, the TUC calculate that the workers who are most likely to be reliant on SSP-only are people who earn less than £15,000 a year, young workers, women and Black, Asian and Minority Ethnic workers – all groups that are over-represented in the foundational economy. Some workers are not even eligible for SSP - workers on zero hours contracts and young workers are much more likely than other workers to earn less than the SSP threshold and so receive nothing if they are too ill to work.

Workers we interviewed reported that lack of adequate sick pay schemes had a significant impact on their working life. In social care and retail we heard of workers who came to work when they were unwell or had been asked to self-isolate because they could not afford to lose pay. Not only is this not good for workers' health, it also spreads infection to colleagues and clients. This is especially worrying in social care where clients may be vulnerable.

The absence of sick pay provision combined with challenging sickness absence targets to put pressure on employees. Retail in particular had low tolerance of sickness absence and penalties for breaching targets. Some workers and unions felt that sickness absence targets were not always consistently applied by management, and were sometimes imposed in cases of planned absence e.g. for surgery.

3.4. Employee voice and representation

Trades union representation has a key role in fair work. As well as representing individual workers, workers represented by unions on average have higher pay than those who are not and also have other benefits.¹⁸ In terms of the foundational economy, low levels of union membership have been found to be one of the key drivers of non-compliance of existing labour market regulations in the restaurant sector.¹⁹

Employee representation via trades unions is strikingly low in the foundational economy. Overall, around 30 per cent of all workers in Wales are members of a trades union. While social care has slightly above average membership rates, only around one in five retail workers (22 per cent) is a union member. Data for the UK indicates that union membership amongst workers in food and beverage services is just 2.2 per cent. Our engagement with employees revealed a similar pattern. Across the three sectors, our survey found that 21 per cent of respondents said they were trades union members, with membership being higher in social care than in retail and hospitality.

In both our survey and discussions with workers, we found that the main reasons workers join a union are a combination of believing in unions and wanting the general benefits, although a sizeable minority joined for help with a specific issue.

The reasons for not joining a union were more varied. In our survey, by far the most common reasons for not joining a union was that respondents had not been asked or did

not know there was a union they could join. Discussions with workers revealed a more complex picture. In terms of unions themselves, non-membership was partly attributable to lack of awareness of unions but also to perceptions about the cost of membership and perceptions that unions did not represent their interests. In addition, there was a basic lack of trade union awareness and culture across workplaces. Some workers in our survey did not know what unions are or how they might be relevant to them. In addition we heard about workplaces where employers were hostile to unions and membership was frowned upon.

These challenges are compounded by difficulties of organising in the relatively large number of small workplaces in these foundational sectors and in workplaces with high staff turnover. We also heard that limited union resources were being focused on firefighting individual disciplinary cases rather than pressing for wider improvements in working conditions. This creates a vicious circle of hard-to-organise and low-paid workers and workplaces, and union resources being stretched too thinly to reach them.

3.5. Conclusion

The analysis of data and experiences of workers paints a powerful picture of poor quality work that is widespread across the three foundational sectors considered. Many – but not all - jobs in retail, social care and hospitality are characterised by low rewards, considerable insecurity and substantial risks to workers' health and wellbeing. These characteristics are inter-related, and in larger companies are the result of deliberate decisions in respect of the level of worker benefits, the design of jobs and the protection of workers' health. The structure of the sectors, including the small size of workplaces and the fragmented workforce, make it difficult for worker organisations to attempt to address the poor conditions.

If the Welsh Government wishes to see the foundational economy develop further, it is vital that it drives up fair work in tandem with the development of these sectors. If it does not, there is a risk that expanding the foundational economy will increase the number of workers working in insecure, low paid and potentially unsafe jobs.

4. What should be done?

It is clear that poor work conditions and negative experiences are widespread in the foundational economy sectors we considered. But while unfair work is widespread, it is not inevitable. In each sector, we identified employers with a wide range of business practices including some which were committed to improving rather than driving down conditions at work (see Fig. 1). The fact that some employers can reward their workers fairly, respect their rights and listen to their concerns indicates that many more could do so if they wished.

Figure 1: Selection of businesses paying the real Living Wage

	Business	Pay rate	Notes
Retail	Morrisons	Pays all staff a minimum of £10 per hour from April 2021.	Increase part-funded from employees' annual bonus. No paid breaks.
	Aldi	Pays all staff a minimum of £9.55 an hour outside London from April 2021.	Includes paid breaks, which for a 6-hour shift is equivalent to £10.11 per hour.
Social care	Home Instead Senior Care	Accredited Living Wage employer, paying minimum of £9.50 per hour.	Franchise model. Many contracts are zero hours.
	Gwyddfor Residential	Accredited Living Wage employer, paying minimum of £9.50 per hour.	Residential care home in Holyhead.
Hospitality	Craft Republic	Accredited Living Wage employer, paying minimum of £9.50 per hour.	Craft brewery outlet in Barry.
	Llyn Gwynant Campsite	Accredited Living Wage employer, paying minimum of £9.50 per hour.	Small campsite in Caernarfon

Source: Living Wage Foundation

Nevertheless, increasing fairness at work is a major challenge, and one which is made all the more difficult because of the current devolution settlement. As is widely acknowledged, employment is a reserved matter. Section 7A of Government of Wales Act sets out matters reserved for the UK Government. Para 141 of the schedule 'reserves employment rights and duties and industrial relations, except for the setting of wages for agricultural workers'.

However, as the Fair Work Commission noted, the Welsh Parliament does have legislative competence in matters related to employment through the Equality Act 2010, Wellbeing of Future Generations Act and the Regulation and Inspection of Social Care (Wales) Act 2016, as well as via the Government of Wales Act itself. While these powers do not enable the Welsh Government to – say – determine minimum rates of pay or to reform Statutory Sick Pay, it does enable it to take action on aspects of fair work. Indeed, it has used its powers during the coronavirus outbreak to make several interventions in workplaces, for example in respect of the NHS to implement the NHS and social care

financial recognition scheme and to impose restrictions in workplaces based on the Public Health (Control of Disease) Act 1984.

There is, therefore much that the Welsh Government can and should do. This section sets out our recommendations. It takes as a given that the social partnership bill will be introduced into the current Senedd, and therefore does not include recommendations in respect of the bill (other than on the definition of fair work) nor in respect of responsible procurement. Instead it considers additional and complementary policy and legislative changes to increase fair work.

It begins by setting out our recommendations in respect of the Welsh Government's overall approach, and then looks at specific actions in respect of business support, sickness, learning and skills, places and worker voice.

4.1. Overall approach

The review of evidence we undertook highlighted the critical importance of getting the overall approach to fair work right, as well as introducing specific actions to address individual aspects of fair work.

4.1.1. Implement the Fair Work Commission recommendations

The Fair Work Commission's recommendations are the result of a substantial amount of work by experts in the field and provide a balanced set of recommendations that should increase fair work without damaging the economy and labour market. The Welsh Government has previously accepted all its recommendations either wholly or in principle. **We therefore recommend that the Welsh Government implements the Fair Work Commission's recommendations in their entirety as a matter of urgency.**

4.1.2. Comprehensive definition

The experiences of workers showed that they viewed fairness at work as an overall package, with issues such as job security and health and wellbeing being as important to them as their total rewards. The Fair Work Commission's definition of fair work encompasses all the features (and more) and it should therefore become the cornerstone of all legislation and public policy on fair work.

Embedding the definition of fair work must be consistent across the many different branches of Welsh Government. It should be incorporated in full in the proposed social partnership bill, in the new Economic Contract and as a condition in all grants, in remit letters to public bodies, and in public sector procurement contracts. **We recommend that the Fair Work Commission's definition of fair work be included in all future Welsh Government policies and legislation that have the ability to affect employment.**

4.1.3. Fair Work Conditionality

The Welsh Government funds a large number of organisations, providing grants to local authorities, charities and other public bodies as well as support to businesses. If the Welsh Government is to drive up fair work, one of the most effective ways in which it can do so

is through requiring those organisations to which it provides funds to adhere to the principles of fair work when employing staff. Its moves to require social care providers to pay the real Living Wage is an important step forward.

We envisage fair work conditionality going further than procurement and including all public bodies which are provided with grants towards their costs and private sector employers which benefit from grants and reliefs (such as small business rates relief). Without this conditionality, Welsh Government moneys could be used to undermine one of its core objectives. The question of business support is considered separately below.

We recommend that all organisations receiving public funds should be required to work towards fair work practices in their workforce and to be able to demonstrate to Welsh Government that they are doing so.

4.1.4. Sectoral agreements

The foundational economy is very varied with different sectors having different operating models, business pressures and prospects. The challenges and opportunities for fair work therefore vary considerably across sectors. Approaches tailored to specific sectors are likely to be more effective at safeguarding and developing good employment than a focus on the foundational economy per se. The Social Care Forum, established in September 2020, brings together employers, employee representatives and care commissioners and could be a model for other sectoral initiatives.

The Office for Fair Work and the Social Partnership Council should adopt a sectoral approach, prioritising the economic activities with the largest number of workers who would benefit from greater fairness. Forums for hospitality and retail should be established alongside the Social Care Forum as a matter of urgency. The challenges businesses in these sectors face post-Covid provide an ideal opening for dialogue.

We envisage the forums being a mechanism for government, employers and employees to reach broad agreement about fair work in specific sectors, particularly if those sectors are looking to government for financial or other support. The sectoral agreements would establish the areas of improvement to be delivered in the sector, including minimum standards, public sector investment in training or business support, and rights of trades unions to recruit and represent workers. Sectoral agreements can be seen as collective versions of the economic contract, setting out mutual responsibilities.

We recommend that the proposed social partnership council works towards sector agreements which set out minimum standards and mutual responsibilities of employers, employees' organisations and government.

4.1.5. Whole system approach

The review of evidence found that there is no single action or intervention that can increase fairness at work. Instead, it recommended that the Welsh Government should adopt a 'whole systems' approach to fair work, which brings together a range of legislative and policy interventions.

A whole system approach is important for three key reasons. First, the Welsh Government does not have devolved powers to determine key aspects of fair work and must therefore make full and effective use of its other powers that are relevant to fair work. Second, employees and employers do not operate in isolation – their decisions and behaviours are shaped by factors such as the availability of alternative work, workers’ skills and qualifications, and business objectives and drivers. And third, single actions that are not part of a wider approach can have unforeseen consequences, as has occurred when increases in hourly pay have resulted in cuts to other payments to workers.

One way of ensuring a whole system approach and avoiding the inevitable silos in government would be through the Office for Fair Work (OFW) that the Fair Work Commission proposed should be established by the Welsh Government. To work across government departments and with other stakeholders, the OFW should be located within the First Ministers’ office.

We therefore recommend that the Welsh Government adopts a whole system approach to fair work, co-ordinated through an Office for Fair Work located in the First Minister’s office.

4.2. Fair work through business support

Our review of evidence identified that low pay and other poor conditions at work often reflect business models that are focused on driving down costs especially staff costs, rather than adopting other strategies such as increasing productivity, automating or simplifying processes, or focusing on higher value. The Welsh Government could use its economic development powers to encourage business practices that are not based on cost-minimization especially those based on cutting staff costs.

4.2.1. Strengthen and extend the Economic Contract

The Welsh Government’s economic contract provides a framework for businesses in receipt of certain economic development funding to demonstrate their commitment to fair work (amongst other criteria). A refresh of the contract was in train in early 2021, with the Welsh Labour manifesto proposing to strengthen the contract further. These developments create an opportunity to ensure the Economic Contract has maximum impact on fair work.

We recommend:

- **aligning the definition of fair work in the Economic Contract with that of the Fair Work Commission**
- **extending the contract to funding provided by the Development Bank for Wales and to all Business Wales support, including support for tourism**
- **expecting local authorities, city deal bodies, county joint committees and other bodies that support businesses to apply similar fair work obligations.**

4.2.2. Support innovation in job design

Jobs with limited task variety and discretion are not inevitable – they are the result of the design of jobs and the autonomy and discretion granted to employees. Rethinking job design can provide more variety and responsibility for workers, improving job satisfaction and potentially increasing reward. Our review of evidence identified a number of examples where funding for innovation in retail and social care stimulated the redesign of jobs (for example combining aspects of shop-floor and first-tier management tasks or introducing a holistic approach to care), improving job quality and productivity.

We recommend that the Welsh Government establishes a ‘fair work innovation fund’ to encourage improvements in job design and worker empowerment in social care, retail and hospitality. Innovations must have potential to be retained within the business and rolled out more widely.

4.2.3. Fair work minimum standards and charter

Although the characteristics of fair work are set out by the Fair Work Commission, the minimum standards that should be associated with each characteristic are not included. Instead, the Fair Work Commission recommends developing a fair work standard, or charter, based on six key criteria. It proposes that signing up to the charter would be voluntary but participation would be independently verified.

The Fair Work Commission recommends that the standard should be the same across all types of business. While we understand that variable standards may appear to undermine the concept of fair work, there does need to be a mechanism to recognize that conditions in different sectors vary considerably and that they also face different economic pressures.

We therefore recommend that the Welsh Government establish minimum standards of fair work, and that progress towards them be recognized by sector-specific accreditation e.g. ‘Fair Work Retailer’ or ‘Fair Work Care Company’.

4.2.4. Fair work through employers working together

The terms and conditions of work are often associated with wider issues in low-paid sectors such as recruitment, skills and retention. Elsewhere in the UK, employers in sectors such as hospitality have established local or regional networks in which businesses work together to improve labour supply and the terms and conditions of work.

Local sector networks could also be practical ways of introducing and monitoring the effects of establishing minimum standards, and could help to raise the profile and appeal of employment within the sectors. Local sector networks could also boost employment conditions by offering training for managers on key aspects of employment legislation and good human resource management practices. Existing sector organisations could help to establish these local or regional groups.

We recommend employers establish local or regional sector networks to work together to increase fairness at work and improve management practices.

4.3. Fair work through learning and skills

Learning and skills play an important role in fair work. Workers with skills to do the job are likely to be more productive, managers with training in human resources are more likely to treat workers fairly and in compliance with the law, and workers who are aware of their rights are more likely to report abuses. With learning and skills being fully devolved, this is also an important area for Welsh Government intervention.

4.3.1. Understanding worker rights

The Fair Work Commission noted that knowledge of employment rights is generally low, and those who most needed to know their rights were least likely to be aware of them. They called for a 'know your rights campaign' and also for awareness to be raised amongst prospective workers e.g. via Careers Wales.

Our findings reinforce the urgent need for employees, especially young workers, to know their basic rights and that this needs to be an ongoing campaign of education not a one-off campaign. **We recommend that:**

- **Wales TUC and Welsh Government establish an ongoing, multi-channel 'know your rights' campaign, targeted at young people in or about to enter the workplace, with young workers having a prominent role.**
- **The Welsh Government should require providers of work-based learning (traineeships and apprenticeships) to include ensuring learners are informed of their rights at work and have the opportunity to join a trades union.**

4.3.2. Worker learning

On average workers in retail and hospitality have below-average levels of qualification and are also less likely to receive in-work training than workers in other sectors. Learning new skills improves outcomes for individuals, enabling them to adapt and move on to a new role if they wish, often increasing earnings as they do so.

The Welsh Government's extension of Personal Learning Accounts (PLA) to all vocational areas is a welcome step but could be developed further. **We recommend that the Welsh Government ensures that:**

- **PLAs include a minimum core of learning opportunities in all parts of Wales, ensuring all workers have access to a choice of skills and vocational areas;**
- **Learning offered is part of a defined progression pathway so that learners can continue their development if they wish;**
- **There are high standards in content and delivery of provision.**

4.3.3. Management learning

Management skills are a particular area of weakness, and poor management practices can be a contributory factor in failure to implement good work practices. Our review of evidence pointed to two potentially valuable types of management training: greater take-

up of established management learning e.g. by CIPD or Be the Business, and wider use of degree apprenticeships as entry-routes into management.

We recommend that the Welsh Government:

- Explores incentives for managers to participate in learning similar to the CIPD People Skills pilot or Be the Business training in retail, hospitality and social care;
- Investigates the potential to introduce degree apprenticeships in management in these sectors.

4.4. Fairness when workers are sick

One of the most striking findings from our evidence of workers' experiences is the severe pressure workers face when they are ill. The combination of inadequate or no sick pay and tough sickness absence targets encouraged workers to attend work when they are ill. The consequences of sick workers in public-facing roles, some of them working with very vulnerable people, have been all too clear in the Covid-19 outbreak. Working when ill is not just a fair work issue, it is a public health matter.

There may be scope for the Welsh Government to address provision of sick pay where sick workers in the workplace are a risk to public health. It could explore whether it could require businesses to reduce infection spread through requiring company sick pay schemes, and in their absence could develop a system of emergency payments to workers paid for by a levy (via devolved taxation powers) on employers without sick pay schemes. Such a scheme would be a major step that would test the boundaries of devolved legislation but it is in our view worth exploring.

We recommend that the Welsh Government explores the use of its public health powers to provide adequate compensation for workers in occupations with a high risk of spreading disease who are unable to work because of illness.

4.5. Fair work towns and communities

Action to increase fairness at work is not the sole responsibility of the UK or even devolved governments – local-level action can also have an important role to play. Our review of evidence cited initiatives by cities such as Manchester and Birmingham but there is no reason why local leadership cannot be in rural areas or towns. Local organisations have relatively few powers over 'fair work', but what they can do is lead and set voluntary standards, inspire and encourage businesses and workers to aim higher, and provide local services that support workers, from childcare to public transport.

4.5.1. Local leadership

Local organisations, and especially local authorities, can come together to improve the quality of jobs in their area. One local authority in Wales – Cardiff – is already committed to being a Living Wage City, but there is scope for a much wider interpretation of fair work. One of public bodies' duties under the Wellbeing of Future Generations Act is to secure a prosperous Wales through, amongst other things, decent work. This would

complement local social partnership arrangements anticipated via the social partnership act.

We recommend that the public service boards explore the potential to increase 'fair work' through local action, including becoming Living Wage places, use of responsible procurement, and working with local businesses.

4.5.2. Wraparound services

The evidence review identified that services such as childcare (after school and in the holidays as well as pre-school) and public transport could not only make working life easier for those on low pay but also enable them to progress to better paid roles or increase their hours of work.

We recommend that:

- **Welsh Government reforms its childcare offer so it is available to children from nine months of age and is open to parents who work short or irregular hours, who are seeking work or who are in training.**
- **Welsh Government puts school holiday provision on a permanent footing, extends provision to more children in more schools, with provides schools with a firm steer to participate.**
- **local authorities work with the Welsh Government to fill gaps identified in holiday and after-school care identified in 2022 childcare sufficiency assessments;**
- **Welsh Government increases funding to local authorities to subsidise non-commercial bus services that serve routes to and from places with large numbers of low-paid workers such as town centres and retail parks.**

4.6. Fair work through worker action

Last but not least there are actions that workers themselves, and their representative organisations, can take. These fall into two broad areas: progression and collective voice.

4.6.1. Progression

One of the most common actions that workers take is to leave employers with poor conditions. Although retail and hospitality have relatively high staff turnover, employees nevertheless tend to get 'stuck' in low paid work for an extended period. This is especially common in retail, with Wales having the highest proportion of 'stuck' workers in the UK.²⁰ While progression out of low paid work benefits the individual, there is still the question of the quality of work for those who enter the sectors and their colleagues who do not progress.

We conclude that the Welsh Government, trades unions and employers should work through the sector forums to establish progression pathways to identify the skills required and create effective routes.

4.6.2. Increasing union membership

While workers' collective voice and bargaining may be the most effective way to achieve fair work, collective organisation is limited especially in retail and hospitality and remains difficult in social care.

There are significant challenges for trades unions in these sectors. They are caught in a vicious circle of trying to recruit workers in sectors with small, fragmented workplaces, disconnected workers and high employee turnover. In addition, some employers are unsympathetic and even hostile to worker organisations.

Nevertheless, the large number of workers who said they had not been asked to join a union suggests that targeted recruitment campaigns could well be effective. Similarly, the perception that membership is too expensive suggests that unions could tailor their offer for low-paid and part-time workers. Examples include introductory free or low membership rates for a period, enabling a choice about frequency of payment depending on whether workers are paid weekly, fortnightly or monthly, and making provision for workers on variable hours who may be faced with no pay some weeks.

Reaching young workers and workers with frequent job changes can also be difficult for trades unions, especially as many young workers do not know about unions or understand their importance. Unions could explore innovations such as offering trainee membership for apprentices and work-based learning trainees, and 'membership passports' to enable easy transfers of membership between unions when workers change jobs.

It can often be difficult for unions to engage with workers at the workplace, especially if management do not agree to a union presence. Unions have no legal right of access to workplaces other than to accompany members at disciplinary hearings. The proposed sector agreements could include agreement about union access to workplaces, including requiring trade union access to a workplace if a worker raises a concern in respect of equality or health and well-being. For bodies in receipt of any Welsh Government or other public sector funds, access by a trades union to work places should be a core part of a fair work requirement for all bodies.

We recommend that:

- **all bodies in receipt of public funds should be required to allow unions to access workers in the workplace**
- **sector forums should explore ways in which unions may be granted access to workplaces.**

4.6.3. Connecting workers

One of the characteristics of the foundational economy is that workers are fragmented because of their small workplaces, variable hours and high turnover. There are concerns that the growing number of workers who work from home will also be disconnected from colleagues. Building relationships between workers can be a valuable pre-cursor to joining a union.

The evidence review identified scope to create real or virtual spaces for workers to come together, using models of organisation that are somewhat different to conventional trade union participation. For example workers – including union members and non-members - can connect or collaborate via Facebook groups or other social media. Similarly technology can empower workers, with WorkerTech initiatives providing collective voice e.g. workers rating their employer (similar to ratings for restaurants and hotels on TripAdvisor or traders on TrustPilot). These initiatives are at an early stage and will require investment to test and develop them. Interestingly, outside Wales WorkerTech initiatives are being taken forward by a mix of charities and businesses rather than with government funding.

We recommend that the trades unions develop virtual environments where workers can exchange experiences and build solidarity.

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