



OFFICIAL REPORT
AITHISG OIFIGEIL

Economy and Fair Work Committee

Wednesday 16 November 2022

Session 6



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ECONOMY AND FAIR WORK COMMITTEE

26th Meeting 2022, Session 6

CONVENER

*Claire Baker (Mid Scotland and Fife) (Lab)

DEPUTY CONVENER

*Colin Beattie (Midlothian North and Musselburgh) (SNP)

COMMITTEE MEMBERS

- *Maggie Chapman (North East Scotland) (Green)
- *Jamie Halcro Johnston (Highlands and Islands) (Con)
- *Fiona Hyslop (Linlithgow) (SNP)
- *Gordon MacDonald (Edinburgh Pentlands) (SNP)
- *Graham Simpson (Central Scotland) (Con)
- *Colin Smyth (South Scotland) (Lab)
- *Michelle Thomson (Falkirk East) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Mary Alexander (Fair Work Convention)
Patricia Findlay (Fair Work Convention)
Helen Martin (Fair Work Convention)

CLERK TO THE COMMITTEE

Anne Peat

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Economy and Fair Work Committee

Wednesday 16 November 2022

[The Convener opened the meeting at 09:31]

Decision on Taking Business in Private

The Convener (Claire Baker): Good morning, and welcome to the Economy and Fair Work Committee's 26th meeting in 2022. No apologies have been received.

Our first item of business is a decision on whether to take item 3 in private. Are members content to take that item in private?

Members *indicated agreement.*

Fair Work Convention

09:31

The Convener: Our next item of businesses is an evidence-taking session with the Fair Work Convention. The purpose of the session is to provide members with an introduction to the convention's work and to discuss with it the challenges and opportunities that businesses and workers face.

I welcome Mary Alexander and Patricia Findlay, who are co-chairs of the Fair Work Convention. They are joined by Helen Martin, who is head of the convention secretariat.

As always, I ask members and witnesses to keep their questions and answers as short and concise as possible.

I invite Mary Alexander to make a short opening statement.

Mary Alexander (Fair Work Convention): The Fair Work Convention brings together employers and unions from across the public, private and third sectors and is supported by academic expertise. We operate in the tradition of social dialogue and therefore have a balanced representation of employers and trade unions.

The convention is a relatively small organisation with 11 members. We receive funding from Government and are supported by a small, multidisciplinary secretariat, which is based within the Scottish Government. However, we are independent of Government and our remit is twofold: first, to advise the Scottish ministers on fair work and, second, to advocate for and promote fair work.

Our vision, which is shared with the Scottish Government, is that Scotland will be a leading fair work nation by 2025. To that end, the convention has played a leading role in defining fair work through the fair work framework, which was published in 2016. We have drawn on international learning, considered the available evidence on what works from Scotland and across the United Kingdom, and defined fair work using five dimensions: security, opportunity, fulfilment, respect and effective voice.

We also examined Scotland's progress on fair work and developed the fair work measurement framework, which was first published in December 2020. We hope to publish a refresh of the measurement framework in spring next year.

To deliver our remit effectively and have the greatest impact within our current resources, we have developed a work plan that focuses on two main activities. The first is that we seek to build

capacity and understanding of fair work across key organisations. That area of work is about supporting organisations to play a key economic development or scrutiny role and to build fair work effectively into the work that they do. Therefore, we have a key focus on organisations such as the Scottish Government, the enterprise agencies and Audit Scotland. We also work with employers, employer bodies, unions and organisations such as the Chartered Institute of Personnel and Development to help to build wider capacity and understanding of what fair work means and how they can deliver it in their organisations.

Secondly, we use our in-depth inquiry function to look at specific sectors of the economy. We choose sectors where we consider there to be specific fair work challenges. We then bring together employers, employer bodies, unions, workers and relevant public bodies and run a series of thematic meetings, looking at the workforce's experience of fair work and the barriers that exist in the sector to improving fair work outcomes. We then work with the stakeholders to agree recommendations that will support progress on fair work.

By taking that approach, we are able to look at complex issues that may require a range of interventions from a range of actors. We also use our convening function to raise awareness of fair work issues in the sectors concerned and to support all actors to understand the need for change, as well as the specific steps that can be taken to achieve it.

The convention has completed two sectoral inquiries to date. The first was into social care, and we published our inquiry report on that subject in 2019. The second was into construction and it reported in April 2022. We launched our third inquiry, which is into hospitality, in June this year. It had its third meeting yesterday and it is due to report in spring 2024.

Our inquiries are long and in depth, but they are widely acknowledged for providing valuable, concrete and achievable progress on complex fair work issues that are consequences of how business models function within sectors.

I thank the committee for inviting us to discuss the convention's work and fair work in Scotland. We hope to be able to support the committee's work going forward and we hope that the evidence that we provide today will be of value and will help to inform your future work.

The Convener: Thank you. I will begin by asking some questions about progress on fair work. You mentioned the report card that was published in December 2020, where the convention raised concerns about lack of progress on realising the 2025 vision. In March 2021, the

convention warned that, unless the Scottish Government took urgent action, the vision would not be realised.

Have you seen the urgent action that you called for since then? Are there actions that the Government needs to take forward to make sure that we reach the 2025 target? Why has progress in some areas been so slow?

Mary Alexander: I will defer to my co-chair to respond to that.

Patricia Findlay (Fair Work Convention): Thank you for the invitation to give evidence to the committee today. I apologise for not being able to be with you in person. A work commitment requires me to be in Glasgow very soon after the committee meeting.

Part of the answer to your question is that fair work is quite difficult. It is multidimensional and there are no particularly easy sets of measures, although there are good sub-component measures of fair work. For example, we can say that there has been significant progress in Scotland on trying to improve the number of people who have access to payment of the real living wage.

In some other areas—for example, the subjects of some of the recommendations that we have made in our inquiries and indeed the measures of what constitutes fulfilling work and who has access to good, effective voice mechanisms at work—it is much more difficult to measure things and we do not see the same progress.

In the instances that you mentioned, we have encouraged the urgent addressing of some areas where we think that gains can be made. We appreciate that it is difficult and that, in the past few years, external circumstances have made that somewhat more difficult. Indeed, they continue to do so. However, it is not simply the case that difficult external circumstances can be seen as an obstacle to fair work. We have to think about how we can use those circumstances such that we can leverage fair work better.

I will give an example that might be helpful. If we look at how much effective voice there is across Scottish workplaces, we can see some distinctive patterns. We see a relatively well-unionised public sector and a much less unionised private sector. It is not impossible that voice mechanisms should exist in private sector organisations, but it is generally accepted across the globe that independent trade union representation is the gold standard of effective voice.

We saw the development of good effective voice mechanisms during the pandemic, when there were opportunities to respond to the public health emergency by, for example, developing guidance on working safely. Therefore we did see progress

even in quite difficult times. Sometimes difficulty can act as a catalyst towards improving the fair work mechanisms that we are interested in examining.

There is no single measure of fair work; a variety of measures exists, but they do not always move in tandem. We might see improvements in some of them but not in others. For example, we have seen a rise in the number of people who are paid the real living wage but, along with the rest of the UK, we have also seen significant decline in the level of real wages. Trying to push all the levers of fair work at the same time is challenging—we understand that and the difficulties that the Government and businesses face. However, we strongly believe that the central objectives—of being a leading fair work nation and of allowing fair work to drive benefit for people in our labour force, their families and communities, our wider economy and our society—are important ones.

All the members of the convention introduced by Mary Alexander deliver their expertise, experience and strong relationships across the fair work ecosystem pro bono, as it were; no one in the convention is paid. Our funding covers our secretariat and a small research budget. All those members do that work because they are fundamentally committed to achieving the objective of Scotland's being a leading fair work nation and to putting in place measures that will show us that, even though it is difficult, we are making some progress.

We currently have a plan to develop a measurement framework that will benchmark Scotland against other relevant countries on their fair work performance. That work will be completed and the framework will be launched some time in 2023. Following the 2019 report and our comments in 2021, we have urged not only the Government but other stakeholders to push forward the cause of fair work. The Government is not the only player here, but it is an important one. We hope that we will be able to pick up some of that momentum in our measurement framework in 2023.

The Convener: You have started to address issues that other members will want to pick up on. The convention's report of December 2020 said that the Covid-19 crisis

"laid bare much of the unfairness in our economy"

and that

"even before the pandemic, limited progress was being made in improving key fair work indicators."

The refreshed plan is due out quite soon—I think that it was meant to have been out in the autumn. Will it be able to address the existing unfairness, which has been added to by the pandemic? Will

that be the plan's focus, or will its focus be elsewhere in terms of addressing any gaps?

Patricia Findlay: Producing the fair work action plan is the job of the Scottish Government; it is not that of the convention. Although we have discussions—

The Convener: What would you like to see in the plan when it comes out?

Patricia Findlay: Can I preface that with an answer to the earlier part of your question? We know that the absence of fair work practices is really quite sticky in the Scottish economy and elsewhere. If businesses do not meet one element of fair work practice they tend not to meet others. For example, if a worker is low paid they are much less likely to have a secure contract. If both of those factors apply, that person is much less likely to have access to training and development or career progression. There is a configuration of fair work dimensions—a bunching effect—that benefits some workers and not others. We know that the pandemic exacerbated such difficulties so that the people who were worst off in our economy continued to be worst off.

Much more positively, we also know that businesses and organisations that have invested in good fair work practices found those to be of significant benefit during the pandemic. They allowed them to be agile and flexible and to keep their workforces on board while they did things in a very different context.

We know that there are some intractable challenges to do with fair work, and we would like the action plan to focus on those areas, specifically low pay, which is really challenging, because where there is low pay it is very difficult to pick up on other elements of good and fair work. We would like that to be addressed in the sectors in which low pay is endemic.

09:45

We would like an emphasis on how Government engages with the employer community to discuss the kinds of business model and approach that produce fair work or work that is less fair. Some of the work that the Scottish Council for Development and Industry has done on business purpose has been helpful in opening up a discussion in the employer community about how employers can respond to the demands of fair work by adopting a more stakeholder-oriented business purpose.

We would like there to be much more emphasis on the parts of the labour force that do not have access to sick pay and how we might support development in that regard and address issues of insecurity in work.

The Scottish Government and the public sector can provide a really important example and be role models when it comes to hearing a broader voice in industrial relations. This is a difficult time for industrial relations—Mary Alexander will be able to talk about that, in her role as a union officer. There is a much higher rate of industrial action, which is fuelled by the cost of living crisis, among other things. We would like there to be creative work on how we get effective voice and dialogue in Scotland, at sectoral level and at organisational level.

The Convener: Thank you. I will bring in Graham Simpson.

Graham Simpson (Central Scotland) (Con): Patricia Findlay, if you answer this, could you keep your answer a bit shorter, if that is okay? The question is for whoever wants to answer it.

I have been looking at the convention's website, because I wanted a definition of what we mean by "fair work" which can mean different things to different people. The definition on your website is 76 pages long. That is quite a lot. How on earth are employers meant to take all that in?

Regardless of what Patricia Findlay just said, what has the fair work convention achieved so far? Have there been any tangible outcomes?

I do not know who wants to respond—maybe Mary Alexander or Helen Martin wants to come in.

Mary Alexander: I will respond and Helen Martin can add to what I say.

You referred to the lengthy, detailed fair work framework. There is a much shorter version. Indeed, the principles say it all: fair work is about individuals having

"an effective voice, opportunity, security, fulfilment and respect."

It is quite obvious what they mean. I am sure that I do not need to go into detail on that.

We came up with the five principles after extensive research, including international research, into what a fair work workplace looks like and means to workers. The principles chime with me, as a trade union official, particularly "security" and "effective voice"—an effective voice is really important.

You asked what we have achieved. I point to the sectoral inquiries that we have done. As we said, we have done one on social care, the recommendations of which were published in 2019.

The benefit of that approach was that we were able to sit down with all stakeholders and have an 18-month-long inquiry that really looked at the issues faced by social care workers, 84 per cent of

whom are women; the challenges in the sector; and the challenges faced by employers. We went into great detail and came up with five recommendations.

What has been frustrating about the process is that three working groups were formed to look at the recommendations and how to take them forward, and they are still going. Quite a lot of work has been done in those workstreams on terms and conditions and on what the effective voice approach looks like. We are very positive about the recommendations and about their being taken forward lock, stock and barrel as recommended in the Feeley review, and we continue to meet Government officials to try to influence things, because, as you know, social care is a very hot topic and there is a crisis with recruitment and retention.

Graham Simpson: I will come to Helen Martin in a moment, but I just want to jump in here. You are right—you have produced reports, including a recent one on the construction industry, which I have just flicked through. It is very interesting, and it raises issues that many of us have heard many times before, but my concern is that although this might well be fascinating stuff, what is going to come of it? You have sat down with people in the construction industry and have produced a report, but how are we going to monitor change? Will the report lead to anything, and are you going to be the driver of change? If not, what is the point of it all?

Mary Alexander: I will let Helen Martin respond in a minute, but I would just point out that, with the construction report, we sat down with all the stakeholders and really looked at the challenges in construction, the work experience in the industry and what we can do to change that. We met Ivan McKee and set out our recommendations, and we are now waiting for a response. Our job is to advise the Scottish Government; we have done so in the social care and construction reports, and we will continue to push for those recommendations, which were the outcome of a collaboration with the other bodies involved.

Helen Martin (Fair Work Convention): On the specific point about the construction report, we recognise the need to continue to push the Government to adopt these recommendations as well as others in the sector. Our report actually recommends that we ourselves come back and formally review the work in five years' time as a signal of our seriousness about seeing what progress has been made in the sector. We therefore recognise the need to continue to drive that progress.

As for the specific issue of support for employers, we recognise that the fair work framework is indeed quite a weighty document

that sets out all the evidence on fair work; however, it is not our main communication with employers. We have a two-minute YouTube video that sums things up quite well and which I tend to use when I speak to employers, and we also have a self-assessment tool that is housed with Scottish Enterprise and which gives employers a chance to sit down, answer a few questions and get a sense of where they are with fair work as well as get an action plan for how they can improve their business in that respect.

We also have a survey for the workforce about their own workplace that allows them to compare their experience of fair work with that of other people and gives them a sense of what they might be able to ask for or how they might be able to work with other employees to bring change about. We have done quite a bit of thinking about how we communicate these things to other stakeholders.

Finally, we have developed a free-to-use microsite with the Chartered Institute of Personnel and Development Scotland that sets out specific information under each fair work dimension to allow employers to introduce specific policies into their workplace that align with the fair work framework. We are continuing to work with partners to drive understanding forward and to operationalise fair work in the workplace. The process is fairly slow and complicated, but the fact is that employers understand this stuff, because it is not a million miles away from what they already do. Nevertheless, it provides them with a good framework for breaking down the experience of work in the workplace and driving it forward.

Graham Simpson: It seems to me that it is a collaborative thing, and there is probably a role for the committee. You are here today, and we can work closely together in monitoring this stuff.

My next question is my final one, because I know that others want to come in. I think that it was Mary Alexander who mentioned that you receive some Government funding. How much is that?

Mary Alexander: I ask Helen Martin to respond.

Helen Martin: It is £500,000 a year. That pays for all the staffing and for the programme budget.

The Convener: I am going to change the order of questions and bring in Jamie Halcro Johnston, as his question is relevant, I think, to what we have heard so far. I will then come to Colin Smyth.

Jamie Halcro Johnston (Highlands and Islands) (Con): Good morning to the panel. I will direct my questions to Mary Alexander, who can redirect them as she sees fit.

You talked about the social care sector report, which came out in 2019, and said that you are now at the stage of having three working groups. I

do not know when those are going to deliver their results, but it will probably have been roughly four years—at least—before they deliver their findings. We respect the fact that it is not a quick process.

I was going to ask about the outcomes, but we are not there yet, so I will have a look at some of the challenges that the sector continues to face. In addition, issues have been raised by trade unions and workers about the new national care service. Do you have any issues or concerns about its impact on fair work?

Mary Alexander: Yes. Yesterday, I was in the Parliament as a witness from the trade union point of view. When it comes to fair work and the social care inquiry, our focus has been on the recommendations that are to be taken forward as part of the national care service, in a sectoral approach. As I alluded to, we have had three working groups since the social care report.

One of the problems has been the very low wages in that sector. Since the report came out, there have been increases, so that social care staff are now on the real living wage. That has been a very welcome development, particularly in the private sector, which did not have that baseline and had varying rates and zero-hours contracts. There has been progress in the working groups, which are now looking at terms and conditions and how to create sectoral bargaining, particularly for that sector.

I am trying to remember what else you said.

Jamie Halcro Johnston: It was about the impact on fair work of the plans for the national care service. Do you foresee such an impact? Is it deliverable? Will it bring improvements, or could it be a distraction? What are your general thoughts?

Mary Alexander: When it comes to fair work, we need the social care inquiry recommendations to be enacted in the national care service, so that everybody is on a level playing field, a job evaluation system is in place, and there is clear career progression for workers. The national care service provides that opportunity.

However, there are a lot of other issues with the national care service—for example, with the proposal to create care boards and to transfer staff from local authorities, because that creates a lot of insecurity for staff. For example, local authority staff might be transferred across to the care boards under the Transfer of Undertakings (Protection of Employment) Regulations and then TUPE-ed somewhere else. There is a great deal of uncertainty about what will happen to them. Such issues are of concern, and we have talked about those.

Jamie Halcro Johnston: What will be your role in ensuring that the concerns that you have raised,

both as a member of the convention and as a trade union official with responsibility to its members, will be included? What are the avenues for ensuring that such concerns are taken into account?

10:00

Mary Alexander: As with everything, it is about communication, being in the stakeholder groups and participating in discussions on the issues. For example, we previously had discussions on the social care inquiry's recommendations in the context of the proposals for a national care service.

Jamie Halcro Johnston: Lastly—I know that we have many other questions—do you have confidence that the national care service, either as it is proposed or as it might be delivered, will improve outcomes?

Mary Alexander: Obviously, the bill as it is drafted is a framework bill. With my trade union hat on, I have a different view from the one that I hold when I wear my Fair Work Convention hat. There needs to be a lot more dialogue and understanding of the impacts and also a working through of the challenges that exist. At the moment, many of the outcomes are unclear, which is never good for anyone.

Colin Smyth (South Scotland) (Lab): Good morning to the panel. Your report of December 2020 made five specific recommendations, on improvements in sectors where performance was poor, such as agriculture and fishing; improvements for disabled workers, ethnic minorities and women; conditionality in grants; access to training; and collective bargaining.

Patricia Findlay has touched on the progress that has been made, which has been primarily on payment of the living wage. The Scottish Government has now made a commitment to link the provision of grants to payment of the living wage. That is an area where we have seen progress, but I am keen to know about the areas in which you have not yet seen it. What policy levers should the Scottish Government use to deliver such progress?

Patricia Findlay: Our recommendation for conditionality in grants, for which the convention argued strongly in its initial report, has been taken up by the Scottish Government. That illustrates our impact—we pushed heavily for conditionality. The fair-work-first conditionality around grants and procurement does not apply solely to payment of the real living wage; it applies more broadly than that and asks for actions in a number of key fair work areas. We think that conditionality is an important lever that the Government can use to try to effect change so that public funding is used to

drive and improve fair work. That could be implemented through, for example, ensuring that effective voice exists and that, when contracts and grants are given to organisations in Scotland, they have given evidence in their bids of effective voice.

Conditionality is an important lever, but the Government has other roles in its relationship with the employer community, which include encouraging, supporting and facilitating dialogue. Those are all important ways in which the Government can help to convene and facilitate people—as we do with the inquiries—so that they can create solutions that work in context, because fair work does not look the same everywhere.

Helen Martin: There has been interesting progress. Our report said much about creating sector-level fair work processes. That was about building on some of the progress that happened during the pandemic, when employers, unions and the Government worked closely together to develop guidance on safer workplaces and on the general response to the pandemic. We thought that it was a useful way of working and spoke to the Government about continuing that approach in tackling issues after the pandemic.

We have now seen improvement in the role of industry leadership groups. Trade unions are now more likely to have seats on such groups than they would have been in the past. The Scottish Construction Leadership Forum is an inclusive organisation that has brought together many different types of employers. It is a good example of the great change in the way in which that sector is working, which is now much improved.

We have also seen the creation of industry leadership groups in retail and hospitality, which is really important. The retail industry leadership group is committed to producing a fair work agreement, as set out in the national strategy for economic transformation. We see that as good progress in starting to make the sorts of changes that we want to see in those sectors.

There are sectors where we would like to see more progress, and those were set out in our report. We would like to see a focus on agriculture and other sectors where there are issues, although it is good to see the progress that is happening with fair work agreements in retail. That is the beginning of the process, so there is still quite a long way to go before we see tangible impacts on the fair work outcomes that are measurable at the economy level.

Colin Smyth: There is obviously progress but, on the point about conditionality, what specifically are you saying about that? We are moving to a position in which companies that receive Government grants must pay the minimum wage.

That is long overdue—I remember proposing that 15 years ago when I was a councillor and being told that it was illegal. We are getting there, eventually, but during the pandemic, a host of grants were handed out without any conditionality. Businesses took grants to get through the week, but they still made people redundant or handed out zero-hours contracts.

What specifics, beyond payment of the living wage, should we attach to that conditionality? Should we say that employers must have collective bargaining, or be moving towards that? Should we say that employers cannot use zero-hours contracts? We have a lot of levers that we can use in Scotland when it comes to grants. How should we be pulling that particular lever?

Mary Alexander: There are lots of things that we would like to happen with conditionality. Unions are the effective voice of the workforce. When we drew up the principles, we looked at what makes a productive workplace, and the research showed that having a union voice was fundamental.

Colin Smyth: That should be linked to any grant. If a big grant goes to a company that employs 300 or 400 people, we should be saying that they must have collective bargaining in the workplace in return for getting that grant.

Mary Alexander: We should be asking how businesses give evidence of an effective voice. That is what is missing. For example, in procurement, an employer can say that they are a fair work employer and can offer some evidence, but we do not really scrutinise that evidence. For us, the trade union voice is the gold standard of effective voice and is what we would want. There is a lack of scrutiny of effective voice and a lack of monitoring when businesses are given grants or take part in procurement bids. We want unions to be able to access workplaces and to have collective bargaining, but we also want monitoring to demonstrate that successful bidders are doing what they say they are doing to create a fair workplace.

Colin Smyth: We have looked at conditionality in contracts. Are there any other policy levers that the Parliament or the Scottish Government have at their disposal and that should be used, or are there specific policy changes that would drive progress in the five areas where you indicated that there had not been enough progress?

Patricia Findlay: I make the general point that we have pushed heavily for conditionality. The fair-work-first guidance from the Scottish Government talks about investing in workforce development, paying attention to the use of zero-hours contracts, addressing the gender pay gap, opposing fire and rehire policies and instituting family-friendly working. Those are important things

that people who spend public money should do, and we should not be using public money to do anything other than that.

Mary Alexander made the really important point that, as well as having conditions, it is about enforcement. It is not just about saying what the conditions are to get the grants; the enforcement is really important. Who decides whether the conditions have been delivered in a contract? In our construction inquiry, which was chaired by Mary and me, we found evidence that public sector bodies such as local councils, the national health service and the Scottish Government, which spend money in a variety of places, interpret what fair work means quite widely, and the weighting that they give to fair work is often quite low.

Therefore, as we said in the construction inquiry, there is a really basic job to be done to make fair work conditionality matter to whether someone gets a grant or a contract, and we need to make it matter to the way in which contracts are monitored and enforced. It has to be able to make a difference. Conditionality is an important lever.

Colin Smyth raised the important point about whether it is legal to institute conditionality. During the construction inquiry, we took extensive legal advice, and we were advised that, under World Trade Organization rules, it is lawful to say that an employer has to pay the real living wage. We were also given advice that it would be lawful to say in a contract that an employer has to abide by a currently operating collective agreement. That is often much more significant than the real living wage. In construction, the real living wage is not really an answer, because the challenges are not at that level of really low pay; there are other challenges about insecurity.

In everything that we do, we are keen to explore how we can use the levers that the Scottish Government currently has. There are a whole series of other things about employment legislation and how we might work with the United Kingdom Government to deal with some issues there. However, we have tried to push as far as possible the Scottish Government to use conditionality. The Government can use its support and facilitating powers and the advice and guidance that it provides to give employers a host of reasons to engage with fair work and know how to do it. We help employers with evidence, practice and support, we help public agencies with how they interact with businesses to build fair work into what they do, and we help Skills Development Scotland to support skills formation in a way that produces fair work.

You are right that there is a set of levers that go far wider than conditionality, but conditionality is important.

Michelle Thomson (Falkirk East) (SNP): Good morning, everybody. I will ask a question of you, Mary, but pass it on if you want to. Obviously, we are the fair work committee, but we are also the economy committee, and the challenges that we have at the moment are well reported. Everyone will watch with interest to see what the UK budget means and what flows through in implications for the Scottish Government and the wider economic environment. With that in mind, can you put on the record what you see as the key economic barriers to progressing fair work for your key stakeholders—that is, employees, employers and the Scottish Government?

Mary Alexander: I ask Patricia Findlay to answer that.

Patricia Findlay: We know that there are big challenges out there. We know that there is a cost crisis, a staff shortages crisis and an industrial relations crisis, so there is a lot going on that makes it very difficult. The convention's position has always been that, in times of adversity, fair work is a good thing for the economy.

One argument that we have made from the outset—it has perhaps not been taken up as readily or as frequently by the Scottish Government as we would like—is that we do not think that fair work is a social policy, as, for example, it appears in the national strategy for economic transformation. We do not think that fair work is simply a poverty reduction strategy, because it is aimed at every level of the economy. We think that it is how you build a good sustainable, robust, flexible and responsive economy.

We think that, not because it is a good idea but because there is good evidence to suggest it. Countries across the world that have better fair work indicators than ours tend to have innovative, high performing and highly productive economies. We genuinely believe that that is important.

10:15

Michelle Thomson: I agree with everything that you have said, but my question was: what assessment have you made of the economic barriers that your key stakeholders—employees, employers and the Scottish Government—face? I agree that fair work is enmeshed in economic choices. However, even today, we have talked about sick pay and zero-hours contracts, which, of course, come under employment law. We have not touched much on the issue of the gig economy generally. I am trying to work out what assessment you have made of the economic blockers and barriers.

Patricia Findlay: It is clear that the biggest issue for employees is the cost of living crisis. We

understand that employers' cost constraints make it difficult to deal with that cost of living crisis. There are two aspects to dealing with it, one of which is to focus on how to redistribute the pot in as fair a way as possible, by identifying where there are real challenges. We have seen a host of employers across Scotland do that by making one-off payments to their staff. The incidence of that is higher at the bottom end of the income distribution than it is at the top end. We have seen employers try to respond to the situation and to recognise the real difficulties that workers face.

We know that the Scottish Government does not have unlimited resources. Mary Alexander talked about social care, which is a low-paid sector that is struggling with staff shortages. That is a big economic barrier to instituting fair work because, if you simply do not have enough people, the people who are there end up having to do more. We know that that is a really challenging situation, but there are ways to redistribute budgets and money to try to address the worst excesses of that.

We have real concerns about the extent to which people are in work and in poverty in Scotland. In Scotland, 60 per cent of adults who live in poverty have a working member of the household. We need to find a way to redistribute the resources that we have, albeit that they are limited, to make work pay and to make the difficulties easier to bear across the board.

Michelle Thomson: I will raise a point that is more about finance. On redistribution, have you come up with ideas about where you would take money from? When you operate with a fixed budget, giving money to one thing means taking money from somewhere else. Have you looked at that from the point of view of fair work? Where would you take it from?

Patricia Findlay: We have not looked at that specifically. It is not our job to advise the Scottish Government on its financial arrangements. However, some weeks ago, we made a public statement on the national care service—that relates to an earlier question—because we were concerned about the lack of a budget line to support the implementation of our social care recommendations. We made a public statement on the need for that to be funded. My understanding is that there has been a change in the budget line for the national care service, so that some of the money that had been kept to fund the development of the service will now be spent on front-line wages and social care, which we think is a good thing.

Gordon MacDonald (Edinburgh Pentlands) (SNP): In the Fair Work Convention's report, "Fair Work in Scotland", which was published December 2020, you highlighted a number of sectors that were not performing well against the

fair work indicators. We have already touched on the issue of the pandemic, but what impact has it had on those sectors? I know that you have carried out inquiries into two or three of them.

Patricia Findlay: The pandemic has certainly made the challenges in social care worse. I will come back to social care in a second, but I would also highlight construction as an interesting sector in that regard, because it was one of those sectors that needed to get back to work pretty quickly during the pandemic.

Across the economy—not just in those sectors—the fact is that where people had had poor conditions beforehand, most of those conditions either stayed the same or got worse during the pandemic. For those who did not have access to sick pay, that was much more of a challenge during the pandemic, and it also tended to be higher-paid and more highly-qualified workers who were able to work from home.

One member mentioned the gig economy. We know that workers in precarious and non-standard employment were heavily impacted by the pandemic, and many of them were made redundant by their employers, even though they were eligible for furlough pay. Self-employed people, too, fell between many of the support schemes that were available at that time. All of those aspects of precarity were made worse in a particularly uncertain situation. We have not remeasured how many of those groups are better or worse off, so we cannot give you detailed or robust evidence on that today, but it is in our work plan as part of our measurement framework for 2023.

It is our understanding from other evidence and information that the pandemic has not improved access to sick pay, for example, or security in the economy. Labour shortages have lifted up wages in some areas; at the same time, though, there has been the impact of the cost crisis. However, those labour shortages are not particularly pushing up wages in, say, social care, and there are still challenges with social care recruitment. It is probably much easier to work in a big supermarket than in social care, which is a demanding job, and workers are likely to be paid more in the big supermarket, with employers raising wages because of skills shortages. We therefore have no particular reason to believe that things have got better.

Gordon MacDonald: You have touched on the lack of sick pay, on low pay and on precarious working, all of which relate to employment law and trade union legislation. How much of a barrier to achieving fair work nation status for Scotland is the fact that those things are reserved to Westminster?

Patricia Findlay: It is undoubtedly a barrier. One would expect—and here I am thinking about my day job as professor at a university—to look at other countries to see the whole range of levers that a state has. It can be a role model employer; it can fund in a particular way; and it can legislate and regulate to do things to support fair work. We see that in other contexts. Undoubtedly, therefore, what you have referred to is a barrier. I would point out that, in our role as advisers to the Scottish Government, we encourage representations to be made to the UK Government that support—or do not support—particular practices. Indeed, that is what we have done in relation to fire and rehire.

We have concerns about what will happen with the sunset clauses in the European Union exit legislation, and we have real concerns about how changes at UK level might reduce protections for workers at the lower end of the labour market in a variety of ways. We are having an on-going discussion with the Scottish Government about that and are trying to produce as much evidence and support as possible for retaining protective legislation. It is a challenge; indeed, it is a real worry for the convention and our trade union members in particular.

Gordon MacDonald: You touched on the gender pay gap and the living wage. How does Scotland compare with the rest of the UK when it comes to that gap and the number of living wage employers?

Patricia Findlay: On both criteria, Scotland does well. The Scottish Government put out a report on the living wage just yesterday, I think, or the day before, and I can also say that a very high number of employees in Scotland earn it. We also know that the gender pay gap in Scotland is lower than it is for the rest of the UK.

Some members have asked how quickly progress can be made on fair work. Just think of how long and the variety of ways in which we have been working on gender pay equality in Scotland. It has taken quite a long time but, as I have said, we actually have a lower gender pay gap than the rest of the UK. That is a good thing and something to celebrate. However, to go back to your question about levers, I think that, in some areas, we need to pull our levers as far as possible. In other areas, we just do not have any levers at all.

Gordon MacDonald: Okay. Thanks very much.

Mary Alexander: On Gordon MacDonald's point about limitations in relation to UK employment law and Patricia Findlay's reference to the sunset provisions, I would just say that there are ways in which we can use the levers that we have. In the social care inquiry report, we made recommendations on, for example, sectoral

bargaining, and we could also use procurement differently.

In the construction inquiry report, we made recommendations that could make work fairer. An example that I would highlight is apprentices' pay, which changed in 2017. Employers used to have to register with federations and apprentices were paid collectively bargained rates, but what we found during the inquiry was that the situation with apprentices' pay since 2017 had, to say the least, been very patchy. Certainly, collectively bargained rates had not been applied, and we therefore made recommendations for improving pay for apprentices. There are many recommendations in the report, but this is also a case of applying collectively bargained rates. As I have said, we could also use procurement in a number of ways to make things better, and we could use, as Helen Martin has pointed out, sectoral bargaining as we have done in the college sector.

Colin Beattie (Midlothian North and Musselburgh) (SNP): Good morning. We have already talked about the significance of the increased costs that businesses face; energy costs are a big part of that, but material and labour costs have increased, too. When these things happen, they tend to focus people's minds. Businesses focus on survival, while their workers focus on their own day-to-day issues. Will that situation make it difficult to progress the fair work vision? That question is for Mary Alexander.

Mary Alexander: It will undoubtedly make it challenging. However, we are all about fair work and about people, companies, trade unions—indeed, all the players—talking. The more we do that, the better.

I have never known us to have as many industrial disputes as we have now. When we listen to workers on the ground, we hear how difficult it is for them to put food on the table and to manage until payday; they—including, in particular, social care workers—are going to financial institutions or are borrowing from families and friends just to try to make ends meet. It is a difficult position, and there is a lot of unfairness in the system. We see daily reports of companies making huge profits, yet they are in dispute, because they are not offering inflation rises—nowhere near that, in some cases.

It is, as I have said, very difficult, but fair work is all about promoting social dialogue and trying to work through things together, as we did in the pandemic. You will always have employers who are not really all that interested, who will continue to pay wages that do not match inflation and who are immune to conversations about the impact on workers. Equally, there are many very good employers out there who recognise the problems and will do their best to reward workers as far as

they can, because they recognise the position that workers are in.

As I have said, some very positive stuff came out of discussions with industry leadership groups during the pandemic. For example, we were able to make progress on personal protective equipment and sick pay by sitting down and having a conversation to try to work through those issues.

Colin Beattie: You have clearly taken on board the issue and understand its impacts on businesses and workers. How has it changed or informed your course of action and your approach—in other words, what you yourselves do? That question is for Patricia Findlay.

10:30

Patricia Findlay: At the moment, we are thinking about the pinch points. To pick up on Mary Alexander's point, I would say that lots of businesses are doing very well; the costs of their energy and materials might have increased, but they are making record profits, too. Therefore, we need to focus on those businesses where there are genuine challenges in addressing fair work issues.

We have asked the Scottish Government to focus on the people who have been particularly impacted by the cost crisis; indeed, we would like the committee to focus on them, too. That might mean a focus on specific sectors, but it might also mean a focus on different types of households, whether they be households with disabled workers or households with single parents, who are overrepresented when it comes to low pay. At a time like this, it is very important that the existing inequalities in our labour market are not exacerbated, so that things do not get worse for the people for whom they were already bad.

I am not going to suggest that we put a positive spin on the issue, because this is a very difficult time, but we know from evidence from around the world, including from the UK and Scotland, that fair work is really good for businesses' economic performance. We know that it increases people's discretionary effort, that it motivates people and that it leads to innovation. There is very good evidence that, if we invest in fair work, we create better, more efficient and more innovative and productive businesses. There is a very positive case that we can make for fair work.

There are different forces at play at the moment. One such force is skills shortages, which a neoclassical economist would say drive up wages and improve job quality and fair work. Therefore, there are other pressures that are encouraging employers to think creatively about how they can

deliver better work so that they attract and retain workers.

There is an important piece of work to be done on the ageing workforce in Scotland. We have had public debates about the great resignation and quiet quitting, and we know that economic inactivity is on the rise. That is a real challenge; we need people to be at work, because we have skills shortages, and fair work is one way of trying to get people to stay there. We need to make the workplace look like somewhere people can stay when they are a bit older. Moreover, our research shows that we need workplaces where older women can stay when they have to combine working with a range of caring responsibilities.

In short, even in a crisis, fair work provides an opportunity for businesses to come together and try to create outcomes with which everybody can be comfortable, notwithstanding how difficult some of them are.

Colin Beattie: You have touched on the labour market. It is very tight in almost every sector that we have looked at, with the skills and labour gaps in some sectors more acute than in others. You have touched on this a little already, but can you expand on how fair work can improve recruitment and retention for employers and help build a bit more resilience in the labour market? I know that that is a very hard question, but I ask Mary Alexander to comment.

Mary Alexander: As Patricia Findlay has said, improving fair work has an effect on recruitment and retention. We need to look at the problems here. A number of issues, such as Brexit, are causing the tight labour market, and we need to look at the solutions that are out there. I am sorry to keep going back to social care, but the fact is that there is a real crisis there. When we started our inquiry on that in 2017, things were really bad; they are still very bad now, and everybody says that we need to do something urgently to intervene. We know what the issues are in social care—low pay, stress, people having to do unpaid overtime, zero-hours contracts and a lack of training, supervision and support—so we need to tackle them and provide solutions.

The same applies to construction, on which we have also done an inquiry and identified issues. The very big problem in that sector is that the workforce is primarily an ageing one. I cannot remember the figures, but an awful lot of people are due to retire and, particularly given the net zero commitments in construction, there is no way that we have enough workers to fill the gap. The fact is that people are not going into construction, because it is so precarious; it is just not attractive to workers. There are many issues that we need to understand and tackle, and a lot of them have to do with fair work.

Colin Beattie: I think that most companies recognise the fair work approach. I will come back to the issues that we have just talked about but how in this present crisis, in which smaller businesses, which do not have a great deal of resources, are focusing simply on survival, do you get across the message that there is a benefit to them in fair work? They are just trying to pay their bills day by day and get through. How do you get your message across, given this feeling of crisis and the day-to-day chaos of trying to survive?

Mary Alexander: During the pandemic, I spoke to a lot of employers in my role as trade union official. They would phone up and say, “What am I going to do? I am really struggling and I do not want to have to terminate contracts. Can we sit down and work through this together?” There was a lot of collaboration like that, but you will never hear about it. You will hear only the bad stories.

However, many employers have really good working relationships with their workers; the workers understand that their employers are in a really difficult position; and because they would rather have their jobs, they are open to seeing what can be done, whether that be reducing the working week—as happened in a lot of places during the pandemic—or through other measures. There is a willingness to do those things.

Helen Martin: We have just started an inquiry into hospitality, which is an interesting sector, because, with the cost of living crisis, it is in the eye of the storm in a number of ways. It is also in the eye of the storm when it comes to staff shortages.

There is an odd dynamic between the other cost pressures on a business and those staff shortages. Many hospitality employers, particularly pubs, restaurants and other places that can easily flex down or up, are saying that they cannot run at full capacity, because they do not have enough staff to open all the days that they might want to open. That means that they are not maximising their business either.

In a slightly odd way, the crisis is creating a lot of interest in fair work, with some smaller employers who might not have seen it as their core business realising how it might benefit them. They would have seen their core business as the business that they were doing, and other things would just have come along with it; however, they are now suddenly really interested in how they can improve recruitment and retention.

Many employers thought that, if they upped their wages by 50p, that would sort the problem out. However, it did not. The experience in hospitality is that although wages have risen, the staff shortages are staying. The situation is much more complicated and is all about how you organise

your shifts, what security and hours you offer and how perceptions of the sector have developed over the pandemic. Perceptions of hospitality really declined during Covid, because of the way in which workers were dismissed.

All of those things are having a really big impact on that sector, but they are also focusing the minds of a range of employers on how they can change things and on what they might need to consider in order to make that change. It is for sure a difficult moment, but we also see in it an opportunity to make gains through a wider understanding of fair work.

Maggie Chapman (North East Scotland) (Green): Good morning. I thank the witnesses for their comments so far. I will pick up on hospitality in a moment, but I completely agree with Patricia Findlay that fair work is a way of building a good economy. It is not just about poverty reduction, although the contribution to that is clear. We probably need to have that conversation more often.

Helen Martin spoke about hospitality. I appreciate that the convention's inquiry into hospitality has just begun and is due to report in 2024, but given what we know about the challenges that that sector has faced in the past two and a half years, and given some of the issues that Colin Beattie and others have raised, we cannot wait until spring 2024 for your recommendations and conclusions. What should we be doing now to support and promote fair work in that challenging environment, given what has been said about the cost crisis? Are there things that we should be looking at? I know that that is a big question.

Helen Martin: We see the inquiry as an intervention in and of itself. We hope that the end report will provide recommendations that the sector has bought into and will therefore be interested in delivering. It is an interesting inquiry, and it is different from our other ones, in that the lever coming down from the state is less visible. In social care, there was a commissioning arrangement that could be used to drive fair work in the future, and 50 per cent of construction is driven by public procurement, so there are clear levers that can be used to drive fair work there. In hospitality, we very much need to convince employers that there is a different way of doing things and to support the sector to do better on its own.

One feature of the inquiry is to look at which public sector levers, such as tax or licensing, could be used as incentives. The inquiry is primarily about supporting the sector to think differently and to do things differently. We see the inquiry as an intervention. Each time we bring that group of stakeholders together, we help them to

understand themselves a little better and to understand their problems. I am not saying that they do not know their problems—they absolutely do—but we help them by giving them some space and a lens through which to look so that they can see how to link issues together and make progress across the sector.

There is a lot of interest and good will from the industry leadership groups, who want to do better. There have already been efforts in that regard through the hoteliers charter, the training that was done during the pandemic and other such things, but we see other issues that could be systematically addressed. For example, a lot of courses require work experience as part of the course. Yesterday, we discussed the fact that that work experience is not necessarily paid and that there is no requirement for it to be paid, so there might be things that we can do to shift the culture, and how work is seen, in that sector.

That is challenging, because the crisis is now. We are doing our best to support the sector in real time to think about the issues that it faces.

Maggie Chapman: That is really interesting. There are cultural challenges, too. During recent discussions, some hospitality employers said that they do not see a need for unions because their staff trust them. That tells us something about what an effective voice means in that culture and brings me to a broader issue. We might need to think about cross-sectoral inquiries or work, because there are multiple interpretations and understandings of what fair work is or could be.

We have a particular challenge with the third sector. We know that the Scottish Government can have conditionality and very clear requirements around contracts and funding, but when the same workers are part funded by other funders or have other contractual obligations that do not have the same conditions attached, that puts immense pressure on organisations that are often already stretched. What should we do to ensure that we do not have a two-tier system in which a Scottish Government fund or contract brings one set of conditions but no one knows what happens when funding comes from someone else? If we do not have the employment law levers that we have talked about, how can we avoid a two-tier system?

Helen Martin: Patricia Findlay has been doing some specific work on that.

10:45

Patricia Findlay: I have indeed, but I do not have an answer to your question, because it is an incredibly thorny issue.

In my day job at the university, we are doing a fair work in the third sector survey and interview programme, and the results of that will be available in spring.

We know that it is a very heterogeneous sector, that it is funded by a lot of different organisations and bodies and that there are sticky issues with the legal position, which is that conditionality can apply only to the contract that you are funding; conditionality cannot be imposed on other contracts. For example, you cannot say to a bidder that, if the organisation is providing half of its workforce for a Scottish Government or local authority-funded contract, it needs to pay all its workers the real living wage, and other such conditions cannot be attached. Currently, that is not lawful, which puts organisations in a difficult position. That means that a two-tier workforce could be created, which is incredibly bad for motivation and engagement, and it might expose the organisation to legal liability in relation to equal pay, so they might be put in a massively risky position. That could also mean that some organisations pull out of publicly funded contracts if they cannot meet the conditionality requirements—they will either not apply or not get the contracts.

I do not have an answer to your question. I suppose my best answer is that the Scottish Government needs to have that conversation with other funding organisations, including charitable organisations such as the National Lottery. It is only by joining things up, in relation to the legal constraints and the organisational reality, that we can square that circle.

I accept the premise of your question, which is that this is an incredibly difficult and thorny issue for the third sector, and it simply does not know how to deal with it. It is not clear how the issue could be dealt with, at policy level, other than by trying to work across funders. That should be the Scottish Government's role.

Maggie Chapman: That is really helpful. You spoke about the potential for equal pay claims, and we have talked a little bit about gender pay gaps, but disabled workers and people of colour also face inequalities in the workplace, so there is work for us to do in that space, too.

I think that Patricia Findlay mentioned that other countries have much clearer or more robust fair work indicators. Will you share some information on that to give us an indication of the kind of thing to look for so that we can be more direct in pushing the Scottish Government on that?

Patricia Findlay: There are two parts to the answer. In relation to the international data that is collected, including, classically, labour force data, there are some areas in which the UK—Scotland

is not that different in this regard—looks different from other countries. For example, we talk about the importance of meaningful and fulfilling work that uses people's skills and talents, but about 42 per cent of people in the UK workforce report that they have no control over their job. That figure is much higher than it is in comparative economies in the Scandinavian countries, Belgium, the Netherlands and Germany. That relates to how jobs are designed and how management practices operate, and making changes in those areas does not necessarily come with a cost. In fact—I come back to the discussion about the hospitality sector—it might actually be of benefit if people were given a bit more control, if there was a bit more dialogue with them and if we used the skills and talents that we invest in heavily in Scotland. We have an incredibly highly educated workforce, but some people go into workplaces where their talents and skills are not particularly well utilised. In such areas, we do not look quite as good as other countries.

The second part of the answer relates to institutional arrangements. In other countries, there are better processes for collective voice and dialogue, whether that is through social partnership arrangements or the operation of employer guilds that align with trade union confederations to discuss skills, pay rates and so on. The institutions that shape fair work in other countries are much firmer than they are in Scotland and elsewhere in the UK, because we are a liberal market economy in which a lot of decision making is left to employers. The state does not really engage in such decisions, beyond a minimum level. Without those sorts of institutional arrangements, it is difficult to effect change.

Through our inquiries and all the other work that the convention does, we have tried to create a voluntary version of those arrangements. We do not have institutions that bring employers, policy makers and trade unions together, but we have tried to do that through our inquiries, because it is important. Having the dialogue at sectoral and workplace levels so that we can overcome challenges that are faced is crucially important. We do not have enough data on that; we do not know where that operates well in Scotland. There are great arrangements out there, as we saw from our construction inquiry, but we do not have the data that we need.

On some substantive, individual indicators, we do less well, and we do not have embedded institutions that provide broader arrangements for dialogue and discussion in the workplace.

Maggie Chapman: That is really helpful.

Fiona Hyslop (Linlithgow) (SNP): Professor Findlay, you set out clearly why fair work is good

for business in relation to recruitment and retention, and, on the issue of productivity, you said that collaboration can lead to innovation. For the Economy and Fair Work Committee, those are interesting aspects. How do you see the Fair Work Convention working with the committee? What are your expectations of us?

Patricia Findlay: We are very happy to work with you on anything that is relevant. It is important to keep discussing the economic value of fair work—I know that you had direct responsibility for fair work when you were a cabinet secretary. There might be a role for politicians and for the committee to discuss fair work not just with unions, where it gets a good reception, but with employers, because we know that employers with certain types of business models expose the rest of society to costs. Often, it is the state that picks up those costs through welfare payments, tax credits and such things.

The role for the committee and for politicians is to have that important dialogue and to be clear that there is a strong and sustainable policy commitment to fair work. We have already done a lot of that in Scotland, and that commitment has not gone unnoticed in the rest of the UK; we are recognised as leading the UK's discussion on fair work. The Welsh fair work agencies and the good work charters in England and Wales consult us, and we are considered to be the part of the UK that is taking the fair work principles further forward.

My asks of the committee and of politicians in general are to push the dialogue as far as we can so that we can try to make fair work a reality; to support the policy levers that we can use so that we can show visible change and progress; and to help us to get the data and information that we need so that we can work out where the pinch points are. It is the committee's role to keep the dialogue strong and show that, as we say in the framework, fair work is good for business, good for individuals and good for Scotland.

Fiona Hyslop: We understand that fair work is good for business and productivity, and Mary Alexander mentioned the national strategy for economic transformation. From what you said, I take it that you think that the strategy looks at fair work more from a social perspective. Does the strategy need to be strengthened by pushing the economic and productivity aspects of fair work? Would you like to see improvement in that regard?

Mary Alexander: I ask Helen Martin to answer that, because she has more of a focus on the NSET.

Helen Martin: The convention has spoken with the Government a few times about how fair work was dealt with in the national strategy for

economic transformation. The concern was that it was a bit of a missed opportunity, because fair work was not mainstreamed throughout the document; rather, it was dealt with in one chapter. There were concerns about the fact that entrepreneurialism was dealt with separately, as a distinct issue that did not have a fair work dimension. We felt that fair work could have been built in consistently to each element of the strategy. That would have been a good opportunity to help employers and other Government agencies to understand how fair work, the wellbeing economy and other such concepts build on one another and build into the economic strategy. We wanted that to be done more consistently.

That is not to say that there are not good fair work commitments in the NSET—there are, including the commitment to increase conditionality and the commitment to fair work agreements, which are very welcome. Our concern was more about how the issue was dealt with in a structural way throughout the strategy.

Fiona Hyslop: You will be familiar with the fact that, during the pandemic, rapid work was done to bring together trade unions, employers and the Government on a sectoral basis in order to get the country back to work after lockdown. That was intended to continue, through the industry leadership groups, to make sure that the creative working that took place helps us to improve a range of economic levers that businesses, the Government and trade unions want us to improve. Has that happened to your expectation?

Helen Martin: Yes and no. There has been an effort to continue with that way of working, to a degree. I spoke earlier about the creation of the new industry leadership groups and about the inclusion of a trade union seat in quite a lot of those groups, which was very welcome. However, the convention is still a bit concerned about the balance of the voices, because we often have a lot of employer voices and only one union voice. Patricia Findlay might want to come in on that.

Although it is progress to have the one union voice, that voice is not necessarily as strong as it might be under a more codified social dialogue model. It is a step in the right direction, all the same. We had hoped to see a little bit more recognition that that should be a consistent approach—that we should always have those key stakeholders together—whereas there has been more codification of discussions between employers and the Government without the unions present. There is more structure than there was previously, and that might be appropriate and helpful in lots of ways, but we had hoped to see a more consistent approach and a commitment to social dialogue.

Fiona Hyslop: Patricia Findlay might want to focus on that, and I will direct my final question to her, if she is the appropriate person to answer it.

We have already touched on procurement in the construction industry and your construction inquiry, and you touched on what would be legal and what would not be legal. I am not sure how visible that is to everybody; there might be an issue about how we make it more visible. At what point in the process of public procurement for construction can fair work requirements be legally embedded? Currently, it is, I think, at the point at which the grant is given, which is after the contract has been awarded. Should something be done further upstream in the process to enable better conditionality? If that point came when the contract was awarded, everybody who was bidding for it would be required to comply. I am not sure whether we can improve the process by changing the point at which fair work comes in.

Patricia Findlay: It comes in very early in the process, at the point when bids are made. We want bidders to outline their fair work commitments in the same way that they currently outline community benefit clauses and some equalities issues. We want those things to be outlined at the same time.

One of the real challenges in construction is that public infrastructure construction projects last for quite a long time, so existing contracts were awarded without the attention to, and the emphasis on, fair work that we would have wanted. We have tried to work with the procurement community in supporting them to put an emphasis on fair work in future contracts. We want to ensure that fair work is built in from the beginning and that we find inventive and creative mechanisms to make sure that that is actually delivered.

Given the tier system in construction—there is a main-tier contractor who subcontracts and subcontracts and subcontracts—there is an issue about who is responsible for the enforcement of fair work commitments and how we ensure that those are delivered.

It comes in early in the process so, when people are asked to bid, it is very clear that they have to do so with fair work in mind.

Fiona Hyslop: Is that happening across all the public sector bodies that have procurement contracts?

Patricia Findlay: No. It is not happening in the same way. There is an awful lot of variation in how fair work is interpreted, what weight it is given—whether it is given any weight at all—what difference that makes to the contract and whether that is enforced.

The Convener: That is helpful. The committee might decide to follow up on that issue in the future.

That brings us to the end of the evidence session. I thank all the witnesses for coming along and sharing their knowledge and expertise.

10:59

Meeting continued in private until 12:23.

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