

# Policies for Decent Labour Standards in Britain

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## Abstract

Decent labour standards are a prerequisite for perceived justice and social cohesion. Insofar as they have been achieved in Britain in the past, it has been the result of collective bargaining between employers and trade unions. This has all but vanished in the private sector and, it is argued, there is no chance of its being revived. Upholding labour standards now lies in the provision of statutory individual employment rights. Experience with minimum wages provides some guidance on how these might be developed through social partnership arrangements. Once achieved, such rights amount to little without effective enforcement. Increasingly important for this is the use of the law and consumer campaigns to expose poor employment practices and complex supply chains so that offending employers can be held to account. If Britain is to avoid falling into a competitive 'race to the bottom' with Brexit, it must institute a robust means of implementing and enforcing decent labour standards.

**Keywords:** labour standards, minimum wages, collective bargaining, consumer campaigns, labour standards enforcement, social partners

DECENT LABOUR standards are fundamental to perceived justice and social cohesion. They are defined by how far the prevailing levels of pay and working conditions meet the accepted social norms of the time. Decent standards have never, in any country, been achieved through unfettered market forces or by the unconstrained exercise of employer power. In all societies it has required interventions by the state to regulate the market for labour to a greater or lesser extent. Ultimately the challenge has been to redistribute, through paid employment, the economic gains arising from myriad productivity improvements. These improvements largely arise from incremental technological innovations, widely dispersed across the economy.

A central role in the redistribution of such gains in industrial democracies over the past century was played by trade unions. Their collective strength at the point of production enabled them to negotiate a share for their members. Much of the state's intervention in the latter half of the last century was concerned with regulating the power of unions and, specifically, their capacity to disrupt business and public services through strikes. But the rapid decline in trade union influence in recent decades has fundamentally

altered what is required. The challenge for the state is no longer one of mediating between employers and trade unions to secure industrial peace. It has become one of engaging directly with employers to influence the distribution of pre-tax income in response to a different 'labour problem': sustained wage stagnation and widening inequality. The proportion of the British workforce classified as 'low-paid', that is, defined as those earning less than two-thirds of the median hourly wage, stood at 21 per cent in 2016, compared to 13 per cent in the late 1970s. The proportion of national income going to wages has fallen from 66 per cent in 1975 to 55 per cent in 2016.<sup>1</sup> The long-standing characterisation of Britain as suffering from a 'low wage, low skills, low productivity equilibrium' remains apt. This article discusses how a British government might address low and poorly enforced labour standards.

## The failure of collective bargaining

Why cannot we restore the world we have lost? Why cannot we rebuild some semblance of the collective bargaining between

employers and trade unions that proved so effective in raising and maintaining labour standards for much of the twentieth century? The starting point in answering this is to note that it is only collective bargaining in the private sector that is of importance in terms of redistributing profits—either directly or by use of wage comparability arguments. Collective bargaining for the public sector is fundamentally different: it is essentially a bargain with the tax-payer, and while it relies heavily on comparisons with wages in the private sector, public sector wage bargaining is dependent upon the state's capacity to raise revenue. It is the British private sector that is of primary importance for the present discussion, and here trade union membership had fallen to only 13 per cent of employees by 2016 and is still falling. The proportion of all workers who have their pay determined by a union-negotiated collective agreement has fallen from 70 per cent in 1984 to 26 per cent in 2016 and, if we take the private sector on its own, it has fallen to 15 per cent.<sup>2</sup> Some of the more profitable sectors have among the lowest levels of collective bargaining coverage. These trends have occurred despite trade union members continuing to enjoy a 14 per cent wage premium compared to workers without trade union membership.

To understand why it is not possible to reverse this collapse of private sector collective bargaining, it is necessary to appreciate its causes. In broad terms it has declined most in those sectors most subject to increased competition, and especially to increased international competition, because this has undercut the wages of unionised labour. The rapidly increasing internationalisation of ownership has also been important; footloose capital can search the world for cheap labour, unencumbered by ties to particular nations. A contributory factor has been the recent decline in the once almost universal full-time, open-ended nature of the employment relationship. By providing continuous and protected employment, the standard employment relationship had been an important labour market institution that facilitated equity of treatment for workers and predictability for employers. It has been associated with building employee skills, careers and cooperative relationships within

enterprises. The standard employment relationship became embedded in advanced industrialised countries in the post-war decades. But the increase in emphasis on financial targets for enterprises since the 1980s has encouraged private sector companies to prioritise short-term returns over longer-term investments. This has included reduced investment in employees, which has encouraged temporary and other non-standard forms of work. Another major part in eroding these traditional employment relationships has been played by innovations in information technology. Among the consequences have been the automation of many conventional skills, and the reduction in the costs to employers of controlling outsourced contracts and loosely associated jobs. Because the private sector is by its nature commercially driven, these broad trends will continue. For trade unions which operate in the private sector, and which rely on collective strength at the point of production for influence, the prospects will get worse.

An alternative source of influence for trade unions over the past century has been through government. The extreme case today is in China, where the single legally permitted trade union is, in effect, an agency of state. Its central role is to encourage the redistribution towards the workers of the profits of the burgeoning Chinese private sector. The key objectives are to raise domestic consumption and to prevent the state from being destabilised by inequality-driven social unrest. The union does this, not through collective worker action, but by mobilising local government influence over employers. It does it against the background of a comprehensive (if poorly enforced) statutory structure of minimum wages and individual employment rights. But the Chinese approach is most unusual. The prevailing picture in both the developed and the developing world is currently one of weak and declining private sector trade union influence with diminishing state support.

The notable exceptions are those countries of Northern and Western Europe, such as Sweden, Belgium and Germany, where the state provides substantial support for collective bargaining. In these countries, sector based collective bargaining, alongside the encouragement of collective worker

representation, are ingredients in the mix of productive work organisation, good labour management practices, high quality jobs, and a longer-term focus on employee investment. In Denmark, sectoral collective bargaining complements the 'flexicurity model', which provides extensive unemployment benefits and vocational training to assist the return to work of workers displaced by technological change and business restructuring. The key features of these systems are clear procedural roles for the 'social partners'—recognised employer and trade union organisations—in labour market policy-making, combined with substantial legal support for sectoral collective agreements.

It is not that the private sectors of these countries are unaffected by the pressures of competition and technological change that have undermined collective bargaining in Britain and elsewhere. Far from it; Sweden has one of the most open trade regimes in the developed world, while Denmark has long been a trading economy characterised by open and internationalised markets. Nor do these systems depend on unusual rights to strike, whether broad or narrow. The implicit deal is that the state provides legal support for the social partners so long as they can between them ensure a trained workforce, with wages and productivity that are internationally competitive. But such a deal has to be economically well-grounded. The Macron government agenda in France—to break up sectoral bargaining—is a timely example of what can happen when a European country's trade unions and sectoral agreements are widely perceived to have lost touch with workplace reality.

A serious argument is sometimes made that British private sector collective bargaining is not beyond recall. This takes two broad forms. The first calls for a strategic shift towards a legal and institutional structure comparable with the sector-based, Northern European social partnership model just described. The second, compatible with this, calls for a range of legal changes to reinforce trade union and collective bargaining rights. But the feasibility of the first and the effectiveness of the second are to be doubted. In retrospect, the first might have been a far-sighted policy when these things were last seriously considered in the 1960s.

But since its rejection then, the chance for its recapture has vanished. It is not only the massive decline in private sector trade union membership; it is the even greater collapse of sectoral employer organisation and collective training arrangements. Even if there were the political will to establish the legal requirements for effective sectoral bargaining, it would run counter to the now almost universal practice of British private sector employers of fixing wages and conditions of work both independently of each other and also without any trade union involvement.

There is indeed a strong case to be made for the second approach, for the restoration or clarification of many trade union and bargaining rights. Rights to strike, for example, have become so heavily restricted in Britain in recent years that, for most private sector workers, there is effectively no right to strike. This imposes deep strains on trade union governance and inhibits orderly conflict resolution at the workplace. It encourages unfocused and poorly represented alternative action such as street demonstrations, or covert individualised conflict, such as disengagement, absenteeism and high labour turnover. On issues such as strike ballots, picketing, membership due payment, and trade union administration, there are many restrictions which could usefully be relaxed to allow unions to be more effective in managing their members' discontents. But it would be a delusion to argue that this would have a substantial impact.

This point is illustrated by how little effect the statutory trade union recognition procedures that New Labour introduced in 1999 have had. That law led to some growth in employer agreements to recognise unions in the years immediately after it was enacted, but there has been little sustained effect. In a country with more than three million business establishments, there have been fewer than 100 applications for statutory recognition in each year since 2004.<sup>3</sup> Achieving statutory recognition has proved difficult for unions. Smaller workplaces with twenty or fewer employees are not covered by the law; unions face substantial legal barriers to securing the necessary support; and the typically adversarial nature of the recognition process can fuel antagonism from employers.

The practical realities of gaining trade union recognition and of engaging in collective bargaining—and whether in reality such bargaining is any more than cosmetic—remain at the discretion of the employer. So long as their product market circumstances and the form of employment contract prevent worker organisation from developing in a way that can exert pressure, employers are largely free to decide both whether and how to provide their employees with either voice or influence. There will always be a few niches where the employer is in a quasi-monopoly position and where the union has managed to retain high membership and collective bargaining coverage—parts of the passenger transport industries provide examples. Another example is the engineering construction industry, where both employers and unions remain committed to a long-standing industry-wide collective agreement for regulating labour standards. Their agreement has helped to eradicate once endemic problems, such as widespread poaching of skilled workers, unpredictability of labour costs, industrial unrest and the undercutting of industry standards by rogue contractors. The presence of a strong employer association to enforce compliance and a joint council to mediate between the parties are important ingredients in upholding the agreement. But, across most of the private sector, employers remain disorganised and trade unions lack the organisational opportunity either to grow their membership or to gain from improvements in statutory collective labour rights.

## The importance of individual rights

It has been through innovations in individual rather than collective labour rights that governments have latterly had the greatest beneficial impact on labour standards. The most substantial benefits have come from the National Minimum Wage (NMW). Its effectiveness has depended on three institutional features: independence, evidence and enforcement. The independence from government of the social partnership body that manages it, the Low Pay Commission (LPC), has been crucial in maintaining the

all-important support of employers. It should be added that this independence was seriously compromised and weakened by the imposition of the National Living Wage (NLW) by the then Chancellor, George Osborne, in 2015. The rigorous evidence and research basis of LPC recommendations have been essential in maintaining the support of HM Treasury. The fact that enforcement has been the responsibility of an experienced team at HM Revenue and Customs (HMRC) has been important in maintaining support of both employers and trade unions.

The widely perceived success of the NMW can be built on. The best blueprint for this has come from the Resolution Foundation's committee, chaired by Sir George Bain, which reported in 2014.<sup>4</sup> Drawing on the experience of both the LPC and the Living Wage Foundation, it proposed changing the LPC's terms of reference to increase its impact on low pay more generally. It argued that this should be done within the framework of an explicit government policy on low pay with medium-term targets. To get over the bluntness of a single NMW when many sectors could afford to pay more, it suggested that the LPC should be asked to analyse affordability by sector so that a debate might get underway on higher aspirational, sectoral rates. In a similar way, it suggested a non-mandatory London weighting for the NMW, again to influence public thinking on norms of decency. The intention was to maintain the independent, social partnership constitution of the LPC, while extending its research attention to low pay more broadly, and to do so in an open dialogue with government on how best to achieve its long-term objectives. An important part of this strategy would be informing a debate on feasible aspirational minima at sectoral level, thus providing an additional, more authoritative and finer grained basis for suitable pay targets for corporate social responsibility.

The International Labour Organization has found that 'inclusive' labour standards that cover employees across a particular sector or labour market are an effective way of reducing income inequality and sustaining economic growth. These are particularly important for protecting the pay and conditions of workers such as migrants, women,

younger workers and those in occupations classified as low-skilled who, for one reason or another, are especially susceptible to mistreatment or being paid below their worth. Inclusive labour standards include multi-employer collective bargaining and statutory extension mechanisms that extend standards to all employees, regardless of whether they work in a unionised establishment.<sup>5</sup> This is contrasted with 'exclusive' systems, like the British one, where the vast majority of (largely non-unionised) workers are not covered by collective bargaining and instead protected only by a single statutory minimum wage rate. The sectoral bargaining systems of Scandinavian countries or the award system in Australia, which protects the skill premiums of workers in specific sectors and occupations, could provide a model for more inclusive wage setting in Britain. Another possibility is to adapt previous models for extending labour standards to low-wage employees in Britain. The Wages Councils system used what would now be considered social partnership procedures to set sectoral rates in low-wage sectors such as retail, hospitality and hairdressing, prior to its abolition by the Major government in 1993. Before it was abolished in 2010, the Two-Tier Code of 2005 (comparable with the Fair Wages Resolution of 1891–1983), used procurement policy to extend the terms of public sector collective agreements to private contractors engaged to deliver outsourced services.<sup>6</sup> Such a model could potentially be applied to the private sector.

The question of labour productivity becomes an issue here. Old debates about the impact of trade unions on labour productivity have been relegated to history by the changed nature of collective bargaining. The truth always was that where trade unions inhibited productivity growth, it was usually because management, wilfully or otherwise, had surrendered control through, for example, poorly managed incentive payment systems. What matters with regard to statutory minimum wages is that, for most of employment, the productivity of labour is not under labour's control. Its productivity depends on how well it is trained, equipped, motivated and managed. A minimum wage, at best, forces the marginal employer to achieve the required low unit costs of production—not

by paying employees less, but by managing them better. The success of the NMW has owed much to the fact that it has been raised relative to median earnings only gradually, providing employers with the time to adjust their training, workplace organisation, and capital intensity of production.

The state has a vital role in protecting good employers from being undercut by employers who seek competitive advantage through poor employment standards. As Winston Churchill famously remarked, in the absence of an effective regulatory framework, 'the good employer is undercut by the bad and the bad by the worst ... Where these conditions prevail, you have not a condition of progress, but a condition of progressive degeneration'.<sup>7</sup> Fear of a 'race to the bottom' on labour standards is one reason why a well-enforced National Minimum Wage has commanded such widespread employer support.

This also applies to the standard of the individual employment contract more broadly. The relatively slow growth of labour productivity in Britain at present is likely to be linked with the decline in the traditional employment relationship referred to earlier. Despite the policy shifts of recent decades that have resulted in workers having to bear more of the costs of acquiring their own skills, there may now be even less incentive for employers to invest in their workers' careers. New technologies of monitoring and control make it easier than before to extort low unit costs by harsher coercion of unorganised and less-skilled workers. In order to protect responsible employers, there may be scope for tax incentives for good employment practice. A relatively straightforward one would be the introduction of a higher employer's National Insurance contribution for jobs that are fixed-term, zero-hours, agency-provided, or otherwise insecure. Extending such a provision to the growing number of companies who engage individual worker 'contractors' on digital market-clearing or 'gig' economy platforms (like Uber and Deliveroo) would also help to address problems of low pay and insecure work. This is because such contractors do not enjoy the same rights and protections afforded to workers legally classified as an 'employee'. The 2017 report by a group

chaired by Matthew Taylor on modern working practices has provided an excellent analysis of the challenges, particularly with regard to tightening the legal definition of an employee, including proposing a new category of 'dependent contractor'.<sup>8</sup> So far, the government that commissioned it has taken minimal effective action in response.

## Ensuring enforcement

The more that reliance is placed on statutory individual employment rights as a basis for labour standards, the more important enforcement becomes. It is essential for protecting good employers. But Britain has never had a comprehensive or proactive labour inspectorate and has always been culpably lacking in the failure to enforce the awards made on individual rights cases by Employment Tribunals. A substantial proportion of employees who win their cases on individual employment rights are forced to go, on their own initiative, to county courts to get their awarded remedies paid, and many fail in this. Rights are of little value when the remedies are effectively denied to those who need them most. The NMW, with proactive enforcement by HMRC, is a laudable exception to this, although there is already evidence that one response to the introduction of the NLW is increased non-compliance.

Nothing is more likely to erode employer respect for the NMW or other rights than increased levels of non-compliance and evasion. The appointment of Sir David Metcalf to the new role of Director of Labour Market Enforcement in January 2017 has opened the way for something more effective. His role is to set strategic priorities for the Gangmasters and Labour Abuse Authority (GLAA) and for the Employment Agency Standards Inspectorate, as well as for HMRC's minimum wage enforcement team. His office has embarked on a broad review of the issues, including employees' awareness of their rights, the scale and nature of non-compliance and wage theft, liability within supply chains, and the effectiveness of sanctions. There are welcome signs that Britain is edging towards the long overdue policy innovation of a comprehensive labour inspectorate; this would command most respect if it were overseen by the social partners.

Lack of resources for government inspectorates is generally a major challenge for labour standards enforcement, particularly given the decline of unions, which once played an important *de facto* role in this process. The 'strategic enforcement' model developed by David Weil, an academic and former head of the US Department of Labor Wages and Hours Directorate, is one way for underfunded enforcement agencies to make the most of limited resources. In the US, as in Britain, breaches of labour standards are most likely to occur among employers situated at the lower tiers of supply chains, who are large in number and difficult to monitor. Under Weil's leadership, the Wages and Hours Directorate shifted its focus away from targeting these employers directly and instead focused on 'lead firms' such as supermarket retailers and major brand names, situated at the apex of supply chains, and made them accountable for the standards of their suppliers and labour contractors. Such strategies are most effective among lead firms which are protective of their brand image, whose commercial reputation gives them a large incentive to maintain decent standards in their supply chains.<sup>9</sup>

Social partnership at the national level has a good track record in Britain for labour market regulation. It has provided the basis of the Low Pay Commission's independence and success. It has also been fundamental to the largely unacknowledged success of the Advisory Conciliation and Arbitration Service (Acas). This success should not be judged superficially by how well Acas resolves workplace disputes (although its record at that is excellent), but by how far it prevents disputes arising in the first place, by propagating good practice and providing free advice. Perhaps the single greatest achievement of Acas has been in getting formal discipline and grievance procedures established in the great majority of British workplaces, thereby providing most workers, whether unionised or not, with procedural rights at their workplace.

This use of social partnership could be extended. The Bain committee's report suggested it as a vehicle for determining aspirational minimum wage rates above the NMW at the sectoral level. It could be used to strengthen superannuation arrangements

and training provision, for instance, by extending the role of Union Learning Representatives whose presence in a growing number of workplaces has produced beneficial outcomes for workers and employers in terms of accessing job-related training and developing skills.<sup>10</sup> Social partnership could be a valuable feature of a more decentralised Britain, with the different collective bargaining traditions of different regions and cities playing a role in local governance. Trade unions may have lost much of their bargaining muscle at the point of production, but European experience suggests that they could build influence at national, sectoral and regional levels, representing worker interests irrespective of union membership in the administration of individual employment rights.

As was said at the start, decent labour standards are essentially about social norms, which mutate and are to some degree negotiable, reflecting changing economic circumstances and a societal view of human need that transcends individual enterprises and sectors. An important development of the past couple of decades has been the emerging power of consumer campaigns in pursuit of better adherence to decent labour standards. Two powerful phenomena are being mobilised. The first, alluded to earlier, is the steady growth in importance of brand names in response to widening product markets. Consumers place heavy reliance on them and they depend on massive investment in marketing, with associated high reputational risk. The second is the use of social media, which continue to reduce the cost of information transmission. The combination of these has seen the rise of consumer campaigns and of boycotts associated with evidence of poor labour practices.<sup>11</sup>

A direct consequence has been a growing concern of enterprises with corporate social responsibility and sustainable sourcing. Consumer power is displacing or combining with producer power as a means of improving labour standards.<sup>12</sup> The LPC, HMRC and the GLAA already use 'naming and shaming' of miscreant firms as effective sanctions. Organisations such as Labour Behind the Label and the Ethical Trading Initiative do effective work identifying firms with poor labour standards and working with firms to

improve their practices. But their reach is limited because supply chains are complex and inherently opaque. Consumer-facing firms such as those in the food and clothing retail sectors with high aversion to reputational damage have been willing to work with these organisations. But other firms are less motivated to associate themselves with ethical practices; they are therefore less responsive to consumer campaigns for better labour standards. There is substantial scope for deepening and extending consumer power with new legal obligations to disclose and to enforce the exercise of due diligence over suppliers and supply chains—both national and international—so that their labour standards can be subjected to inspection. This is evident in the strategies used to improve labour standards in the meat processing and construction industries in Britain, as well as internationally to protect workers in developing countries who manufacture the goods marketed by multinational clothing and electronics brands.<sup>13</sup>

## Conclusion

For forty years a major stimulus to decent labour standards in Britain has come from its membership of the European Union. Procedurally it has strengthened the political position of our social partners; substantively it has initiated individual rights on, for example, part-time work, agency work, and parental leave. No one knows what will be salvaged from the unplanned chaos of Brexit. At worst is the vision of a hard Brexit where Britain competes internationally through degrading labour standards. But there is a very different vision which could be nurtured. It would draw on the fact that the newly energised part of the electorate consists of young workers who are currently most vulnerable to bad employment practice. They may not join trade unions, but they will support political action to strengthen labour standards. Britain already has internationally outstanding social partnership institutions in Acas and the LPC. It has the opportunity to build on and alongside these. It is well placed to develop more far-reaching labour standards, and the means for their negotiation, maintenance and enforcement.

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## Notes

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