



**Unite Submission to
Taylor Review of Employment Practices in the Modern Economy**

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Introduction

This submission is made by Unite, the UK's largest trade union with over 1.4 million members across all sectors of the economy including manufacturing, financial services, transport, food and agriculture, construction, energy and utilities, information technology, service industries, health, local government and the not for profit sector. Unite also organises in the community, enabling those who are not in employment to be part of our union.

Central to our submission is the importance of genuine worker voice and the ability of workers to organise in addressing the challenges of the modern economy. The important role of public policy is also highlighted. Case studies are included illustrating good and bad practice. A summary of the policy suggestions contained in the submission is listed in the conclusion.

The role of trade unions in the modern economy

Unite welcomes the recognition by Matthew Taylor, who is leading this review, that too many workers feel that they lack control or voice in the workplace.¹ Trade unions and collective bargaining are an important part of addressing the imbalance of power that exists in the world of work and need to be part of the policy response in addressing the challenges of the modern economy. Unite was pleased to have been on the evidence panel at two of the regional events conducted by the review team at which we highlighted not only some of the problems that currently exist and how trade unions have played an important role in challenging them, but also where Unite and employers have worked together constructively to deliver more successful and secure working environments.

Unite has pointed out that the most glaring omission from the Government's Industrial Strategy Green Paper is worker voice and trade unions, which must be seen as 'partners in productivity' and a frontline resource to help empower workers, drive up skills and boost productivity.²

One of the '10 pillars' of an industrial strategy identified in the Green Paper is 'institutions to bring together sectors and places'. Trade unions, collective bargaining and social partnership are precisely the sorts of institutions and mechanisms that need to be part of delivering a sustainable and equitable economy.

To quote the House of Commons BEIS Select Committee in its first review of industrial strategy:

*"It is crucial the Government's industrial strategy sets out strong mechanisms for dialogue and collaboration with businesses (of all sizes) **and unions** (our emphasis), aimed at facilitating consensual agreement on future policy direction where appropriate."*³

When the success of the UK motor industry is praised, for example, recognition should be given to the contribution of Unite representatives. During the last economic crisis companies such as Jaguar Land Rover (JLR) worked pragmatically with trade unions to ensure workers and their skills were not lost to the sector and the economy. We gave evidence on our experiences in JLR to the review team at its event in Coventry (referred to in more detail later in this submission).

¹ *Workers' feelings of powerlessness fuelling anger, says jobs tsar*, The Guardian, 13th February 2017, [URL](#)

² *Partners in productivity*, Unite live, 18th April 2017, [URL](#)

³ *Industrial Strategy: First Review*, BEIS Committee, March 2017, [URL](#)

Improving productivity requires better work organisation and recognition of the importance of strong employee voice, a point emphasised by ACAS.⁴ Analysis by the National Institute of Economic and Social Research finds evidence that *“unionisation may be beneficial to workplaces seeking to improve their performance after the recession...counter to the proposition that firms benefit from a highly deregulated and non-unionised environment”*.⁵

Unite also welcomes the emphasis that the review is giving to the quality of work and the call for the improvement of the quality of work in the UK to become a new “national goal” so that people “feel like citizens at work and not servants or slaves”.⁶ We have been active in campaigning for ‘Decent Work for All’.⁷

Unite research conducted with Warwick Business School, Cass Business School and Royal Holloway shows the positive effects that workplace union representatives can have in improving job quality which can lead to higher productivity.⁸ It found that employee perceptions of several dimensions of job quality are better where an onsite union representative is present and that this can be explained by the higher perceptions of union collective voice that onsite representatives engender (a number of factors were controlled for including gender, ethnicity, work status, age, salary, size of workplace and region.) Respondents in workplaces with an onsite representative reported higher job quality than those in workplaces without an onsite representative in respect of three aspects of job quality: job content (factoring elements such as whether they found their job interesting and enjoyable, whether they have a say in how the work they are responsible for gets done, and whether their job makes full use of their skills and talents), job stress and work-life balance.

In addition, research on ‘good work’ conducted by one of Unite’s predecessor unions also found a strong correlation between people having a trade union voice in the workplace and reporting positive experiences in respect of being treated fairly at work, and feeling in control of their working environment. 63% of those with a trade union voice in the workplace said that they were treated with fairness and dignity at work compared to 44% of those without. 48% of those with a union voice in the workplace said they feel in control of their working environment compared to 39% of those without.

Trade unions and collective bargaining also help to reduce inequality⁹ and this is supported by international evidence including from the IMF which finds that *“...less prevalent collective bargaining and trade unions are associated with higher market inequality”*¹⁰ and the ILO¹¹ whose Senior Specialist makes the point that *“the strengthening of unions and collective bargaining in the period following the Great Depression was not a historical accident. It was an explicit intention of public policy”*.¹²

⁴ *Building Productivity in the UK*, ACAS (2015), [URL](#)

⁵ *The UK’s Productivity Puzzle*, Alex Bryson and John Forth (2015), NIESR Discussion Paper No. 448, [URL](#)

⁶ *Workers’ feelings of powerlessness fuelling anger, says jobs tsar*, The Guardian, 13th February 2017, [URL](#)

⁷ Decent Work for All, Unite, [URL](#)

⁸ *Union representation, collective voice and job quality: An analysis of a survey of union members in the UK finance sector*, Kim Hoque, John Earls, Neil Conway, Nick Bacon, Economic and Industrial Democracy. Vol 38, Issue 1, 2017, [URL](#)

⁹ Equality Trust, What influence do unions have on inequality? [URL](#)

¹⁰ *Causes and Consequences of Income Inequality: A Global Perspective*, IMF Staff Discussion Note, June 2015, [URL](#)

¹¹ *Labour Markets, Institutions and Inequality*, ILO (2015), [URL](#)

¹² *Want to tackle inequality? Shore up collective bargaining*, [URL](#)

Furthermore, a recent report on international trends in insecure work conducted for the TUC by the National Institute of Economic and Social Research concludes that: *"The main lesson...is that labour market institutions, regulations and traditions matter. The rise of insecure forms of work is not an inevitability of macroeconomic change. Rather policy decisions play an essential role in determining the level of non-standard work arrangements and the insecurities associated with them".*¹³ It finds that the UK has seen a larger increase in insecure work since the financial crisis than many other countries and that the highly deregulated and liberal UK labour market, with comparatively low levels of employment protection for permanent and temporary workers, has not been substantially altered in recent decades. In this regard, it notes that the absence of new legislation, in the context of other changes, can be regarded as a policy decision in itself, as it can be seen as an endorsement of the already existing deregulated and liberal labour market.

In Scotland, the Scottish Government's Fair Work Convention aims to promote work that offers effective voice, opportunity, security, fulfilment and respect; that balances the rights and responsibilities of employers and workers and that can generate benefits for individuals, organisations and society. The FWC sees a positive role for trade unions within that agenda. To quote from the Fair Work Framework 2016:

"Delivering fair work is at the core of the activities of trade unions and we encountered many examples where workers' experience of fair work was a direct consequence of trade union organisation and action." (page 30)

Unite is represented on the board of the Fair Work Convention and we have used the Convention to highlight to the Scottish Government issues that fall short of delivering fair work, particularly in the procurement process.

In Wales, the Labour-led Welsh Government embraces the spirit of social partnership and recognises the role of trade unions in a modern economy.

The Welsh Labour Government has introduced the Trade Union Wales Bill which, if passed, will dis-apply sections of the UK Government's damaging Trade Union Act 2016 for devolved public services. This includes measures to ban the use of agency workers in devolved public services to provide cover during strike action should this be taken forward.

These same partnership structures will establish a Fair Work Commission that can help build an economy, including the vital industrial sector that builds an economy in which more people can have access to good work and a secure income. This new Commission will build upon work already done in Wales to make work fairer using the full scope of devolved powers. Through the Workforce Partnership Council the Welsh Government have delivered a two-tier code, issued guidance and principles on the use of non-guaranteed hours contracts (including zero hours contracts) and launched a Code of Practice for Ethical Procurement in Supply Chains.

In addition to **strengthening workers' ability to organise and bargain through trade unions**, the Government must also strengthen other economy wide mechanisms for enhancing worker voice. This includes requiring companies to include **elected worker representatives on boards**. In our submission to the Government's Corporate Governance Green Paper Unite outlined our support for

¹³ *International Trends in Insecure Work*, NIESR, May 2017, [URL](#)

TUC proposals¹⁴ that worker representatives should comprise a minimum of one third of the board, with a minimum of two worker representatives per board. Unite is committed to the objective of half of unitary company boards being comprised of workers' representatives. These 'workers directors' must be elected by members of an independent trade union and must be supported in their work by changes to the legislative framework governing directors' duties.

In addition, employers should be required to agree collective and independent consultation arrangements when requested by a recognised trade union or by five workers in non-unionised workplaces.

Precarious work and ending the race to the bottom

The UK is seeing a growth in precarious working arrangements. There has been much recent media coverage including, to select just two more or less at random, reports of sick couriers facing charges of up to £250 if they can't find cover¹⁵ and Uber contracts with drivers being described as "gibberish" and "almost unintelligible" as the company attempts to ensure its drivers remain self-employed.¹⁶

Proper regulation of the labour market, in partnership with trade unions, must be a cornerstone of a modern economy. A properly regulated labour market must end bogus self-employment, social dumping, the use of zero hours contracts and close the loopholes of fake subcontracting, all of which result in undercutting of terms and conditions.

TUC analysis shows that up to 3.2 million UK workers are in insecure work.¹⁷ This includes 1.7 million workers in low-paid self-employment, the fastest growing sector. What is clear is that becoming 'self-employed' might be a choice for some, but it is also a way for employers to avoid their legal obligations in terms of both pay and conditions.

The TUC research reveals that an increasing proportion of those working on temporary contracts are doing so on an involuntary basis. 30% of all of those working in temporary work are doing so because they cannot find a permanent job. This is up from 25% a decade ago. When this is broken down further, it is revealed self-employed workers are most likely to be working in information, finance and professional services (21%) construction (20%), and 'transport, arts and other services' (16%).

Further analysis by the TUC reports that if current trends continue, 290,000 more people could be trapped in insecure work by 2022. The figures show that by the start of 2022, 3.5 million people could be in insecure work such as zero-hours contracts, temporary or agency work, and low-paid self-employment.¹⁸

Research by the CIPD finds that most 'gig economy' workers want employment rights. Not only that, but their Chief Executive has commented that *"our research suggests that some gig economy businesses may be seeking to have their cake and eat it by using self-employed contractors to cut*

¹⁴ *All Aboard: Making worker representation on company boards a reality*, TUC, 2016, [URL](#)

¹⁵ *Sick Parcelforce couriers can be charged up to £250 if they can't find cover*, [URL](#)

¹⁶ *Uber contract 'gibberish', says MP investigating gig economy*, [URL](#)

¹⁷ *Living on the edge: The rise of job insecurity in modern Britain*, TUC, 2016, [URL](#)

¹⁸ *A quarter of a million more in insecure work by end of next Parliament?*, TUC, 2017 [URL](#)

costs, while at the same time trying to maintain a level of control over people that is more appropriate for a more traditional employment relationship.”¹⁹

In addition, the House of Commons Work and Pensions Committee’s inquiry into self-employment and the ‘gig economy’ reported that: *“The apparent freedom companies enjoy to deny workers the rights that come with “employee” or “worker” status fails to protect workers from exploitation and poor working conditions. It also leads to substantial tax losses to the public purse, and potentially increases the strain on the welfare state”.*²⁰

In the UK the problem is such that workers may never be sure, even after obtaining legal advice from an expert in the field, whether they are workers, employees or self-employed, or, in relation to agency workers in a triangular relationship, whether they are employed by an agency, a sub-contractor, the end user of their services, or none of them. Some, like those on zero hours contracts, can’t even be sure they will have work from one day to the next.

Everyone should be able to gain access to decent rights at work. Government should **extend existing rights to all those in work, not only those who qualify for ‘employee’ status.** This should include creating a legal presumption that everyone qualifies for the full set of employee rights, placing the onus on the employer to prove that this is not the case.

There is a particular need to ensure wider and better access to family friendly rights. Too many workers are denied parental employment rights due to their employment status or failure to meet a qualifying period of employment. **Family friendly rights should be extended to all workers from day one of their employment.**

All workers should **have a day-one right to a written statement setting out pay and conditions, including expected hours of work.**

Evidence shows that there are incentives for employers to keep a worker’s hours and pay low as it reduces employer obligations in respect of National Insurance Contributions (NICs) and statutory sick pay (SSP) and pensions.²¹ Low paid workers should have equal rights to SSP. On pensions, the earnings trigger for employer contributions should be abolished and there should be a simplification of the system of band earnings. In addition, the principle of auto-enrolment that has successfully driven higher pension provision for employees should be utilised by using the tax return to automatically enrol self-employed workers into pension provision via NEST, unless they choose to opt out. The tax return should also explain the tax advantages of enrolling in a pension (in terms of tax relief).

The Government must also make sure that those rights can be realised effectively. This includes **abolishing Employment Tribunal fees** which are inhibiting people’s access to justice. The introduction of fees has seen a 67% drop in the number of claims. In addition, in respect of enforcement it should also be noted that approximately half of the people to whom an Employment Tribunal makes a financial award will not be paid without them having to expend more effort and money on enforcement. And even then, payment is far from guaranteed.²²

¹⁹ *Most gig economy workers ‘want employment rights*, People Management, 2017, [URL](#)

²⁰ *Self-employment and the gig economy*, Work and Pensions Select Committee, 1st May 2017, [URL](#)

²¹ *How the tax system is driving people into insecure work in unexpected ways*, TUC ToUChstone, May 2017, [URL](#)

²² *The cost of a hollow victor: CAB evidence on enforcement of employment tribunal awards*, CAB 2013, [URL](#)

It also means **ensuring that enforcement agencies including the Gangmasters and Labour Abuse Authority (GLAA) and HMRC are given sufficient resources to deal with employment abuses.**

As referenced earlier the Scottish and Welsh Governments have taken action within devolved powers and the new Fair Work Commission is to consider some of these problems in greater detail.

Case study: Eddie Stobart's failure to pay holiday pay

One of a number of cases Unite has been obliged to fight on behalf of its members was the five-year legal battle to get haulier Eddie Stobart Ltd (ESL) to pay the correct rate of holiday pay, which resulted in a pay-out of £364,000 for more than 430 drivers. Only union drivers benefited from the successful legal action, but, going forward, all drivers working for ESL, will benefit from the higher rates of holiday pay for the 28 days leave a year on which tax will be paid.

The drivers, who are mainly based in the north of England, started receiving their payments in August last year, ranging between £700 and £1,000 each. Unite argued successfully that the drivers had allowances and overtime that should have contributed towards a higher rate of 'average' holiday pay. The legal process started in 2011 and was settled before it reached court. It also involved 69 members of the United Road Transport Union (URTU) who will share in the £364,000 pay-out.

In addition to these changes and others mentioned later in this submission, central, devolved and local government must use procurement powers to ensure tenders for goods or services are not awarded to firms which have zero hours contracts or use bogus self-employment. **Public spending should be used to promote and advance fairness, more secure employment and genuine worker voice.**

Self-employment

Research by the Social Market Foundation²³ finds that "around half (49%) of the UK's self-employed are in low pay, measured on an hourly basis, compared with around a fifth of employees (22%)". This led them to estimate that 1.73 million workers have continued to be paid below the 'National Living Wage' when it became the statutory minimum pay for those aged 25 years or older since 1st April 2016 as it does not cover the self-employed.

There is a need to distinguish between genuine self-employment and false or bogus self-employment. While there are many who make a positive choice to be self-employed, we also know that people have been forced into 'self-employment'.

Estimates of bogus self-employment vary. Citizens Advice suggests that around 500,000 people could be classified as falsely self-employed.²⁴

Bogus 'self-employment' means that workers are deprived of their basic employment rights and protections, such as sick pay and maternity pay. It also means they do not have a vital safety net for

²³ SMF March 2016, a summary of the work can be accessed at <http://www.smf.co.uk/publications/tough-gig-low-paid-self-employment-in-london-and-the-uk/>

²⁴ Bogus self-employment costing millions to workers and government, Citizen's Advice, 2016 [URL](#)

periods when they cannot work. In the construction industry, where the practice is particularly widespread, it places people outside of the industry-wide collective agreements.

A simplification of the law so that employment rights cover all workers and not only employees would end this problem. It is already the case that if a person is subject to direction and control in relation to their work then that person is regarded as an employee of the person or organisation who is doing the directing and control, regardless of what contractual arrangements may be in place. However, the monitoring and enforcement is non-existent leaving the worker themselves to challenge their own employment status, and in doing so, very often lose work.

Unite is clear that no worker should be stripped of their rights simply because they do not work in a traditional workplace. There needs to be a lifting of the universal level of employment rights by extending existing rights to all those in work, not only those who qualify for 'employee' status. This includes family-friendly rights, protection from unfair dismissal and the right to redundancy pay.

As Unite has stated to the BEIS Committee Inquiry on the Future World of Work and Rights of Workers, *"The legal default should be for all workers to have employed status with the onus on the employer to prove a person is genuinely self-employed. All workers should be entitled to trade union and employment rights granted to employees."*²⁵

Any new definition of a self-employed worker should not be limited to tax and National Insurance liabilities. There must be joined-up government and it must be accompanied by a new definition in employment law. Within the construction industry the Construction Industry Scheme should be abolished making genuinely self-employed workers responsible for their own tax affairs. **HMRC should be provided with sufficient resources to ensure company compliance with tax and National Insurance obligations.**

Unite is also aware of reports of agencies attempting to force workers into **so-called 'umbrella companies'**, particularly in the construction sector, to off-load National Insurance Contributions and other benefits to the detriment of the worker and has called for them **to be outlawed along with other forms of bogus self-employment.**²⁶

Case study: bogus self-employment and umbrella companies

Unite, has launched an appeal case before the Employment Appeals Tribunal (EAT) to try to tackle bogus self-employment in the construction and other sectors. We are hoping that the EAT's decision on the appeal will set a much needed legal precedent, which Employment Tribunals nationwide will be obliged to follow when dealing with claims involving agencies and employers that utilise sham payroll or umbrella companies.

The case concerns Unite member Russ Blakely who was employed as a pipefitter on the NHS funded Broadmoor hospital redevelopment project in Berkshire, from 19 January 2016 until 20 May 2016.

The main contractor was Kier and the mechanical contractor was Fascel. Mr Blakely received a text from employment agency On-Site Recruitment Solutions Limited to confirm he was to undertake

²⁵ Unite submission to the House of Commons Business, Energy and Industrial Strategy Committee Inquiry on the Future World of Work and Rights of Workers, [URL](#)

²⁶ Unite demands government outlaws umbrella companies, [URL](#)

work on the project and that he needed to contact an umbrella/payroll company, Heritage Solutions City Limited for payment.

Mr Blakely was paid weekly and was charged a weekly fee of £18 by Heritage for his pay (described as Management Company Margin). He was also charged the employer's national insurance contributions, labelled on his payslip as 'HMRC Payment NERS'. In total he was charged £324 in management fees and £725.59 in employer NICs.

Mr Blakely was not asked to sign any form of contract until March 2016 when Heritage asked him to sign 'a contract for services'. This document stated that he was neither an employee nor a worker and it sought to exclude the most basic worker rights; including auto-enrolment pension, holiday pay under the Working Time Regulations 1998 and sick pay. The contract also attempted to authorise deductions for employer's class 1 national insurance from Mr Blakely's pay and included a menacing 'indemnity' clause aimed at dissuading him from pursuing any legal claims and gagging him from raising complaints with HMRC (who regulate employers' compliance with the National Minimum Wage, as well as tax matters). He was told that if he did not sign the agreement his pay would be stopped. Despite this Mr Blakely refused to sign.

He continued to work until 20 May 2016, when he took holiday and was told that he was not needed to return.

With the support of Unite Legal Services Mr Blakely took an employment tribunal case for unlawful deduction of wages for the management company deductions and the employer's national insurance. He also claimed for the accrued holiday pay he had earned and not been paid. The member's total claim is worth between £2,500-£3,000.

The case was initially heard at the Reading Employment Tribunal which dismissed the claim as they found he was not a worker, having failed to properly understand the evidence provided. Unite lodged an appeal with the EAT in March 2017 based on the tribunal wrongly applying law and reaching a perverse conclusion. The decision is expected to provide some much needed legal authority and protection for workers being exploited by bogus self-employment arrangements that use umbrella or payroll company scams to satisfy the taxman, but fall short of minimum worker rights.²⁷

In spite of the case being taken, even if it wins there is still urgent need of legislation through parliament to address a range of issues. For example, if one loophole or bad practice is dealt with, exploitative employers (advised by their lawyers in drafting contracts and the like) will simply change their practices to exploit a different mechanism.

Unite represents a range of self-employed occupations and represents workers in a number of sectors where self-employment is likely to increase due to changing technology and so recognise it is a challenge for the future about how to ensure security of rights, employment and earnings for these workers. In many cases, such workers are best thought of as 'contractors' rather than 'self-employed'.

'Uberisation' will increase the number of 'self-employed' people who do not only not employ others but in reality only have one client or contractor. They are dependent contractors, reliant

²⁷ That line in the sand moment for construction workers, [URL](#)

primarily on one organisation for work, as employees are with employers, but they have none of the rights.

Much of the rise of precarious work is however not located in newly emerging technological platforms, but in the retail, hospitality, care and other service sectors and by established businesses. The sectors and occupations most scarred by poor, exploitative practices predominantly employ women, with Black, Asian and Minority Ethnic and migrant workers also over represented.²⁸ Practices that began in these sectors have been increasingly spreading to other sectors.

Zero hours contracts

Zero hours contracts are formally contracts without a minimum number of guaranteed hours each week. They represent the latest attack on workers' rights and dignity. Employers are using zero hours contracts to cut wages, avoid holiday pay, pensions, and other benefits enjoyed by employees and agency staff.

The number of workers on zero hours contracts reported in official government statistics hit a high of 910,000 in the last quarter of 2016, a rise of more than 100,000, or 13%, compared with the same period in 2015²⁹, although anecdotal evidence would suggest that this is an underrepresentation of the actual number in use. Figures report that 55% of those on zero hours contracts are female and that these contracts are most prolific in the accommodation and food (25%), health and social work (22%), and 'transport, arts and other services' (14%).³⁰

TUC research shows that the typical UK employee earns 50% more an hour than the typical worker on a zero-hours contract.³¹ The median hourly rate for a zero-hours worker is £7.25, while for all employees it is £11.05. Furthermore, the growth in zero-hours working over the last decade is costing the Government almost £2 billion a year.³²

Unite supports a **ban on zero hours contracts** and highlights the precedent set by New Zealand in 2016.³³

In April 2016 the New Zealand Parliament unanimously passed legislation ending the use of zero hour contracts. The legislation is a relatively simple amendment and works in the following ways. Firstly, an employee must be given guaranteed hours. These must be specified and written in the contract. Secondly, if an employer wants workers to be available in addition to the guaranteed hours then these must be specified in number, with the reason as to why they cannot be part of the regular guaranteed hours.

An employer has to give 'reasonable compensation' for availability on the part of the employee – whether required to work or not. This is effectively an 'on-call' payment. An employer also has to

²⁸ Successive Low Pay Commission reports have reported how higher proportions of workers with no qualifications, disabled workers, migrant workers, ethnic minorities and female workers were in minimum wage jobs than the total workforce in 2015 and low pay is associated with other poorer terms and conditions.

²⁹ Record 910,000 UK workers on zero-hours contracts, The Guardian, [URL](#)

³⁰ House of Commons Library Briefing Paper Number 06553, 3 October 2016 – *Zero-hours contracts*

³¹ Zero-hours contracts have become an easy way to employ staff on the cheap, says TUC, [URL](#)

³² Zero-hours contracts allow bosses to treat workers like "disposable labour", says TUC, [URL](#)

³³ The real heroes of the end to zero hours, Unite New Zealand, 2016, [URL](#)

state the notice period for cancelling shifts – if a shift is cancelled by the employer after this notice period the employee should receive ‘reasonable compensation’.

The implementation of the legislation has meant that large, multi-nationals such as Burger King, KFC, Pizza Hut and Starbucks, who also operate in Britain, have moved to fixed shifts and hours. There is no reason why the same cannot work here.

Large chains such as these operate over regular opening hours, will know their regular footfall, busy periods and low periods – they have sufficient data to plan in advance to know how many staff to roster on shift. There is nothing to prevent individuals therefore being given advance notice and guaranteed hours. The continued operation of these chains in New Zealand with no adverse effects demonstrates this.

Unite notes the recent announcement by Welsh Labour that it will legislate to tackle zero hours contracts in the care sector and that the Welsh Labour Government will shortly begin a period of consultation on plans to ensure that care providers offer all workers the option of a minimum-hours contract after a three month probationary period based on the average weekly hours worked during this period.³⁴

Without prejudice to the argument for banning zero hours contracts, **exclusivity clauses must be abolished, especially for contracts less than 25 hours a week.**

Agency workers

Research by the Resolution Foundation finds that agency worker numbers are significant (an estimated 865,000 agency workers in the UK today), and rising fast (estimated to be more than a million by the end of the decade).³⁵

The Resolution Foundation analysis finds that agency workers are more likely to be from groups that suffer labour market disadvantage; working for an agency carries a ‘pay penalty’ of 22p an hour; and, whilst it suits some workers’ needs, a significant number want more, and for many it offers a ‘raw deal’. Policy needs to ensure that agency working does not become “an enduring form of precarious work”.

The reality in Britain is that agency workers are used as a matter of the permanent culture in many workplaces. Elsewhere in this submission, and in our evidence to the review team at its event in Nottingham, we highlight the abuse of agency working in Sports Direct.

This is also not a problem limited to the private sector. Unite knows NHS trusts in England are trying to cut agency costs driven by NHS improvement since December 2015. Trusts are doing their best to recruit mainly nurses from the bank or agencies to become permanent staff. One consequence is that in 2016 two NHS Trusts in the South of England (Oxleas and East & North Hertfordshire) have offered newly recruited band 5 & 6 nurses an increased basic salary for not joining the NHS pension scheme and joining an inferior pension scheme instead on a temporary basis. The pension regulator has allowed this practice to occur and it is not a breach of pension law.

³⁴ *Welsh Labour tackles zero-hours contracts in Welsh Care sector*, May 2017, [URL](#)

³⁵ *Secret Agents – agency workers in the new world of work*, Resolution Foundation (2016) [URL](#)

In the road transport, commercial, logistics and retail sector, Unite has received reports that agency workers in warehouses are invariably subject to higher performance standards than core workers. Core workers may be expected to work at 85% of the measured standard whilst agency will have a 100% target. There are also agency drivers who are said to be self-employed but work solely for one company with their work and vehicle provided by that company.

Steps should be taken to constrain the use of agency workers by business. **The use of agency workers should be limited to the occasions that they are necessary and for short periods.** Then they should become employees.

In Belgium agency workers can only be utilised to cover exceptional peaks of work or work of an unusual nature. In France, the Netherlands and Italy the length of any agency assignment is limited to 18 and 36 months respectively before workers are entitled to a permanent contract.

Unite, along with the TUC, also believes that the so-called '**Swedish Derogation**' should be removed from the **Agency Worker Regulations** to ensure that employers cannot use agency workers to undercut the pay and conditions of other workers. This derogation leads to the manipulation of minimum hours of pay between agency assignments in order to exempt them from equal pay. Such contracts have been used to guarantee as little as 1-4 hours a week at minimum wage.³⁶

Unite has seen an increasing number of employers, including in the major supermarkets distribution supply chains, seeking to avoid the application of equal rights for agency workers by applying 'the Swedish Derogation'.

Another solution for agency workers and problems of sub-contracting would be to **provide for joint and several liability in relation to the "three-way relationships"**. A simple expedient akin to that contained in the Employer's Liability (Defective Equipment) Act 1969 would be sufficient.³⁷

Unite has negotiated agency agreements that enshrine regular consultation between the elected shop steward's union and the company on the use of agency workers. This ensures that agency workers are only sourced through agreed agencies which are covered by union recognition, and that the use of agency workers will not be to the detriment of the permanent workforce. The agreements also agree limits on the use of agency work, in the cases of Vauxhall and Rolls-Royce, for example, that is 5% of the total workforce.

Unite believes that there should be **compulsory collective bargaining for agencies and for companies recruiting from abroad** to further protect those workers the agency places and to protect 'permanent' employees.

³⁶ Employment practices at Sports Direct, House of Commons Report, 2016 [URL](#)

³⁷ Employer's Liability (Defective Equipment) Act 1969.

1. (1) Where...(a) an employee suffers personal injury in the course of his employment in consequence of a defect in equipment provided by his employer for the purposes of the employer's business; and (b) the defect is attributable wholly or partly to the fault of a third party (whether identified or not), the injury shall be deemed to be also attributable to negligence on the part of the employer (whether or not he is liable in respect of the injury apart from this subsection), but without prejudice to the law relating to contributory negligence and to any remedy by way of contribution or in contract or otherwise which is available to the employer in respect of the injury.

Case study: Jaguar Land Rover

In our evidence to the review team at its event in Coventry, Roger Maddison, Unite National Officer, spoke about how Unite has negotiated on the use of agency workers in Jaguar Land Rover. He advised the review that use of agency or indeed fixed-term contracts does not mean employees should be exploited. Agency and fixed-term employees at JLR enjoy the same benefits as full-time employees and are covered by the same area shop stewards. Under the agreement agency employees progress through the appropriate pay increments and in the event of an agency employee reaching 100% rate of pay are, subject to certain conditions, offered a permanent JLR contract.

Case study: Sports Direct

Luke Primarolo, Unite Regional Officer gave evidence to the review's Nottingham event on 16th February on experiences in Sports Direct. Unite has been at the forefront of the campaign highlighting the harsh working conditions experienced by thousands of workers at Sports Direct's Shirebrook warehouse, including low pay, precarious working arrangements including a dependence on agency working, and a culture of fear. Some concerns have been addressed in response to Unite's work, but serious issues remain.

Following the Unite campaign, thousands of workers at Sports Direct's Shirebrook warehouse in Derbyshire received back pay totalling an estimated £1 million for non-payment of the minimum wage. This covers workers directly employed by Sports Direct and those employed through employment agency The Best Connection. Unite also recently informed the House of Commons BEIS Select Committee that workers employed at Sports Direct are still awaiting the wages that they are owed by their agency Transline, who failed to pay the workers the minimum wage. Unite has called for Transline not be allowed to 'dodge' its responsibilities as it emerged that the firm had submitted court documents preparing it for insolvency.³⁸

This has been followed by a 15p pay rise for all minimum wage workers, the appointment of a full time nurse and welfare officer, and the removal of the 'six strikes' policy, after which workers could be dismissed. All workers on zero hours contracts have been offered the option of moving onto fixed hours or minimum hours contracts. An independent review of working practices and corporate governance is now set to take place including a review of Sports Direct's model of predominantly using agency workers.

The Sports Direct business model means that in reality those who are precariously employed have no access to justice. If they are treated badly they are in fear of raising it in case they lose their employment. They have very little protection which means there are no consequences for those who commit poor treatment. This inevitably leads to more extreme situations.

Unite has wished well to the newly appointed board member supposed to represent workers' interests but has questioned the method of selection and warned that he will face an uphill struggle to have workers' heard and to resolve the deep-rooted problems across the business.

³⁸ Transline must not be allowed to 'dodge' its responsibilities to workers, says Unite - [URL](#)

Unite has called for the company to waste no further time in now moving agency workers onto permanent contracts.

Case study: hospitality sector

The hospitality sector contains many examples of precarious work and poor employment practices. Unite's Hotel Workers Branch has published a report on London's hotels - using the stories of London's mainly migrant hotel workers in their own words - exposing low pay, zero hour contracts and open hostility to trade unions.³⁹ As a consequence of this report and in recognition of its work on behalf of low paid hospitality workers Unite's Hotel Branch recently received a human rights award sponsored by a major German tour operator.

Unite has identified 4 key areas of concern which it is focusing on within the hospitality sector:

- **Fair tips**

Unite has been at the forefront of exposing unfair tipping practices in the hospitality industry whereby restaurants pocket a large proportion of the service charge automatically added to diners' bills.⁴⁰ Unite is calling for:

- **primary legislation to give staff 100% ownership of their hard-earned tips with total control over how they are shared out** between front and back of house staff;
- **rules to ensure that company Tronc schemes are genuinely independent;** free from employer interference and influence;
- **greater transparency so that staff and consumers alike know how the money from discretionary charges is divvied up,** and how much the company pockets for itself.
- **the 2009 voluntary code of practice to be put on a statutory footing.**

- **Housekeeping productivity**

Some time ago Unite raised concerns with the Low Pay Commission regarding guidance on the National Minimum Wage which suggested that the piece rate formula could be applied to housekeeping staff so that they were paid by the room rather than by the hour. We highlighted not only the potential impact on the minimum wage but also the health and safety impact on room attendants who were under constant pressure to increase the number of rooms per shift in order to maintain profit margins in this largely sub-contracted area of the hotel sector.

As a result of the concerns raised the guidance on this was withdrawn and it was made clear that cleaning rooms could not be legitimately considered as piece work.

However, the large hotel chains have continued to adopt a business model of invoicing the sub-contracted service providers by the number of rooms cleaned per day, rather than the number of staff/hours provided. This has resulted in room attendants continuing to be pressurised to increase the number of rooms cleaned per shift, often ending up working through breaks and beyond finishing times to meet targets set. The pressure to increase productivity has increased since the 'National Living Wage' rate of the National Minimum

³⁹ *Unethical London*, Unite Hotel Workers Branch (2016), [URL](#)

⁴⁰ *Fair Tips for Waiting Staff*, Unite, [URL](#)

Wage was introduced, with service providers seeking to claw back the increase by increasing the number of rooms allocated.

- **Chefs' hours**

The UK is experiencing a chef crisis, not only in terms of recruitment but also retention, with many experienced chefs leaving the industry each year. One of the main causes is the constant pressure to work excessive hours. This often leads to underpayment of wages and to ongoing health and welfare problems, as highlighted in the chefs' survey results within the 'Unethical London' report cited above.

The industry has adopted some exploitative practices which contribute to the culture of long hours. These include automatic opt outs from the 48 hours working limit as standard terms of employment contracts and placing relatively junior chefs on salaried contracts whereby all hours worked are not paid.

- **Freedom of association and collective bargaining**

The hospitality sector in the UK has one of the lowest levels of trade union density and collective bargaining is virtually non-existent. Since the abolition of sectoral bargaining via the Wage Councils in the 1990s the industry has systematically dismantled whatever local bargaining arrangements existed in hotels and restaurants.

This has led to a constant downward pressure on pay and conditions, increased levels of exploitation, and a situation where the UK compares less favourably to other comparable tourist destinations when it comes to respect for basic human rights to freedom of association and collective bargaining. This should not be the case. Six of the major hotel chains employing huge numbers of workers in the UK have signed international commitments such as the UN Global Compact, the ETI Base Code or Global Framework agreements. Other have CSR statements respecting these rights. Yet none of these chains allows minimal trade union access to the workforce and most engage in union avoidance tactics and victimisation of trade union members and activists.

Unpaid internships

Unite is aware of young people being used as 'free labour' in many parts of the economy by using unpaid 'internships'. We have produced a report with Intern Aware on the use of unpaid internships in the voluntary sector.⁴¹ These are wrong because:

- They replace paid entry level jobs: Unpaid internships are increasingly widespread in the not for profit sector and are increasingly being used to replace entry level jobs in the sector.
- They are often breaking minimum wage legislation: The legal uncertainty about volunteering in National Minimum Wage regulations is being used to avoid paying interns in the sector.
- They are elitist: By not paying interns, organisations are excluding many high quality applicants, undermining ethical aims of the sector and equal opportunity in the economy as a whole.

There should be a **ban on unpaid internships**.

⁴¹ *Stop the Abuse of Interns*, [URL](#)

Enforcement

We have already made the point earlier in this submission that the Government must ensure that employment rights can be realised effectively and are properly enforced. This includes **abolishing Employment Tribunal fees** which are inhibiting people's access to justice and **ensuring that enforcement agencies are given sufficient resources**.

Enforcement bodies such as the HSE and HMRC are struggling to maintain their efficacy in the face of relentless cuts in their budgets and, inevitably, in their staff numbers. The Gangmasters and Labour Abuse Authority (formerly the Gangmasters Licensing Authority) has similar capacity issues because its scope has been dramatically increased in recent months with no commensurate increase in resources; from covering 500,000 workers in food, agriculture and shellfish gathering, the scope of the GLAA will now be 31 million workers in all industrial sectors.

This massive expansion in scope follows a series of post-2010 politically-led changes to the governance and structure of the former GLA, including the removal of some stakeholders such as trade unions from its Board, and to its focus – in pursuit of a 'light touch' on business and with an eye on immigration at the top of the political agenda, serious and organised crime has taken priority over 'low-level' labour rights breaches, and via the Immigration Act 2016 the criminalisation of undocumented workers has taken priority over their protection from and the criminalisation of perpetrators, their employers.

Seats for trade unions at Board level need to be reintroduced to the GLAA, ensuring direct representation of worker voice, to ensure that there is a clear and consistent focus on labour rights.

National Minimum Wage and Low Pay Commission

Unite acknowledges the importance of the establishment of the National Minimum Wage, but it is no substitute for collective bargaining, which has seen a large decline.

The Low Pay Commission has been crucial in successfully co-ordinating the range of views that are shared by the different social partners and has made recommendations that have benefited millions of the most exploited workers.

Unite believes that the **Low Pay Commission should have its remit widened beyond advising on the rate of the NMW and look at the causes and consequences of low pay and investigate potential solutions**. Areas of investigation should include the gender pay gap and other equality gaps.

Unite also challenges the age discrimination in the existing NMW arrangements. As Unite stated in its submission to the Low Pay Commission in July, it is not clear whether the Government prepared a case for the exclusion of younger workers from the new rate and from its target of 60% of median earnings, but not to do so might leave the process open to challenge. Questions that might arise could include whether the new "supplement" for older workers will de facto be the main NMW rate, and therefore whether having a lower rate for 21-24 year olds can be justified at all on employment grounds. **Workers aged 22-24 should be included in the higher minimum wage.**

Unite would **ultimately like the NMW to apply as a flat rate from age 16 upwards on a 'rate for the job' basis**. Unite believes that the principle of equal remuneration for work of equal value is an

important one. Any circumstance in which people are paid differently for the same work simply on the basis of age is wrong.

Migrant domestic workers and 'Tied Visa' scheme

Under the terms of the Government's 'tied visa' scheme, which was introduced in April 2012, overseas domestic workers cannot legally leave their employer and find new work. This has left thousands of workers trapped in situations of modern slavery and unable to escape exploitation for fear of arrest and deportation. Many suffer from physical and sexual abuse, non-payment or underpayment of wages, long hours of work and sleep deprivation.

After pressure from campaigners the Government announced changes to the scheme and to 'untie visas' allowing overseas domestic workers to change employers, but only within a period of six months. Unite calls for **allowing overseas domestic workers to apply for a two-year extension to their visa, instead of the proposed six months**. The Government's own independent review and the House of Lords have agreed that the tied visa is unjust and that we need to restore rights to migrant domestic workers.

One of the main recommendations in James Ewins's independent review, which was accepted by the Government, was the introduction of group information meetings. These meetings provide a safe and confidential environment for domestic workers to get information, advice and support concerning their employment and immigration rights. They are also an opportunity for workers to come together and share their experiences with each other. These information meetings have not yet been established and the Government has not made this a condition of the visa. This means that migrant domestic workers will continue to be abused as they are not aware of their rights in the UK. **These information meetings should be a mandatory condition of the visa in order to ensure domestic workers employment and human rights are protected.**

Unite also remains concerned that migrant domestic workers continue to be wrongly denied the NMW using the 'family members' exemption. This needs to be addressed. Therefore, Unite calls for **clear formal recognition that the requirements of the overseas domestic worker visa preclude a 'family membership relationship' and that this be properly reflected in BEIS guidance and helpline advice**. The new 'tied visa' of 6 months duration means that obtaining justice on the NMW is fundamentally undermined for migrant domestic workers. Unite calls for a **clarification in the law that employers may be prosecuted for not paying the NMW whether their workers have legal contracts or not**. Unite would also like to see a situation whereby a **trade union can make a representative action on behalf of a group of workers to an employment tribunal** and that in such instances HMRC enforcement officers should have access to such workers if they are detained.

Offsetting or Profiting?

In the vast majority of cases Unite's experiences with employers and the NLW has been a positive one. However, Unite has come across examples where employers are looking to offset or potentially profit from the NLW by removing or reducing a host of other terms and conditions including reduction in working hours, no enhanced payment for working overtime on weekends/bank holidays, only offering the minimum annual leave, no sick pay, reducing pension benefits or using bogus self-employment.

In one parcel delivery company the employer has begun to take on new drivers on a so called 'self-employed' basis since the introduction of the NLW. These drivers are not self-employed in Unite's opinion because they have the company logo on their own vans and are not allowed to work for anyone else. This method allows the employer to get round paying holiday and sick pay and national insurance contributions.

Unite believes it's too easy for companies to circumvent the principle of the NLW through dismissal/re-engagement if workers fail to agree to inferior terms and conditions. Unite therefore recommends that the **LPC look at strengthening the threshold to defend unfair dismissal cases using 'some other substantial reason' (SOSR)**. Under existing case law, it's too easy for employers to abuse this.

Progression and training

One of the problems faced by workers in insecure jobs is missing out on training and career development opportunities. Research for the UK Commission for Employment and Skills⁴² reports that employers are far less likely to pay for training for workers on temporary or zero-hours contracts and that those on flexible contracts often had to fund their own training.

Unite is active in promoting participation of women and BAME people in a range of industries and occupations. For example, a recent initiative involving the union working with employers and other partners saw a campaign and guide to harness the experiences of young women in engineering and encourage more young women into engineering and science apprenticeships.⁴³

Whilst welcoming the ambition to increase the number of apprenticeships, Unite has also argued that government targets on apprenticeships risks placing an emphasis on quantity over quality. There are already instances of some employers who appear to be abusing the apprenticeship brand to exploit young people.⁴⁴

Unite supports a 'gold standard' in apprenticeships where apprentices develop fully transferrable skills. Unite and other trade unions, promote high-quality apprenticeships, encourage the promotion of diversity in the take-up of apprenticeships, and protect the apprenticeship brand. It was trade unions, for example, that negotiated with the French energy company EDF an apprenticeship ratio which is now binding in the contract for the building of the Hinkley Point C project. This ratio is sustainable for the lifetime of the project and will create an apprentice footprint.⁴⁵

We have also urged the Government to reconsider including a **trade union voice in the Institute of Apprenticeships**. Although trade unions are at the forefront of delivering and supporting apprenticeships across all industrial sectors, it is incredible that not one **trade union representative will sit on the new Institute of Apprenticeships board**.

⁴² UKCES (2014) *Flexible Contracts: Behind the Headlines* [URL](#)

⁴³ *Thinking about an Apprenticeship? Women who work in Engineering and Science talk about their jobs*, [URL](#)

⁴⁴ *Sub-standard apprenticeships threat*, Unite live, 31st March 2017, [URL](#)

⁴⁵ *'Bonkers' - Unite slams apprenticeship board snub*, Unite live, [URL](#)

Case study: Barclays SkyBranch

Recognising skills in the digital workplace

An example of new training and schemes to reflect changing job roles and the key role unions can play is provided by Unite members in Barclays bank. Following a Unite campaign to unionise call centres in Sunderland, Coventry and Liverpool, the union used collective bargaining to negotiate a review of the call centre workers' pay grades and training.

Across banking call centres, workers are now expected to 'Omni-channel' customer service. This can mean answering phones, while also responding to Live Chat screens and managing social media accounts.

Due to the availability of digital banking, customers wishing to simply check their bank balances now use smartphone apps and other platforms. Barclays estimate that over three million of the bank's customers now use mobile banking on their smart phones or tablets.

In response to changing technology the bank relaunched traditional contact centres as 'Skybranches,' a one-stop-shop dealing with customers contacting the bank by apps. The bank sought to promise customers that their first point of contact would solve any given concern and that calls would no longer be transferred to other departments. In the process the bank aimed to reduce 'handovers' by 600,000 a month.

This means the service call centre workers are now expected to provide is more akin to a financial adviser.

Following negotiations Unite and Barclays arrived at a ground-breaking agreement which will benefit over 1,200 members across the SkyBranch branches. Over 900 workers moved up the pay bands, resulting in real terms pay rises of – on average – close to £2000. This is recognition of increased complexity in these roles.

The bank also agreed to launch a series of new training programmes. This is an example of trade union organising preventing the 'race to the bottom' when faced with technological changes.

Automation

In a speech to the TUC in 2015, Andrew Haldane, Chief Economist, Bank of England said that up to 15 million jobs in the UK could be at risk of automation over the same time period.⁴⁶ Unite is clear that to avoid the worst case scenarios, workers and their trade unions must play a central role in the implementation of new technology and share of rewards. As others have noted, an appreciation of the crucial role of labour bargaining power is missing from today's debate about the 'march of the robots'.⁴⁷

This rapid rate of technological change presents a very real threat of job losses to workers in all areas of the economy and in many different unrelated roles. Unite has identified more than 650,000 Unite members working in high risk sectors at risk of losing their jobs through automation.

⁴⁶ 'Labour's Share' - a speech given by Andrew Haldane, Chief Economist, Bank of England, to the Trades Union Congress, London, 12 November 2015

⁴⁷ 'Fear of the robots is founded in the messy reality of labour', Duncan Weldon, Financial Times, 17th April 2016, [URL](#)

Using Frey and Osborne's methodology some 232,000 of these Unite members could lose their jobs by 2035.⁴⁸

A modern economy should ensure that technology is only implemented when it is beneficial for all. While it is agreed that automation will change the nature of existing work, Unite does not accept that it must result in inferior work or unemployment.

Unite is calling for:

- The **extension of collective bargaining in the workplace to include the introduction of new technology;**
- **Trade union members at board level to be involved in all decisions relating to the introduction of new technology in the workplace;**
- **Regulation for how employee information can be gathered, stored and disclosed;**
- A '**Future of Automation**' Commission involving trade unions, employers, research councils and academics, tasked with finding potential solutions for the future;
- **Social and economic impact assessments** to accompany government investment in new technology such as autonomous or electric vehicles.
- A commitment to a **programme of re-skilling and up-skilling** existing workforces;
- The creation of **new training and apprenticeship schemes** reflecting changing job roles.

Unite works closely with our sister trade union in Germany, IG Metall, who have pioneered the response to automation. Alongside China and the United States, Germany is a global leader in automation, where it is known as Industry 4.0. The German Confederation of Employers, the BDA, was quick to recognise the potential of automation for driving down wages and eroding conditions. A BDA position paper called *Opportunities of Digitalization*, in essence a manifesto for precarious work, proposed the following ideas:

- No regulation of agency work
- No maximum daily working time
- No protections against workplace stress
- No regulation of crowd working
- Cooperation with trade unions must not hinder modernisation
- No legal restriction on working time
- Extending the use of zero hour contracts
- Flexible use of employee data.⁴⁹

IG Metall organises workers across German manufacturing and in response the union sought to position itself at the centre of change. This included lobbying and working with government to shape regulation for industrial health and safety. The union also partnered with universities in Bochum and Darmstadt to establish 'Qualification Labs' to propose the new types of jobs and apprenticeships needed for digital manufacturing.

The union has also signed Germany's first 'Industry 4.0' company level agreement with engineering firm Bosch-Rexroth at Homburg, Saarbrücken. The agreement gives the Works Council, comprised of elected union shop stewards oversight into the phased introduction of new production methods. The agreement also includes safeguards for the collection, storage and use of data.

⁴⁸ From brawns to brain: the impact of technology on jobs in the UK, Deloitte, [URL](#) (P1 and Unite's membership system)

⁴⁹ *Opportunities of digitalization*, Position Paper, Bundesvereinigung der Deutschen Arbeitgeberverbände (BDA), Germany

While the agreement between the Works Council and Bosch-Rexroth sets a precedent, IG Metall are also aware that automation will impact workers who are no longer in the traditional workplace.

This example also highlights the important role of social partnership and a recognised institutional role for worker voice and trade unions.

Much like Task rabbit, Uber and Deliveroo in the UK, Germany has seen the rise of the so-called 'Platform Economy,' where piecemeal work is outsourced online. In Germany the website 'Clickworker' claims to have a network of over 800,000 freelancers offering to do work ranging from data processing to publicity.⁵⁰ For manufacturing, this means white collar roles which were traditionally in-house can now be outsourced.

In response IG Metall has launched its own online platform so Clickworkers can be made aware of their rights and get support from the trade union. This includes rating and comparing both pay and terms and conditions to prevent the race to the bottom. For example, as some online platforms proactively try and forbid freelancers workers from communicating with each other, the union's site allows Clickworkers to collaborate and share details on pay.⁵¹

Representation and collective bargaining

This submission started by welcoming the recognition given by the review to the lack of control and voice in the workplace felt by many workers and the role of trade unions and collective bargaining in addressing it. Whilst trade unions themselves need to rise to many of the challenges in a modern economy, it is important to realise, as mentioned earlier, that trade unions do not operate in a vacuum and that public policy has an important role to play.⁵²

Collective bargaining helps address the imbalance in power that exists between employer and employee including the ability to negotiate on pay, benefits, terms and conditions and health and safety in the workplace.⁵³ Without recognition and the right to bargain collectively workers are immediately disadvantaged with only the right to have a shop steward/rep or official represent them in a grievance or disciplinary hearing.

The argument about redressing the bargaining power of labour was recognised over a hundred years ago by Winston Churchill when he introduced the Agricultural Wages Board, which was the last surviving Wages Council before it was abolished by the previous Coalition Government. He said:

"...where you have...no parity of bargaining, 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."^{54 55}

⁵⁰ www.clickworker.com/about-us/clickworker-crowd/

⁵¹ For fair work in the cloud! IG Metall, [URL](#)

⁵² *Labour Markets, Institutions and Inequality*, ILO (2015), [URL](#); *Want to tackle inequality? Shore up collective bargaining*, [URL](#); *International Trends in Insecure Work*, NIESR, May 2017, [URL](#)

⁵³ It's time for a collective bargaining renaissance, [URL](#)

⁵⁴ Winston Churchill, Hansard Series 5, Vol 4, col 388. 28 April 1909, [URL](#)

⁵⁵ Lord Clarke in a unanimous Judgment of the Supreme Court given in July 2011 also made reference to the great difference in bargaining power between those who work and those they work for, [URL](#)

On the issue of the Agricultural Wages Board, it is worth noting that Scotland and Northern Ireland still have a Wages Board negotiating sectorally for workers. In Wales Unite was able to welcome the action of the Welsh Government who introduced legislation for the Agricultural Advisory Panel. Reflecting the difference of approach the Welsh Government had to fight a Supreme Court challenge in order to establish this new arrangement for Wales. In Wales the new body provides fair pay, helps to develop training and career structures for agricultural workers employed across Wales.

Workers in workplaces that recognise trade unions have better terms and conditions than in comparable non-unionised ones. Research shows that workers in unionised workplaces earn on average £4,000-a-year more than workers in comparable non-unionised workplaces and they have greater job satisfaction and job security.⁵⁶ Recognition also means a safer workplace. There are 50% fewer accidents in unionised workplaces than comparable non-unionised ones.⁵⁷

Sectoral collective bargaining

Unite believes that low pay is a drag on productivity. The break-up of sector wide collective bargaining has meant a decline in economic planning, the consumption power of workers and the ability to ensure 'work pays'. Employers have increasingly been forced to compete on cost rather than productivity and quality as they bid to undercut each other on wages.

Sector wide collective bargaining, along with proper employment protection, can help address undercutting and exploitation in labour markets and the unfair treatment of migrant workers and agency workers.

The task required is to develop institutions that will facilitate the process by which wages and conditions can be negotiated and then set for the industry as a whole. This must involve employers' organisations and unions as the key social partners, with government and civil servants facilitating and possibly assisting to identify independent experts to aid the process. Sector forums could also consider other matters of strategic importance such as training and skills.

This submission has already made reference to the establishment Wages Councils to prevent undercutting, and their subsequent abolition. A modern economy must consider how national sector bargaining be rebuilt for the 21st century.⁵⁸ Government should **introduce new sectoral bodies bringing together unions and employers to negotiate pay, conditions, progression and training**. In addition, **ACAS should have its duty to promote collective bargaining restored and fair wages resolutions should be re-introduced in public procurement** establishing a wage floor on the basis of the relevant collective agreements.

Legislative support and the right to access for trade unions

The **2016 Trade Union Act and the 2014 Lobbying Act** undermine workers' fundamental right to independently organise and this legislation **must be repealed**. This must be the first step towards

⁵⁶ One resolution, twenty good reasons to join a union, Work Smart, [URL](#)

⁵⁷ Do the Maths, employers: strong unions are good for business, The Guardian, [URL](#)

⁵⁸ It's time for a collective bargaining renaissance, [URL](#)

substantially raising the level of trade union freedoms in the UK, including dealing with other anti-trade union laws.

Raising trade union rights in the UK must also include giving **trade union Equality Reps statutory rights to facility time in the workplace.**

Workers need to be able to organise for better pay, conditions and rights at work. Government should **give trade unions a right to access workplaces** to tell individuals about the benefits of joining a union and **all workers should have the right to be represented by unions in the workplace.**

In New Zealand the Labour Government introduced straightforward access legislation in 2000.⁵⁹ In 2009 the Conservative administration conducted a review and the Ministry of Innovation and Labour found that Business NZ indicated that there was no clear problem and few complaints, so they were not particularly worried regarding workplace access by unions. There was no widespread evidence of union representatives exercising their current rights to enter workplaces in an inappropriate way, resulting in disruption for business operations or adversely impacting on the employment relationship between employer and union. Thus, the legislation remains in place.

The right to access is not a substitute for the need and requirement to promote collective bargaining and to provide for sectoral bargaining.

In November 2016 the Scottish Government provided £250,000 for a new Trade Union Modernisation Fund to allow trade unions to mitigate the impact on trade unions of the introduction of the Trade Union Act, implemented by the Conservative Government in 2016. Unite has received support from the fund to set up a campaign to organise workers across the hospitality sector.

Case Study: the Petroleum Driver's Passport Ending the race to the bottom in road haulage

Unite members have played a pivotal role in ending the race to the bottom in the road haulage industry. The introduction of the Petroleum Driver's Passport (PDP)⁶⁰ from 1st February 2014 was achieved through a social partnership of trade unions, employers and the Government – an example any successful industrial strategy must emulate.

The Petroleum Driver's Passport (PDP) was introduced to ensure the very highest standards for road tanker drivers in the UK downstream oil distribution sector. This passport was achieved as part of the settlement agreed at ACAS between Unite and the major distributors in 2012 which averted an industry wide strike.

The dispute was about stabilising the distribution of fuel - a commodity that is essential to the smooth running of the country.

Created by the Downstream Oil Industry Distribution Forum (DODF) – a partnership of employers, industry bodies and trade unions, the scheme sets a benchmark in competency against which all

⁵⁹ <http://www.findlaw.co.nz/articles/4280/union-access-to-workplaces.aspx>

⁶⁰ Petroleum Driver Passport UK Downstream Oil Distribution Forum (DODF), Unite the Union, [URL](#)

road tanker drivers involved in the loading, transporting and offloading of petroleum fuel products in the UK are measured.

Delivering the fuel that keeps our houses warm, our cars on the road and aircraft flying is dangerous work. Fuel is a highly volatile commodity. Following the Buncefield oil storage explosion in 2005, investigators made a number of safety recommendations for contractors involved in the loading and offloading of fuel products.

Unite members believed that a robust safety passport scheme would ensure that drivers delivering to UK forecourts are trained to the same high standards the Buncefield team recommended eight years after the disaster.

Case study: Fife Council Construction Charter

An example of the benefit of working with trade unions collaboratively is found in Scottish local government. In February 2017 Fife Council agreed a new construction charter to promote local employment, fair wages and worker protection.

The Fife Council Construction Charter - which has been drawn up with the help of Unite - is designed to stamp out bad industry practices, such as bogus self-employment schemes, on construction sites in the county. The Charter says companies should not use umbrella companies to pay workers, and underlines the vital role of collective bargaining through trade unions.

All construction contractors doing work directly for the council will be asked to agree to it and others who approach the council for other matters like planning permission will be strongly encouraged to do so.

The charter will ensure that local investment is directed towards companies who support the local community, pay a fair wage and treat workers with respect and dignity. It also enshrines health and safety standards, while encouraging construction firms to promote and improve opportunities in education and training.

Case study: undercutting in construction sector

Unite has also exposed and campaigned against undercutting and exploitation of construction workers including, most recently, several Danish firms who are involved in the funding and building of major energy from waste projects in the UK.⁶¹ Workers are being paid up to 61 per cent below agreed industry rates, with some workers being paid just the minimum wage and financing their own accommodation and travel.

Babcock & Wilcox Vølund, which is building an energy from waste project in Rotherham (worth £165 million), sub-contracts large chunks of their work to Croatian company Duro Dakovic which pays workers as little as the minimum wage of £7.50 an hour. The industry agreement (NAECI) has a basic rate of £16.97 an hour with an hourly bonus of £2.37 an hour.

⁶¹ Unions demonstrate in London, Rotherham, Sandwich and Solihull over construction undercutting, [URL](#)

Burmeister & Wain Scandinavian Contractor is the principal contractor at project in Sandwich in Kent worth £175 million. The company refuses to allow unions access to the workforce and does not pay the hourly bonus, industry sick pay, enhanced holiday pay, travel and accommodation allowances and other benefits.

Both projects are being financed by Copenhagen Infrastructure Partners, the investment arm of Pension Denmark. The organisation has clear corporate social responsibility policies which should apply to the organisation's supply chains both domestically and abroad, however these policies are being flouted.

The Danish government has clear policies in place, due to the way it has interpreted the Posted Workers Directive, which prevents these forms of undercutting and exploitation occurring in Denmark. However this does not legally prevent Danish companies from exploiting workers when they operate abroad.

Conclusion: summary of recommendations

The role of trade unions in the modern economy

- Strengthen workers' ability to organise and bargain through trade unions
- Elected worker representatives on boards
- Employers required to agree collective and independent consultation arrangements when requested by a recognised trade union or by five workers in non-unionised workplaces

Precarious work and ending the race to the bottom

- Extend existing rights to all those in work, not only those who qualify for 'employee' status
- A legal presumption that everyone qualifies for the full set of employee rights, placing the onus on the employer to prove that this is not the case
- Family friendly rights extended to all workers from day one of their employment
- A day-one right to a written statement setting out pay and conditions, including expected hours of work, for all workers
- Ensure enforcement agencies including the Gangmasters and Labour Abuse Authority (GLAA) and HMRC are given sufficient resources
- Public spending used to promote and advance fairness, more secure employment and genuine worker voice

Self-employment

- HMRC should be provided with sufficient resources to ensure company compliance with tax and National Insurance obligations
- So-called 'umbrella companies' be outlawed along with other forms of bogus self-employment

Zero hours contracts

- A ban on zero hours contracts
- Exclusivity clauses must be abolished, especially for contracts less than 25 hours a week

Agency workers

- The use of agency workers should be limited to the occasions that they are necessary and for short periods. Then they should become employees.
- Remove 'Swedish Derogation' from the Agency Worker Regulations
- Provide for joint and several liability in relation to the "three-way relationships"
- Compulsory collective bargaining for agencies and for companies recruiting from abroad

Fair tips

- Primary legislation to give staff 100% ownership of their tips
- Rules to ensure that company Tronc schemes are genuinely independent
- Greater transparency so that staff and consumers alike know how the money from discretionary charges is divvied up
- 2009 voluntary code of practice to be put on a statutory footing

Unpaid internships

- Ban on unpaid internships

Enforcement

- Abolish Employment Tribunal fees
- Ensure enforcement agencies are given sufficient resources
- Seats for trade unions at Board level reintroduced to the GLAA

National Minimum Wage and Low Pay Commission

- Low Pay Commission should have its remit widened to look at the causes and consequences of low pay and investigate potential solutions
- Workers aged 22-24 should be included in the higher minimum wage

Migrant domestic workers and 'Tied Visa' scheme

- Allow overseas domestic workers to apply for a two-year extension to their visa, instead of the proposed six months
- Information meetings should be a mandatory condition of the visa
- Formal recognition that the requirements of the overseas domestic worker visa preclude a 'family membership relationship'
- Clarification in the law that employers may be prosecuted for not paying the NMW whether their workers have legal contracts or not
- Trade union to be able to make a representative action on behalf of a group of workers to an employment tribunal

Offsetting or profiting?

- LPC look at strengthening the threshold to defend unfair dismissal cases using 'some other substantial reason' (SOSR)

Progression and training

- Trade union representative on the Institute of Apprenticeships board

Automation

- Extension of collective bargaining in the workplace to include the introduction of new technology
- Union members at board level to be involved in decisions relating to introduction of new technology in the workplace
- Regulation for how employee information can be gathered stored and disclosed
- A 'Future of Automation' Commission
- Social and economic impact assessments
- Programme of re-skilling and up-skilling
- New training and apprenticeship schemes

Representation and collective bargaining

- New sectoral bodies bringing together unions and employers to negotiate pay, conditions, progression and training
- ACAS should have its duty to promote collective bargaining restored
- Fair wages resolutions re-introduced in public procurement

Legislative support and the right to access for trade unions

- 2016 Trade Union Act and 2014 Lobbying Act to be repealed
- Trade union Equality Reps statutory rights to facility time in the workplace

- Give trade unions a right to access workplaces
- All workers should have the right to be represented by unions in the workplace

For further information please contact:

