

# Fair Enough?

Protecting Scotland's  
workers from  
unfair treatment

A report by  
Citizens Advice Scotland



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## Executive Summary

The Citizens Advice Service is a major source of external advice for people who experience employment problems. In 2013/14, citizens advice bureaux in Scotland advised clients on 46,540 new employment issues. Some of these issues are examples of extremely unfair employment practices which place clients in a difficult, complex and miserable situation. This report examines the unfair employment cases brought to bureaux and makes recommendations for how the system can be improved.

As well as being in the interests of people who experience unfair treatment at work, it is in the interests of government and society as a whole that fair employment is promoted. Workers in low quality, stressful jobs have poorer general health outcomes, and poor daily quality of life than other groups – even those who are unemployed. It is also important to ensure that unscrupulous employers who wilfully undermine their employees' basic employment rights do not gain an unfair advantage over fair employers.

The numerous examples of unfair employment we present in this report include:

- Clients being dismissed in unfair circumstances, including for being off sick, attempting to take holiday, or informed of their dismissal by text message.
- Employees who were not paid at all by their employers, in one case for six months' full-time work.
- Employers who failed to pay their employees' income tax and national insurance leaving them to pick up the bill; and instances of clients paid considerably below the National Minimum Wage.
- Clients who were unfairly denied sick pay when seriously ill
- Employers refusing to allow employees to take paid holiday
- Women who were dismissed when they became pregnant
- Instances of racist and sexist bullying at work
- Migrant workers who were exploited and made to work excessive hours
- Clients who could not afford the fees to pursue an Employment Tribunal claim
- Cases where a client won their case at an Employment Tribunal, and were awarded several thousand pounds, but their ex-employers managed to avoid paying them any of the money they were due
- Many of the examples of poorest practice relate to clients on zero hours contracts

Citizens Advice Scotland believes more should be done to promote fair employment and ensure that unfair employers are brought to account. In the report, we make a number of recommendations for how the system should be improved including:

- Removing Employment Tribunal fees
- The creation of a new statutory Employment Commission to oversee the enforcement of employment law and promote fair employment
- Action to make it easier for workers to receive money awarded to them by an Employment Tribunal
- Additional resources to enforce payment of the National Minimum Wage, and to target employers who do not pay their employees' income tax.
- Extending protection from unfair dismissal, as well as rights to full parental leave and pay to those classed as 'workers' (such as many on zero hours contracts).

## Summary of Recommendations

Citizens Advice Scotland recommends:

### Improvements to the Employment Tribunal system

- No fees should be charged to bring a claim before the Employment Tribunal.
- The system of enforcement of Tribunal awards in Scotland should be strengthened. The Scottish Government and Parliament should work together with the UK Government to address this as it overlaps devolved and reserved issues.
- Employment Tribunal awards, expenses or fees unable to be enforced due to insolvency or phoenix trading should be able to be claimed from the National Insurance Fund.
- The length of time an employee is required to have worked for an employer to be able to bring an Employment Tribunal claim for unfair dismissal should be reduced from two years to one.
- The Acas Early Conciliation system has the potential to make a positive difference to the enforcement landscape, and ongoing evaluation of its effectiveness should be conducted. However, it should not be viewed as a replacement for the Employment Tribunal system, nor as a justification for levying fees to bring a Tribunal claim.

### Enforcing employment law and promoting fair employment

- A new statutory body, an Employment Commission, should be created to oversee the enforcement of employment law, with the legislative teeth to target rogue employers.
- Provide additional resources on an ongoing basis to ensure that payment of the National Minimum Wage is enforced
- Efforts and resources to tackle employers not paying employees' Income Tax and National Insurance should be increased.
- Scotland's Fair Work Convention is a welcome development. The Scottish Government should examine the possibility of extending its role once it is fully established.
- When an employee is dismissed, an employer should have a legal duty to communicate the redress systems that are open to the employee, should they wish to contest the decision.

## **Strengthening the rights of zero hours contract 'workers'**

- Protection from unfair dismissal should be extended to 'workers' as well as 'employees'.
- Full rights to parental leave and pay should be extended to 'workers' as well as 'employees'.
- 'Workers' and 'employees' on a zero hours contract should be given a statutory 'right to request' a contract that guarantees hours, without suffering dismissal or detriment for making the request.

## Introduction

Most of us will spend a significant proportion of our lives at work. Most of the time employees have a good relationship with their employer, enjoy fair rights and conditions and work hard for them in return. But sometimes things can go wrong. Sometimes things go badly wrong and lead to unfair employment practices being carried out.

The Citizens Advice Service is the most common external source of advice for employees who experience problems at work.<sup>1</sup> In Scotland last year, clients brought over 46,000 new employment issues to their local CAB, and received free, impartial and confidential advice on their problems, the same good quality of advice provided by citizens advice bureaux for over 75 years.

Often, problems and queries can be quickly resolved, but CAB clients also experience some extremely unfair treatment at work. Bureaux have advised clients who have been dismissed in unfair circumstances, not paid in full – or at all, paid less than the National Minimum Wage, sacked when they go off sick, stopped from taking any holiday, dismissed when they become pregnant, encountered racist or sexist harassment at work, or been bullied by their employer.

Many of these practices are illegal, but employees can experience significant barriers to upholding their rights. They may have attempted to seek justice in an Employment Tribunal, but been unable to afford fees of up to £1,200 to bring a case. Or they have won their case, but their ex-employer has managed to avoid paying them the money they are due. Or they may not have been able to assert their rights due to fear of losing their job.

Unfair employment doesn't just cause problems for the individuals concerned, it's something that causes problems for society more widely. As part of a major study of poverty and social exclusion in Scotland and the UK, researchers found that people who worked in low quality, stressful and insecure jobs had poorer general health and a lower satisfaction with daily activities than those that were unemployed.<sup>2</sup> Unfair employment has an effect on public services, and many other areas of people's lives outside the workplace, and is unfair on employers who make efforts to treat their staff fairly and comply with the law.

In the wake of the great recession in 2012, Citizens Advice Scotland (CAS) published 'Fair Employment: Why Scotland's workers need a Fair Employment Commission'<sup>3</sup>. It lifted the lid on numerous examples of poor employer behaviour and argued for a statutory body to be established to help enforce employment rights

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<sup>1</sup> Workers, Marginalised Voices and the Employment Tribunal System: Some Preliminary Findings - N. Busby and M. McDermott in Industrial Law Journal, July 2012.

<sup>2</sup> Employment, poverty and social exclusion – Poverty and Social Exclusion in the UK project, June 2014  
[http://poverty.ac.uk/sites/default/files/attachments/Bailey%2C%20Employment%2C%20poverty%20and%20social%20exclusion\\_0.pdf](http://poverty.ac.uk/sites/default/files/attachments/Bailey%2C%20Employment%2C%20poverty%20and%20social%20exclusion_0.pdf)

<sup>3</sup> Fair Employment: Why Scotland's workers need a Fair Employment Commission – Citizens Advice Scotland, February 2012. <http://www.cas.org.uk/publications/fair-employment>



and responsibilities. Since then, the recession has ended, but problems at work have arguably got worse.

In the three years since the report was published, zero hours contracts and other forms of insecure working have become increasingly prevalent, with workers employed on that basis subject to some of the most unfair practices. Legislative changes have made it harder for employees to secure fair treatment with the introduction of fees to bring cases to an Employment Tribunal, and requiring employees to have worked for their employer for at least two years before they can bring their case to Tribunal. This has led to the amount of cases heard by an Employment Tribunal plummeting by 80%, against a backdrop of consistent unfair practices.

This report, which is accompanied by a national campaign, reveals the unfair practices that many of Scotland's workers face on a daily basis. It presents numerous case studies, revealing some examples of poor treatment of workers, all of which were brought to a Scottish CAB in 2014. No employers are named in this report – our intent is to highlight the unfair practices that are taking place in Scotland's workplaces rather than 'naming and shaming'. But these examples are not restricted to large or small employers, or from one or two particular sectors. Just as any employer can be a good employer, any employer can be an unfair one.

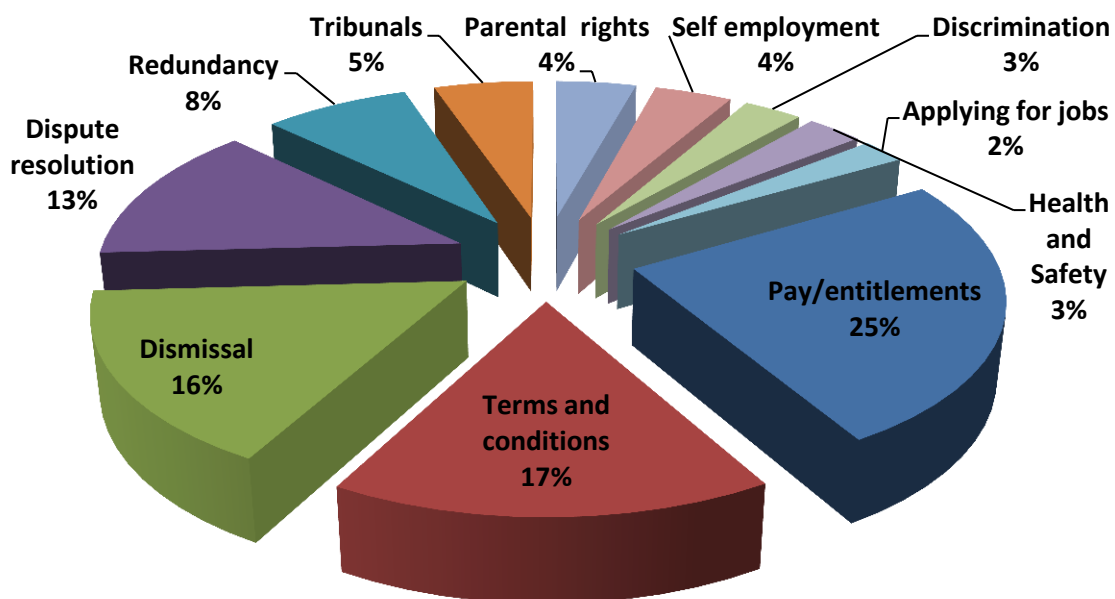
It is in the interests of employees, employers and government that fair employment is promoted in Scotland. In this report CAS makes a series of recommendations to improve the system which we believe would do just that. The recommendations would restore the Employment Tribunal as a place where all employees can access justice for unfair treatment. And our proposed Fair Employment Commission would play a crucial role in ensuring fair employment is actively promoted, the rogues are rooted out, workers' basic rights are secured and ensuring that unfair employers don't gain an advantage over fair ones.

## What problems do CAB clients encounter at work?

Scotland's citizens advice bureaux advise clients on a wide range of employment issues each year. Bureaux advised on 46,540 new issues related to employment in 2013/14 – an increase of 6% compared to the previous year. Employment issues were the third most common area of advice sought by CAB clients with more than one in twelve total new issues brought to bureaux related to employment.

Figure 1 shows a breakdown of the types of employment issues that clients sought advice on:

**Figure 1: Types of employment issues**



Employment issues that increased in number in 2013/14 include self-employment (+19%), parental and carers rights (+15%), pay and entitlements (+19%) and employment tribunals (+7%). Redundancy (-10%) was the only category that fell in number compared to the previous year.

Looking in further detail at the types of issues brought to bureaux reveals the breadth and depth of employment advice provided across Scotland. Table 1 below shows the top 30 advice codes related to employment, revealing some of the most common problems facing clients. However, it should be noted that these make up just 75% of new employment issues, which further underscores the variety of reported problems that clients require advice on.

**Table 1: Top 30 employment advice codes at level 3**

	<b>Issue</b>	<b>Number<sup>4</sup></b>	<b>% of employment issues</b>
<b>1</b>	Contract/terms and conditions	4,647	7.6%
<b>2</b>	Wages, deductions and payslips	3,521	5.8%
<b>3</b>	Grievance procedures	3,327	5.5%
<b>4</b>	Dismissal procedure	2,960	4.9%
<b>5</b>	Holidays/holiday pay	2,870	4.7%
<b>6</b>	Sick pay	2,830	4.6%
<b>7</b>	Unfair dismissal	2,816	4.6%
<b>8</b>	Disciplinary procedures	2,197	3.6%
<b>9</b>	Redundancy pay	1,741	2.9%
<b>10</b>	Notice and pay in lieu of notice	1,402	2.3%
<b>11</b>	Pay – other	1,331	2.2%
<b>12</b>	Illegal deductions from pay	1,303	2.1%
<b>13</b>	Maternity leave and pay	1,223	2.0%
<b>14</b>	Wrongful dismissal	1,184	1.9%
<b>15</b>	Working hours and breaks	1,040	1.7%
<b>16</b>	Dismissal - other	1,007	1.7%
<b>17</b>	Employment tribunals and appeals procedure	993	1.6%
<b>18</b>	Employment tribunals and appeals – time limits	945	1.6%
<b>19</b>	Terms and conditions – other	916	1.5%
<b>20</b>	Redundancy notice	836	1.4%
<b>21</b>	Sick leave	799	1.3%
<b>22</b>	Employment tribunals and appeals – eligibility	770	1.3%
<b>23</b>	Selection for redundancy	754	1.2%
<b>24</b>	Business start-up	738	1.2%
<b>25</b>	Dispute resolution – other	737	1.2%
<b>26</b>	Redundancy – other	663	1.1%
<b>27</b>	Constructive dismissal	648	1.1%
<b>28</b>	Employment tribunal fees	598	1.0%
<b>29</b>	Resignation	591	1.0%
<b>30</b>	Accidents and injuries at work	552	0.9%

It is clear therefore that Scotland’s citizens have many issues at work that require information and guidance about their rights, or advice about how they can resolve a problem. Often they can address the issue with help from their local CAB. In a significant number of other cases however, employers have been able to treat their employees poorly and place them in a difficult, complex and miserable situation. The next part of the report looks at these cases, which expose some common and concerning employment problems encountered by CAB clients. As these are just the cases where a client has visited a bureaux for advice, there will be other instances where people’s problems at work go unaddressed and unresolved.

<sup>4</sup> A total of 61,014 advice codes were recorded at this level, compared with 46,540 new employment issues. This is because often clients will require advice on more than one aspect of their issue.

## Zero Hours Contracts

No analysis of employment issues over the past couple of years would be complete without an acknowledgement of the rise of the zero hours contract. These ‘flexible’ employment arrangements have become increasingly prevalent during that time – the Office of National Statistics estimated that in the UK in February 2014 there were around 1.4 million employee contracts that do not guarantee a minimum number of hours. Zero hour contracts are particularly prevalent in the tourism, catering, food and care industries.<sup>5</sup> According to evidence submitted to the House of Commons Scottish Affairs Committee, a number of well-known high street names employ tens of thousands of staff on a zero hours basis.<sup>6</sup>

Whilst zero hours contracts may be well-suited to particular types of work, such as casual or seasonal labour, the *misuse* of zero hours contracts is becoming a major problem, which should be addressed to prevent exploitation and hardship. Misuse can include situations where zero hours contracts are issued by employers inappropriately, such as where a full-time or part-time contract may be better suited. Based on the experiences of clients, Citizens Advice Scotland has actively campaigned for action to tackle misuse of zero hours contracts.<sup>7 8</sup> In particular, we have focussed on the impact misuse has on the levels of in-work poverty, with a significant number of clients reporting that they face hardship and debt as a result of a work pattern that fluctuates from week to week, making it impossible to budget. This can also make it very difficult to access in-work support from the benefits system, as clients’ weekly incomes can vary dramatically, with entitlement to different benefits changing on a constant basis.<sup>9</sup>

However, misuse of zero hours contracts has also led to a number of serious concerns with regard to workers’ basic employment rights. As casual workers on ‘true’ zero hours contracts (those that are a genuine flexible ‘as and when required’ working arrangement) are classed as ‘workers’ rather than ‘employees’, they are entitled to fewer basic statutory rights at work.<sup>10</sup> Employment tribunals will look at what happens in practice when deciding what someone’s employment status is (for instance, if a person was employed on a zero hours contract, but in practice worked 30 hours per week regularly they would generally accrue the rights of a full-time

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<sup>5</sup> Analysis of Employee Contracts that do not Guarantee a Minimum Number of Hours – Office for National Statistics, April 2014 <http://www.ons.gov.uk/ons/rel/lmac/contracts-with-no-guaranteed-hours/zero-hours-contracts/art-zero-hours.html>

<sup>6</sup> Zero hours contracts in Scotland: Interim Report - Scottish Affairs Committee, April 2014 <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmsscota/654/65402.htm>

<sup>7</sup> Consultation – Zero hours employment contracts: Response from Citizens Advice Scotland, March 2014 <http://www.cas.org.uk/publications/consultation-zero-hours-employment-contracts>

<sup>8</sup> Consultation response – Banning exclusivity clauses in zero hours contracts – Citizens Advice Scotland, November 2014 <http://www.cas.org.uk/publications/consultation-response-banning-exclusivity-clauses-zero-hours-contracts>

<sup>9</sup> Working at the Edge: Zero hours contracts – Citizens Advice Scotland, July 2014 <http://www.cas.org.uk/publications/working-edge-zero-hours-contracts>

<sup>10</sup> Compared with employees, workers usually are not entitled to minimum notice periods if they are dismissed; protection against unfair dismissal; the right to request flexible working; time off for emergencies or Statutory Redundancy Pay. In some circumstances they are not entitled to Statutory Maternity Pay; Ordinary Statutory Paternity Pay and Statutory Sick Pay.

employee). However, this creates an unclear situation for the individual who is looking for basic advice.

Particular practices appear to affect workers on zero hours contracts more than other groups of workers, as illustrated throughout this report. Perhaps most importantly in this context however, is the difficulties workers on zero hours contracts can have enforcing their statutory rights, due to their employer's ability to simply not give any work to staff who have incurred their displeasure, rather than undertake any disciplinary or grievance process. This practice, which has become known as 'zeroing down' creates a real barrier to asserting what basic rights at work zero hours contract workers have.

Throughout this report, cases where the client's zero hours employment status has contributed to the problem they encounter is marked with this symbol.



N.B. In this report, we refer to workers and employees interchangeably – this should not be taken as references to the differing legal statuses referred to above. In virtually all the case studies, the individual would legally be an 'employee' rather than a 'worker'. As we argue in our recommendations, we believe that those classed as 'workers' should be entitled to the same protections from unfair dismissal, the same parental leave and pay rights, and the right to request a fixed hours contract under flexible working regulations that 'employees' currently have. Where we refer to the legal classification, 'worker' and 'employee' appear in inverted commas.

## Dismissal

When an employee is dismissed by their employer it can be a particularly stressful and unsettling time in their lives. Not only do they face a loss of income, their future employment prospects may be adversely affected and they may feel ashamed and afraid to tell anyone else about it.<sup>11</sup> If they feel they have been unfairly or wrongfully dismissed they will often feel angry and seek to rectify the injustice they have encountered.

Whether a harsh dismissal is classed as an unfair dismissal in law is complex<sup>12</sup>, and will often require specialist advice. Certain types of dismissal are automatically unfair, such as if an employee is dismissed because of discrimination - such as because they are pregnant, because they are trying to enforce their basic statutory employment rights, for taking action over a health and safety issue or for joining a trade union. An individual in these situations can make a claim for unfair dismissal at an employment tribunal regardless of how long they have been employed.

Depending on the reason an employer has given for dismissing an employee, and whether they have followed the correct procedures<sup>13</sup> for doing so, their dismissal may be unfair. However, for cases which are not counted as automatically unfair, someone needs to have been employed for two years to be entitled to pursue an unfair dismissal claim at an employment tribunal. This excludes a number of workers who appear to have been dismissed in unfair circumstances from achieving redress if they have worked for their employer for less than 24 months.

This has only been the case since 2013, as previously employees only had to be employed for one year to make a claim for unfair dismissal. This has created an additional barrier to justice for many workers who have been dismissed in harsh circumstances.

Issues related to dismissal were the third most common area of employment advice in bureaux in 2013/14, with 7,128 new issues during the year. CAB clients in Scotland have sought advice after being dismissed for spurious reasons, or in very harsh circumstances. Often they will appear to have been dismissed unfairly, but would seem to have very few options for redress.

### Dismissed for being off sick

If an employee is dismissed because they are ill, or have asked for Statutory Sick Pay, they may have been dismissed unfairly and be able to take the case to an employment tribunal if they meet the qualifying criteria. Bureaux have advised clients who appear to have been dismissed because they have fallen ill and been unable to work. A number of clients were dismissed because of a mental health issue.

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<sup>11</sup> You're fired: Why is there such a stigma in getting the sack? – Daily Telegraph, July 2014  
<http://www.telegraph.co.uk/women/womens-business/11000065/Youre-fired-Why-is-there-such-a-stigma-in-getting-the-sack.html>

<sup>12</sup> For further information on dismissal, see Adviceguide  
[http://www.adviceguide.org.uk/scotland/work\\_s/work\\_work\\_comes\\_to\\_an\\_end\\_s/dismissal.htm](http://www.adviceguide.org.uk/scotland/work_s/work_work_comes_to_an_end_s/dismissal.htm)

<sup>13</sup> An employer taking disciplinary action or dismissing an employee should follow the Acas Code of Practice on disciplinary and grievance procedures. <http://www.acas.org.uk/index.aspx?articleid=2174>

- A West of Scotland CAB reports of a client who had been dismissed from her employment in a pharmacy after 18 years, after being off sick with anorexia. She had attended what she had been told was an 'update meeting', when she was told her contract was being terminated. The client is very upset at being dismissed and feels her medical evidence was not taken into consideration, although the termination letter suggests otherwise. She has a letter from her doctor advising she is physically and mentally disabled. On the other hand, the client is positive that in the future her health will improve as she has a team of people helping her to eat which in turn means she is gaining weight, getting stronger and helping her mental wellbeing.
- A South of Scotland CAB reports of a client who felt he was being consistently undermined at work and felt intimidated at times. He was also concerned about some safety practices. He raised these issues with his employer and said they were affecting him but felt he did not get anywhere. He went to the doctor three weeks ago as he felt his depression was starting again and was signed off for four weeks. However, his employer would not accept this so he cancelled his sick leave and went straight back to work. After a week he had to go back to the doctor and was signed off again. The employer then phoned the client and told him that he was letting him go as he was 'not reliable enough'.
- An East of Scotland CAB reports of a client who had been due to go back to work after being off sick for six months with blood clots. However, his employer has just sent him a letter to say his employment has been terminated and he would be paid off. The client had been employed since 2000, most recently on a zero hours contract.



### Dismissed for taking holiday

Some employers expect their staff to be available to work at all times throughout the year, and in some cases have dismissed staff who take holiday. This appears to be a particular problem for clients on zero hours contracts.

- A West of Scotland CAB reports of a client who works in a local pub on a zero hours contract, being given shifts as and when required, often at very short notice. He took a week's holiday against his employer's wishes a month ago and has not been given any shifts since that time.
- An East of Scotland CAB reports of a client who had worked at weekends for her employer for over six years on a zero hours contract. She had given three months' notice of taking a weekend's holiday to go to her boyfriend's 21<sup>st</sup> birthday, but her employer refused the request. As she was on a zero hours contract she declined the shift when it came. Her employer dismissed her, despite her having no previous disciplinary problems.



A related problem can occur when an employer reduces the amount of work given to a worker, but will not allow them to take on a second job so they can be constantly available for work on a short notice basis. The Small Business, Enterprise and Employment Bill proposes to ban exclusivity clauses in zero hours contracts in an attempt to address this. However, this can occur with other types of contract and has led to CAB clients being dismissed for attempting to maximise their working hours.

- A North of Scotland CAB reports of a client who was employed as a private carer for just over two years. She does not have a written contract of employment. She used to work around 22 hours per week, but her employer had reduced her hours to between 12 and 14. The client had to find another part time job to supplement her income which is weekend work. She agreed verbally with her former employer that she would only be able to work between Monday and Friday which was agreed. However, they then subsequently dismissed her as she is now unable to work weekends despite the verbal agreement. The client wished to check her rights regarding this and what her options might be regarding unfair dismissal.

### **Dismissed after raising complaint or grievance at work**

In some cases employees have been dismissed by their employer for attempting to assert their rights by making a complaint about a particular practice or incident that has occurred at work.

- An East of Scotland CAB reports of a client who had raised a written grievance with his employer as he is concerned about his working conditions and feels the industry's health and safety regulations are not being followed. However, since he sent the letter he has not been given any shifts at all. He has a zero hours contract.
- An East of Scotland CAB reports of a client who was employed in the care sector on a zero hours contract. She was paid based on the number of clients she attended to, but was consistently underpaid. She then became pregnant but when she informed her employers they cut the amount of clients she was allocated, consequently cutting her income. When she complained about this to her employer she was given no further shifts. After a time, they suggested she had been dismissed, but the client has never received written confirmation of this.



### **Informed of dismissal by text message**

Employers have been known to inform staff of their dismissal by text message. Whilst not automatically unfair, the practice could be seen as somewhat callow and trivialising a serious matter. Workers who have been sacked by SMS have



previously been successful in claims to an employment tribunal in Scotland<sup>14</sup>. Some CAB clients may have no choice but to accept dismissal through this medium, if they have worked for their employer for less than two years.

- Citizens Advice Direct reports of a client whose daughter had been working for the past four months on a zero hours contract. Usually she gets contacted by SMS texts or phonecalls to let her know when her shifts are. This morning she got a phone call that her daughter had not turned up at work and would be sacked. However, her daughter did not know that she was supposed to be at work, as no one had contacted her.
- A West of Scotland CAB reports of a client who considered she had been unfairly dismissed by text message. She had worked as a dental nurse for a dentist for four years, and when he set up a new practice he persuaded her to come and work there. She signed a contract but was not given the opportunity to read it. She had been working there for six months at 41.5 hours per week. She received a text two months ago reducing her hours to 38 hours, followed by another text last week reducing her hours to 30. She texted back to say she was not happy and asking how much notice she would have to give if she wanted to leave. No answer was received. A few days later she then received a text dismissing her. The reasons given were that she was coming to the end of her probationary period, and her performance had not been satisfactory. The client said she did not know she was on a probationary period and at no time had she been told that her performance was unsatisfactory.



### **Dismissed without any reason given**

In some instances, employees have sought advice from their local CAB because their employer had dismissed them but given no reason for doing so.

- A West of Scotland CAB reports of a client who had worked as an admin assistant for six months when her manager informed her that her contract had been terminated without any cause or reason. The client had never received a payslip or been given a written contract of employment to sign.
- A North of Scotland CAB reports of a client who was dismissed without reason from her job as a cleaner after eleven weeks. She was promised reasons in writing but these have not been received. She wants to know what happened in case there is some problem she needs to address and is also concerned about the lack of a reference.

Being dismissed in unfair circumstances with no channel of redress is annoying for those workers who feel they have been unfairly treated, but the consequences can

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<sup>14</sup> OMG, soz but UR sacked... The cowardly employers who fire staff by text message – Metro, July 2013 <http://metro.co.uk/2013/07/29/omg-soz-but-ur-sacked-m8e-the-cowardice-of-employers-who-fire-staff-by-text-message-3899725/>

be far more serious than that. It can end long careers in a particular sector in a stroke, and can serve to restrict the opportunities for new employment for an individual, due to employers being reluctant to take on someone who has previously been dismissed. In some cases, like the one below, being unfairly dismissed has led to an individual's world falling apart.

- A South of Scotland CAB reports of a client who attended in a distressed state. He had been dismissed from a well-paying job in disputed circumstances. He had been asked to pay back a £5,000 relocation fee to his employer. The terms of the deal were that if he stayed with the firm for a year, the firm would pay these fees. The firm dismissed him about a week before the first year was up. His dismissal had led to his life going into a downward spiral, including a delay on his Jobseeker's Allowance (JSA) application and he had accrued rent and energy arrears. The client had to be referred for a food parcel.

## Pay

### Not being paid for work done

One of the most basic features of work is that employees are entitled to be paid for the work they have done. However, CAB clients have reported not being paid in full by their employers, in some cases on a regular basis. Sometimes this may be a sign that the business is in trouble, but in other instances there appears to be no apparent reason for wages not being paid. On occasion employees have worked for their employer for several months without being paid at all. With 11,016 new issues in 2013/14, pay and entitlements advice was the most common area of employment advice. It makes up a growing proportion of issues clients bring to their local CAB, up 9% on the previous year.

- An East of Scotland CAB reports of a client who succeeded in finding a job at a local fast food outlet. At the end of her first week, the client asked for her wages which she calculated to be £55, but was told that she was 'dismissed', and that as she was leaving there was no need for the employer to pay her. She has since found that this has been the situation with many of her fellow workers. Her 'employer' did not take any personal details from her - not even her name - before she started work and there is no contract of employment. She is seeking help to be paid the money she is due.
- A West of Scotland CAB reports of a client who believed she was employed by someone as a groom, which included accommodation and livery. The client was told she would be paid for the work and it was arranged for the employer to be reimbursed through a 'DWP job incentive scheme'. However, this did not happen as the employer had no employer's liability insurance. The client advises she was given no wages at all for the six months she has worked there. The client has calculated that she is due about £6,000. She feels she was further exploited during this period of employment as she was sometimes locked in the stables and was made to work seven days a week for long periods of time.
- A West of Scotland CAB reports of a client who started work at a restaurant two months ago and has not been paid a salary for 80 hours' work. 40 other members of staff have also not been paid. The client was told he would not be paid until the end of this month, but the contract states he would be paid monthly. He was offered 70% until his salary would be paid in full, but he wants his full pay now.

Aside from tax and National Insurance deductions, there are very few circumstances where an employer can legally make deductions from an employee's pay without their express written agreement, such as if they have been accidentally overpaid, because they have been on strike, or if an earnings arrestment has been ordered by a court or employment tribunal. However, a number of CAB clients have had their pay docked in apparently unlawful circumstances.

- A West of Scotland CAB reports of a client who was dismissed from her job publicly at a staff meeting. She is not interested in pursuing the reason for her

dismissal but is concerned about getting the pay which is due to her. She was expecting approximately £800 in her final payslip, but received only £401. Part of the payslip indicated a “Manager deduction” of £100. The client has no idea why this deduction was made. She also received no holiday pay even though some was due to her.

Whilst making unlawful deductions or not paying staff for work they have done is illegal, in practice employees can ‘suffer in silence’ as they fear reprisals from their employer as the case below illustrates.

- A West of Scotland CAB reports of a client who is having problems getting paid in full by her employer. She was underpaid by £235 two months ago. Her supervisor said she could only pay her £150 of this and she would get the remaining £85 the next month. However, the next month a further £150 was deducted, the £85 was missing and she had not been paid for a further 16 hours work. Her supervisor told her that it would be best to wait for her next pay to get it sorted out properly, but when that came around none of the outstanding monies had been paid again. The client is reluctant to make a complaint as she is frightened she will be sacked, which she has witnessed happening to former colleagues who complained about problems at work.

### **Employer not paying Income Tax and National Insurance**

Employees are entitled by law to a written payslip, which clearly shows any deductions for Income Tax and National Insurance. In most cases, Income Tax and National Insurance is deducted by the employer before the employee receives the payment and by law anyone making payments to employees is obliged to operate the PAYE (Pay As You Earn System) and pass the payments on to HMRC (HM Revenue and Customs).

However, some employees have discovered that their employer has not paid their tax. In some cases, the employer has made the deduction but not passed it on, with the employee only discovering this when they are pursued by HMRC for an outstanding amount. This is sometimes years after the event.

- A West of Scotland CAB reports of a client who worked for an employer for five hours per week. The client trusted her employer to pay the employee’s contribution towards Income Tax and National Insurance, but he failed to do this. Now the client has been left with a bill for unpaid tax from HMRC, dating back to 2010.

Some employers pay staff ‘cash-in-hand’. This can make it particularly difficult to ascertain whether Income Tax or National Insurance contributions have been made, or for workers to address any unlawful deductions.

- A West of Scotland CAB reports of a client who is retired, but occasionally takes on driving jobs. He worked for an employer for three weeks and received his pay in cash with no payslips. The client advises that he gave them notice and that he has not received his final pay, payslips or a P45. He

has emailed, phoned and visited his employer's office but cannot contact them. He is worried that his ex-employer had not been paying his tax or National Insurance contributions.

- A West of Scotland CAB reports of a client who has worked for his current employer for four years. The client is concerned as he doesn't receive any payslips and is paid cash in hand. Recently his employer has started to pay some of his wages into a bank account but still pays the majority as cash. The client has never signed a written contract. He has been unwell recently and is concerned about what he should do for money if his doctor says he is unfit for work.

### **Bogus self-employment**

False or bogus self-employment is used by some employers to deny their employees basic rights and to avoid paying Income Tax or National Insurance, by declaring their staff to be 'self-employed' or 'independent contractors' when in practice they are paid employees. The practice has been particularly prevalent in the construction industry<sup>15</sup> and whilst not totally illegal, the rules in this area have been tightened in 2014.<sup>16</sup>

The practice has spread beyond the construction industry, however, with a number of CAB clients in different sectors reporting being declared as 'self-employed' against their wishes – or even without their knowledge.

- An East of Scotland CAB reports of a client who was employed in a takeaway for nine months in 2011-12. She was paid a grand total of £1,260 cash in hand and assumed that tax and National Insurance were deducted. The client could not confirm this because she never received a payslip, and on leaving the job was not given a P45 or P60. Now, it appears that her employer declared to HMRC that the client was self-employed, had worked for him for 12 months, and was paid around £6,000 in total. Being self-employed (which she was not, and never has been), HMRC assumed that she was liable to self-assessment and PAYE on this. Consequently, the client received an Income Tax demand from HMRC for £1,583, which was the first she learned of the bogus 'self-employment' arrangement from two years ago.
- A North of Scotland CAB reports of a client who had been employed on a farm and had not received payment for the hours he had worked. The details of his contract with the farm were very vague and not recorded in writing, and the farm owner maintained that he was self-employed. He had received most of his payments in cash without wage slips and he did not know whether Income Tax and National Insurance had been deducted. He considered he was owed in excess of £8,000.

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<sup>15</sup> What is false self-employment? – UCATT <http://www.ucatt.org.uk/false-self-employment>

<sup>16</sup> Bogus self-employment: new government measures on false self-employment – Unite the Union, June 2014 <http://www.unitetheunion.org/how-we-help/list-of-sectors/construction/constructionnews/new-government-measures-on-false-self-employment/>

- A North of Scotland CAB reports of a client who had worked in a beauty salon. She has now left, as her employer insisted that the client was actually 'self-employed' and consequently not entitled to the rights and protections that an employee has. The client engaged the CAB's help to come to a settlement with the employer over unpaid wages and to clarify her tax status with HMRC.

## National Minimum Wage

It is a criminal offence for employers not to pay someone the National Minimum Wage (NMW) or to falsify payment records. HM Revenue and Customs (HMRC) has responsibility for enforcement of the NMW, which from October 2014 has risen to £6.50 per hour for those aged 21 and over, £5.13 for those aged 18 to 20 and £3.79 for under 18s.

In 2013/2014 HMRC conducted 1,455 investigations into employers who had failed to pay the National Minimum Wage which led to £4.6 million in unpaid wages being recovered<sup>17</sup>. The Government has recently introduced a 'name and shame' approach<sup>18</sup> and proposes further penalties in the Small Business, Enterprise and Employment Bill. These are welcome moves, but challenging poor employment practices is far from easy for many workers.

In many cases, clients are well aware of their entitlements but are unable to enforce them due to a fear of being dismissed or disadvantaged for doing so. Citizens advice bureaux regularly advise workers who are being paid less than the appropriate level of the National Minimum Wage. In some cases this is clearly a deliberate move on the employer's part, and can often go hand-in-hand with other poor employment practices.

- An East of Scotland CAB reports of a client whose wife was paid the National Minimum Wage by her employer. However, when the Minimum Wage was updated in October 2014, the client's wife's wage was not. Her employer has announced that they will not pay increases in the National Minimum Wage until December "at the earliest". This is the second year in a row that the employer has delayed paying the increase. Last year it was eventually received and backdated.
- An East of Scotland CAB reports of a client who is concerned about her friend, a vulnerable individual. She considers he was abused by his employer, as he was made to work seven days a week and could work up to 70 hours per week. He was paid less than the National Minimum Wage and apart from Christmas Day had no holidays. He did not get a payslip or P60 so has no proof of pay levels. He was interviewed some time ago by HMRC but he was accompanied at the interview by a daughter of the owner so she considers he was harassed as he was told to say that he only worked 30 hours per week and got the National Minimum Wage.
- An East of Scotland CAB reports of a client who raised concerns about systematic avoidance of the National Minimum Wage by a group of businessmen he has worked for. When he worked there he was told that 'the first 140 hours worked are free to the employer', which he claimed was normal

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<sup>17</sup> HMRC secures record £4.6m minimum wage arrears for underpaid workers, June 2014  
<https://www.gov.uk/government/news/hmrc-secures-record-46m-minimum-wage-arrears-for-underpaid-workers>

<sup>18</sup> Government names and shames 37 national Minimum Wage offenders, January 2015  
<https://www.gov.uk/government/news/government-names-and-shames-37-national-minimum-wage-offenders>

practice amongst the group. Although he enjoys his job, the client is currently only earning £5 per hour. He has contacted HMRC who said they would investigate but were very busy and it could take several months. The client was wondering whether there was anything else that could be done to end these practices.

A lower Apprentice Rate, of £2.73 per hour can be paid under certain conditions – that the apprentice is aged 16 to 18 and those aged 19 or over who are in their first year. This should be a worker who has a traditional contract of apprenticeship or is taking part in a particular government training scheme – in Scotland, a Modern Apprenticeship leading to an SVQ or NVQ at level 2 or 3. All other apprentices should receive at least the appropriate National Minimum Wage for their age. A number of CAB clients have been incorrectly paid the Apprentice Rate, rather than the higher amount they should receive.

- A North of Scotland CAB reports of a client who has been working as a hair stylist, apparently as an apprentice. She has been there for almost two years, spending one day a week at college for which she is not paid. She has no written contract or statement of conditions. The client is now 19 but has been paid below the National Minimum Wage for one year. She has now given her notice because her wage issues have been unresolved and has a new job with another hair salon. She would like to claim back the wages she believes are owed to her.
- An East of Scotland CAB reports of a 20 year old client who worked for a hairdresser. Despite being fully qualified, the client had only been paid the Apprentice Rate National Minimum Wage. The owner of the shop had not given any payslips nor has she given him his P45. The client is upset by how he was treated by his former employer.



## Sickness and Sick Pay

Everyone gets ill at some point, and may need to take time off work to get better. On average, workers in the UK were off work with illness for 4.4 days in 2013 according to the Office of National Statistics.<sup>19</sup>

If an employee is off sick for more than seven days, their employee may ask for a medical certificate from their doctor. These can also be known as 'fit notes' and can certify that the employee is not fit for work at all. They may also suggest that an employee might be fit for alternative work, or make some recommendation for a phased return to work or a change to working hours or duties.

However, some employers appear to be attempting to get workers who are unfit for any work to report for duty by threatening them with dismissal.

- A South of Scotland CAB reports of a client whose son has been employed as an electrician with a firm for over four years. At the weekend he broke and dislocated a finger and his hand and lower arm are in plaster and he is taking strong painkillers. His doctor signed him off for four weeks which was handed in yesterday. He has a consultant appointment tomorrow to establish whether he needs an operation. However, the HR department have rejected his doctor's note. They sent a taxi to take him into work today as they will find him alternate work. They will send him to his hospital appointment in a taxi but he must make his own way to work tomorrow on his own, which requires two different buses. He has been told that if he does not come into work his contract will not be renewed.

## Statutory Sick Pay

Employees who earn more than £111 per week (roughly 17 hours per week at the minimum wage) and are off work for more than three days qualify for Statutory Sick Pay (SSP). This is payable for up to 28 weeks, and is paid at a fixed weekly rate of £87.55. If an employee does not earn enough to qualify for SSP, their employer should give them a form (SSP1) that enables them to claim Employment and Support Allowance (ESA), the social security benefit that provides financial support for those unable to work.

Receiving the correct level of Statutory Sick Pay is important to employees. If it is underpaid, or not paid at all it can lead to an income shock and destitution, and can make clients' health problems even worse, as the case below illustrates.

- An East of Scotland CAB reports of a client who was diagnosed with Hodgkin's Lymphoma two months ago. He has required surgery and will require a six-month course of chemotherapy. His wife is also off sick. The client is employed on a temporary contract, and his employer has still not decided whether he is entitled to Statutory Sick Pay, and as a result he has

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<sup>19</sup> Staff sickness rates drop to 4.4 days a year – Daily Telegraph, February 2014  
<http://www.telegraph.co.uk/finance/jobs/10659865/Staff-sickness-rates-drop-to-4.4-days-a-year.html>

not been paid at all for two months. As a result of the indecision, the client cannot claim SSP in arrears from them, or alternatively claim Employment and Support Allowance if it is not awarded. The client is in desperate need. He has no cash, run out of gas and only £2 in the electric meter. Yesterday he had to get a food parcel and a crisis grant. This situation is causing the client major stress which is not helping his current condition and recovery.

Particular working patterns and types of contract have led to Statutory Sick Pay not being made available to workers who would be normally entitled to it. Agency workers, those on zero hours contracts and part-time workers have been affected by this. In other cases, employers have appeared to try and avoid paying SSP, by ignoring medical evidence or by misinterpreting the rules.

- A West of Scotland CAB reports of a client who is employed through an agency. She broke her wrist on annual leave and notified the agency straight away. On her return, she went to the doctor who has given her a fit note. However, the agency is refusing to pay her Statutory Sick Pay and have told her she is no longer employed.
- An East of Scotland CAB reports of a client who has been off sick for just over a month. He was getting Statutory Sick Pay, but the employer stopped it stating this was because 'SSP is only payable for 28 days' and that 'this rule came in earlier this year' [In reality, SSP is payable for a maximum of 28 weeks]. The client has already disputed this with the employer, but got a text back stating they have not changed their mind.

## Holidays and Holiday Pay

All 'employees' and 'workers' have a statutory right to an amount of paid holiday, whether they work full or part-time, unless they're self-employed or in a few limited exemptions. The statutory minimum paid holiday is 5.6 weeks per year – equivalent to 28 days a year for most full-time workers working five days per week.

Employers may grant more annual leave than the basic minimum to an employee, which is expressed in their contract. Like other substantial contractual changes, in theory employers should not change this amount without the employee agreeing to the change. In practice, if faced with a choice of accepting an unwanted change or losing their job, an employee may be able to take some action against their employer.

Contrary to what some employers have told staff, zero hours contract 'workers' are entitled to paid holiday. This should be calculated based on how many hours they actually work – unless someone was actually working no hours at all over the course of a year then they will accrue some paid holiday entitlement.

### Holiday entitlement problems

Citizens advice bureaux in Scotland have advised clients whose holiday entitlements have been reduced without consultation, or who have not been allowed to use their full holiday entitlement.

- An East of Scotland CAB reports of a client who has worked as a security guard for five years. He has 28 days holiday per year and these have to be used by April each year – as a rule he is not allowed to carry these over to the next year. Last year, the client repeatedly put in requests for holiday but these were turned down as he was told the company did not have enough cover for the days he selected. He put in several requests as it got nearer the end of the year and he still had 24 days to take. He contacted his manager and received an email stating that as cover could not be found he would be able to carry over his holidays to be used in April, May or June. The client managed to use the carry over days during the first three months as instructed - he added a note to the requests to make sure that they were aware that he was using his 'carry over' days. In October, the client requested holiday but was told he had no days left. It transpires that his previous year's leave had not been carried over. He made several complaints about this but was ignored so he began formal grievance proceedings. A grievance meeting was held where the client was told that he would not be able to have his holidays reinstated. The client would like to know what his next step is.
- A North of Scotland CAB reports of a client who had worked in a shop for the past 18 months. During this time he had never received a written contract. On average he has worked 36 hours per week over the past year. His employer has now imposed a new contract and told him and his colleagues that it is now in force regardless of whether or not they agree to it or sign it. The client has been asked to take 2.5 weeks leave before the end of March under his new contractual terms of 16 hours per week and not his 12 week average of

36 hours as entitled under legislation. He feels that he has accrued these rates before the new contract comes into force. After discussion, the client feels his employer will not negotiate and he will have to accept or leave.

### **Not paid for holiday**

Holiday pay should be paid at the same rate as workers' normal rate of pay. However, in some cases, this does not occur.

- A West of Scotland CAB reports of a client who has worked for his employer for five months part time with a 22 hours per week contract spread over five days. He has taken eight days holiday but when he went back to work and received his payslip the employer had only paid him for three days. When he enquired about the other five, he was told that he would not be paid for them until he had worked for the company for a year. He states that they have changed the rules while he was on holiday and never informed him of the change.
- An East of Scotland CAB reports of a client who has been working on a zero hours contract for 16 months. Although his hours fluctuate he normally works five days per week. His contract states that 'This position does not attract specific holidays but the employee must notify the employer if there is any week where the employee will not be working. Such arrangements will be by mutual agreement.' The client has taken holidays but has never been paid for them. He was advised that this was not correct, and he should have been entitled to paid holiday.



Employees who leave their employment are entitled to be paid for any holiday entitlement but have not taken. However, in a number of cases, the employer has failed to do this, despite the employee bringing this to their attention.

- A West of Scotland CAB reports of a client who worked for her employers for eight months. During this time she took one week's holiday. The client has left her employment but has not received the holiday pay she is due. When she asked for the money her employer refused to pay up.

## Pregnancy and Maternity

If a woman becomes pregnant, she has the right to statutory maternity leave. This is at least 26 weeks (six months) and can be up to a year, if not shared with her partner or she elects to come back earlier.

Employers must not discriminate against employees because they are pregnant, or because of a pregnancy-related illness by treating them unfavourably. They must also not discriminate against those on, or attempting to take, maternity leave.

Most pregnant employees have other statutory maternity rights which employers must respect by law. These include being given paid time off work to attend antenatal appointments, and a health and safety risk assessment to ensure that the employee is not being asked to carry out dangerous duties.

### Dismissed when pregnant

Dismissing a woman because she becomes pregnant is discrimination and is automatically unfair dismissal and can be brought to an Employment Tribunal without any qualifying period. Despite this, citizens advice bureaux in Scotland have advised pregnant clients whose employers had dismissed them.

- A West of Scotland CAB reports of a client who is employed at a beauty salon. As soon as the client found out she was pregnant she told her employer. The employer reacted by saying that this was 'not good' and was 'a kick in the face'. Subsequently, the employer told her that she was dismissed. They offered her the alternative of becoming self-employed and renting the room she used in the salon, but the client did not want to do this and would have rather stayed on as an employee.
- Citizens Advice Direct reports of a client who has been dismissed following an absence from work due to a pregnancy-related illness. She has a fit note from her doctor that stated she would need more time off, and started medication for nausea. Her boss is aware of the fact she is pregnant and that she was off with morning sickness. She is certain she phoned in to her work that day, but her boss now claims she did not. She received a notice in the post by courier that day that her employment was terminated with immediate effect. She is worried about how she will be able to support her family.
- A West of Scotland CAB reports of a client who discovered she was pregnant and informed her line manager. The manager suggested to her that she wait until her first scan before formally informing the practice, which the client disagreed with. Later that week the finance manager asked that she attend a meeting the next day. At the meeting, the client was given notice of termination of employment. The client then asked the reason for this and it was claimed that this was due to a two month absence the previous year, when the client had been off sick. All the client's sick lines had been submitted, absence procedures had been followed and there had been no mention of disciplinary action prior to this. The client then asked if she was being sacked because she was pregnant to which the finance manager

replied that she was unaware that the client was pregnant, but the client was certain that this is something she would have been informed of.

### **Problems on return to work after maternity leave**

Employees who are on maternity leave are entitled to return to their old job after the 26 week Ordinary Maternity Leave period, and normally after the Additional Maternity Leave period unless this is not reasonably practical. However, even if it is not practical to return to their old job, employers must offer a job that is suitable, has the same terms and conditions and the same rate of pay.

However, some CAB clients have returned from maternity leave to find an unsuitable job waiting for them, or had their job taken away from them illegally.

- A South of Scotland CAB reports of a client who was made redundant after a pregnancy while the person who was taken on to cover her job during maternity leave was kept on, and the dates of her redundancy were changed to avoid her being employed for two years. As a result, her redundancy pay was reduced.
- A West of Scotland CAB reports of a client who is currently on maternity leave and is going to return to work soon. She has spoken to her employer about her return to work and they have advised her that she will have to travel to Manchester twice a week. The client did not have to do this much travelling before her maternity leave and would not be happy to do this. She has never been consulted about any change to her terms and conditions.

### **Pregnancy and zero hours contracts**

Clients who become pregnant whilst employed on a zero hours contract have found themselves in difficult situations where employers have refused to make any adjustments in the workplace, carry out risk assessments, or allow them time off for ante-natal care.

- An East of Scotland CAB reports of a pregnant client who worked as a care worker on a zero hours contract. Once she told her employers she was pregnant she started to be sent to houses of people where she would have to use a hoist (people who weighed over 20 stone). If she did not accept shifts at short notice she was given the worst jobs - she gave the example of being contacted at 8PM and told that someone was not able to make their shift so she had to go straight away, which causes her substantial childcare difficulties. The client is concerned that the Statutory Maternity Pay she is receiving from her employer is inaccurate. She has also been told that if she did not return to the same employer after maternity leave, that she may need to return the maternity pay.



- An East of Scotland CAB reports of a client who works at a job which was advertised at 30 hours per week. However, it turned out to be a zero hours contract and she was only given 10 hours per week. She is pregnant, but is not allowed time off for ante-natal care or rest breaks.



## Bullying and Harassment at Work

Employees who are bullied or harassed at work face a miserable situation. Whether it is from colleagues or managers, harassment at work is unacceptable and can have a very negative impact on an individual's health. In many of the situations where clients come to their local CAB for advice about being bullied at work, they have been signed off sick with stress.

Employers have a duty to prevent bullying and harassment at work, and it is likely to constitute a breach of health and safety laws as well as the employee's contract. If the harassment relates to a protected characteristic, such as sex, race or sexual orientation, it is unlawful discrimination.

- A West of Scotland CAB reports of a client who has worked at a garage for three years. She is the only female that works there, and is currently off sick with work-related stress due to the bullying she faces at work. The client is being bullied, harassed and humiliated at work by the mechanic and apprentices who constantly make comment on her weight and clothes and generally put her down. She has complained on numerous occasions to her employer, but nothing has changed. Her employer has told her that if it can't be sorted out between them then one of them will have to go and he needs a trained mechanic more than her. It also emerged that her employer paid half her wages in cash, and did not pay her income tax or National Insurance, which has affected her entitlement to Statutory Sick Pay.
- An East of Scotland CAB reports of a client whose employer is well-known to the CAB due to a number of employees having sought advice about the employer's bullying behaviour. The client is on a zero hours contract, but has not been given any hours or appeared on any rotas since being off sick (even though he has told his supervisor that he is available for work). The client also reports that two more staff doing his role have been employed whilst he was away sick and that they are still advertising for more even though he has been told there are not enough hours for him. The client also has a photo of an "employee incentive" whereby any employee who brings a new recruit to work with them will receive a bonus of £50. He has been promised more shifts, but this has not happened. The manager threw an escalation letter from the bureau in the bin in front of the client. There are a number of ongoing issues such as: paid holiday being requested and agreed, tickets booked and paid for and then the employer making the employee cancel the holiday; staff being told that they can go on holiday unpaid or come to work and forfeit the ticket price (this has happened on more than one occasion and to more than one member of staff); shifts being cancelled when staff have actually arrived or only being given one hour of work. New recruits are paid at minimum wage whereas existing workers are on higher wages and better terms and conditions, which makes the client suspect that they may be trying to get rid of him to save money.
- A West of Scotland CAB reports of a client who is worried her husband is being bullied out of his job by his new manager. There have been a number of





incidents where the manager has unfairly criticised her husband's work and was verbally abusive to him. The client's husband has worked for the employer for 14 years as a driver and mill operator, but recently he has been told to work full time clearing stones and picking up hedge trimmings at his employer's house. The client said no other employee has been asked to do this. The client's husband works 55 hours a week. The client advised that the employers have previously harassed and changed employees' terms of contract so that they leave and the company does not have to make any payments to them and is worried this is now happening to her husband.

## Migrant Workers

Just fewer than seven per cent of Scotland's usual resident population (around 353,000 people) were born outside of the UK<sup>20</sup>, with more than 25,000 new migrants from overseas moving to Scotland in 2012/13.<sup>21</sup> However, some migrant workers in Scotland have faced some particularly unpleasant situations. Migrant clients have reported being exploited and badly treated by unscrupulous employers, with some being racially abused, significantly underpaid and overworked.

- An East of Scotland CAB reports of a Polish client who was employed as a driver. After suffering continued racial abuse - both to his face and reportedly behind his back (he has witnesses) - he was offered two weeks' notice, but resigned immediately after the owner reacted in an abusive manner. Since the client left, the owner has continued to send abusive texts. The client has received no holiday pay, and had been employed for over 12 months with no written contract. In addition, although the client received payslips weekly, they only showed 20 hours' work (client worked on average 45 hours per week), and client was paid £8 per hour cash in hand. The client felt that his employer's behaviour to him had forced him to resign and wanted further advice. In addition, this racially abusive behaviour was not limited to the client, so he hoped that any action he took may force the employer to treat his remaining staff better.
- An East of Scotland CAB reports of a Spanish client aged over 25. The client works in a hotel for six hours per day, six days per week. He earns £115.38 per week [an equivalent of £3.20 per hour]. In addition to his regular hours, the client is expected to be constantly 'on call' and is not allowed to leave the hotel in case he is needed for some task, including on his day off. The client has a room in the hotel, but needed to spend his savings cleaning the room and making it habitable, as well as being required to buy smart clothes for work, which he has never worn.

Others looking for work have been recruited with promises of an ideal job in Scotland, which has quickly turned into a nightmare due to unscrupulous employers.

- An East of Scotland CAB reports of a client who paid £400 for a contact in Lithuania to come to Scotland to work in a factory. He has been working for them for six months, during which time he has been housed in a hotel and two different flats. During all this time he has been working 78 hours a week and being paid £2.50 per hour, significantly below the National Minimum Wage. On several occasions he has asked to be paid the Minimum Wage, but he has been put off with excuses, such as 'he is in training' or he has to pay for his accommodation [even with the accommodation offset, his wage would still be considerably below the National Minimum Wage]. Finally last week he asked

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<sup>20</sup> Population by Country of Birth and Nationality – General Register Office for Scotland, August 2014 <http://www.gro-scotland.gov.uk/statistics/theme/population/estimates/special-populations/country-nationality.html>

<sup>21</sup> High Level Summary of Statistics: Population and Migration – Origin and Destination of Migrants – General Register Office for Scotland, June 2014 <http://www.gro-scotland.gov.uk/files2/stats/high-level-summary/j11198/j1119807.htm>

again to be paid the Minimum Wage and this time he was told he was no longer required and to get out of the flat. He wants to know what he can do.

- A West of Scotland CAB reports of a client whose husband replied to an advertisement on the internet for employment as a gardener/housekeeper, when they were living in Poland. The employment offered a flat which was attached to the employers' house, a car, modern utilities and an internet connection for a rent of £250. The client and husband with their two children sold everything in Poland and accepted the employment. On arrival they discovered that there were no utilities in the house, and were denied the offer of a car, being informed by the employer that they could buy it instead. They had to borrow money from family and friends in Poland to buy the car. The employer has now raised the rent to £350 and is now not paying full wages to the client's husband. As a result, they now cannot afford to pay the rent.

## Employment Tribunal Problems

Employment tribunals are set up to make decisions about employment disputes. If an individual cannot get a matter resolved by speaking to their employer, through a grievance process, or through the Early Conciliation system, then they can take their case to an employment tribunal, which will hear the facts of the case and decide whether a breach of their rights has occurred. If the Tribunal rules in their favour, then it can require the employer to pay a financial award to compensate the employee or require the employer to make right in some other way.

### Employment Tribunal Fees

From July 2013, people who want to make a claim to an employment tribunal are required to pay a fee to do so and a further fee if their case goes to a hearing. These fees are not insubstantial – for some claims it costs an individual up to £1,200 to get their claim heard by the employment tribunal, no matter how strong their case may be. Fee remission may be possible, but requires claimants to be on benefits, or have a low income and no other capital. If an employee is owed unpaid wages or other amounts, then these can frequently be for a lower amount than the fees to have their case heard.

The impact of introducing tribunal fees is clear from the amount of cases that are lodged. Official figures from the Ministry of Justice showed there was an 81% decline in the number of cases lodged in the Employment Tribunal in January-March 2014, compared with the year before, when no fee was payable. As the evidence in this report shows, unfair employment is still as common as ever, but people simply cannot afford to pay to bring their claim. Significantly, despite the reduction in cases, new issues related to employment tribunals and appeals in bureaux rose by 7% in 2013/14 compared with the previous year, despite the introduction of fees, with a total of 2,306 new issues during the year.

- A West of Scotland CAB reports of a client who was unfairly dismissed from his employment. He started the procedure to claim unfair dismissal at an Employment Tribunal. He was not granted fee remission as the client could not prove his income. The client has never had a bank account of his own and had his wages paid into this friend's account. For the initial fees charged by the Employment Tribunal he borrowed money, but was unable to borrow any more to pay the hearing fee, so his claim was dropped. The client's former employer offered £1,000 so the client wouldn't pursue the matter which he was forced to accept, despite it being estimated that he was likely to be awarded considerably more.
- A West of Scotland CAB reports of a client who worked for a hairdresser. When she left the employment she was due £560 of outstanding holiday pay. The client requested the holiday pay but has had no response. The client is unable to qualify for fee remission, so is unable to pursue her claim at an employment tribunal due to the fees being potentially higher than the amount due.

## Non-payment of employment tribunal awards

If an employee's claim makes its way to an employment tribunal, is successful and an award is made, that is not the end of the story. In many cases, employees will not receive part of all the money they are due, because an employer goes out of business or simply refuses to pay. According to research published by the UK Government, only 41% of claimants are paid their award in full. The majority of respondents are either not paid their award at all (46%) or are only paid in part (13%).<sup>22</sup>

In Scotland, individuals attempting to enforce their tribunal award need to apply for an 'extract registered decree arbitral'. This acts like a court order which can be used to engage a sheriff officer to try and recover the debt from the employer.<sup>23</sup> However, applying for and receiving the extract takes time. Individuals must wait six weeks until the time allowed for appeal to the Employment Appeal Tribunal has passed. A fee is payable to engage the sheriff officer and even then no money may be forthcoming.

If an employer goes out of business, the award can be very difficult to recover in full. Some CAB clients have experience of employers who close their business, only to emerge as a 'phoenix company', doing the same business from the same location, but with no liability to pay the client what they are owed.

- A North of Scotland CAB reports of a client who did not receive wages or holiday pay from his former employer. The client was successful in his Employment Tribunal claim and received an award of £3,283.34. The client waited 42 days but received no payment from his former employer. He then had to write to the Tribunal for 'an extract of the judgement' which caused further delay. In the interim his ex-employer attempted to get the company 'struck off' meaning the client had to write then to Companies House to object. The objection was successful but this only delays the process for two months. The client now has his extract of award and it is uncertain what enforcement action he will be able to achieve in the time scale, given that the ex-employer reports that the company has no money. The client is in a catch 22 situation with a 'hollow victory' award - in that he is owed money but the respondent will not pay. The company will be struck off in two months' time meaning the client will have an award but no legal entity to pursue payment from thereafter. In order to see if Sheriff Officers can enforce payment, the client will need to pay further sums of around £100 but this may not be successful if his ex-employer has no money. The company is not formally insolvent and so the client is unable to get payment from the National Insurance Fund. The client could trigger the insolvency of the Respondent but the cost for this is over £1,500 (non-refundable) and there would still be no guarantee of getting any money thereafter as the Redundancy Payments Service will only pay holiday

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<sup>22</sup> Payment of Tribunal Awards 2013 Study – IFF Research, Department for Business Innovation and Skills, October 2013  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/253558/bis-13-1270-enforcement-of-tribunal-awards.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/253558/bis-13-1270-enforcement-of-tribunal-awards.pdf)

<sup>23</sup> Payment of Tribunal Awards 2013 Study – IFF Research, Department for Business Innovation and Skills, October 2013

pay due if it is within 12 months. The time taken to get to Employment Tribunal, then get the award and then to trigger an insolvency makes this impossible.

- A North of Scotland CAB reports of a client who won an award at Employment Tribunal for unpaid wages when he was working for his former employer in 2011. The figure was £1,524 plus holiday pay. The ex-employer consistently failed to make payment. The client came to the CAB in 2014 to find out whether he can claim money owed through the National Insurance Fund and whether this would include Sheriff Officers' fees. The client thought the employer had made an application for voluntary "strike off" to Companies House and also wanted to know if he could object to this. The client knew the company is no longer trading as there was a fire three months ago which destroyed part of the building. However, it emerged that the company is not going through insolvency proceedings, which means that the client cannot claim through the National Insurance Fund. The client's only option would be to take enforcement action through Sheriff Officers who should be able to advise on the prospects of recovering any money owed with further fees for enforcement.

Some clients' ex-employers have been based in England, which has resulted in them being forced to pursue their award through the English systems. However, in some cases they have found this easier than the Scottish collection system.

- An East of Scotland CAB reports of a client whose Employment Tribunal award has been outstanding since a default judgement in April 2013. As his ex-employer was headquartered in England he has pursued the respondent via the English Fast Track system for achieving the award. The investment made in the Fast Track process with English bailiffs was £80 plus one other sum. The client has also achieved £440 in reimbursed expenses paid and interest on the award at 8%. This is a stark contrast to the Scottish system which requires payment of between £70 and £100 for each action of a Scottish Sheriff Officer. It would appear from the CAB adviser's experience that the Fast Track system is cheaper, more organised and more effective at pursuing outstanding payments.

## Health and Safety at Work

Employers have a legal obligation to protect their staff's health, safety and welfare, making sure the workplace is safe. Workers have a right to protect themselves from serious and immediate danger at work. Accidents should be recorded and compensation may be appropriate for certain workplace injuries.

Additionally, by law a worker should not be made to work more than 48 hours a week unless they choose to do so and have signed a declaration to that effect. There are stricter rules for young people under the ages of 18 and 16 to prevent people being forced into excessive working hours, and employees must be given appropriate rest breaks – an uninterrupted break of at least 20 minutes for a shift of six hours or longer. Again, there are tighter restrictions on how long younger workers can work for without a break. In 2013/14, clients brought 1,293 new issues to citizens advice bureaux in Scotland.

- An East of Scotland CAB reports of a client who works for a bookmakers and has had many problems as her conditions have changed in the last few years. She is now obliged to work alone and is stressed as there are situations where customers are abusive, and another employee of the same company was murdered in a similar situation elsewhere. She now has to come out from behind the counter and counsel customers using gaming machines on problem gambling as well as her other duties. The client is not sleeping. She was wondering whether there was anything that can be done as it is difficult to work in these conditions.
- A North of Scotland CAB reports of a client who had been employed in two care homes. She has attention deficit hyperactivity disorder and some hearing loss, both of which were declared on her application form and her employers were frequently reminded of her condition. The client frequently worked 74 hours per week even though she had not signed an agreement to allow this to happen. She felt her mental health was suffering as a result of being expected to work excessive hours and felt she could not 'face work' and was frequently off sick as a result. Her managers had at one point said that they would adjust her hours 'at the end of the month' - this never happened as the managers indicated that 'none of them had control of the rotas'. The client was telephoned by a colleague who informed her that her friend had received a text message from management to say that when the client went in to work she would be sacked.
- A South of Scotland CAB reports of a client whose 15 year-old son was looking for part-time work and had enquired at a local hotel. The hotel contacted the client's son asking him to attend on a Sunday for an interview, but when he arrived the chefs said they 'would throw him in at the deep end' as the dishwasher hadn't turned up. The client worked for seven hours washing up without a break or food, which is in breach of a number of regulations [workers under 16 are not allowed to work for more than two hours on a Sunday and should be given a one-hour break after four hours. The employer should conduct a risk assessment and should obtain a permit for doing so from the local authority]. The hotel then refused to pay him on the

grounds that 'it was a trial and he had been useless'. The client has heard from others that this happens a lot.



## How can people enforce their rights at work?

People who have problems at work can get free, confidential, impartial advice on their rights from their local CAB, or online at [www.adviceguide.org.uk](http://www.adviceguide.org.uk). Depending on the circumstances of their case, a number of options to assert their basic rights are available across the enforcement landscape.

### Employment Tribunals

Employment tribunals have the ability to hear a case of unfair treatment at work, decide whether a breach of an employee's rights has occurred, and secure justice for the worker if they have been wronged.

However, as we have seen, the introduction of fees to make a claim to the tribunal has had a devastating impact, with 81% fewer claims being made despite unfair employment being as prevalent as ever. This is a clear access to justice issue. And, even if someone is successful it is more likely than not that they will not receive their full award, or even any payment at all.

Citizens Advice Scotland has consistently opposed the introduction of fees and will shortly be publishing the findings of a collaborative research project between CAS and the University of Strathclyde, which examines the extent to which fees are a disincentive to make a claim in the Employment Tribunal, their impact on the power balance between workers and employers and their impact on access to justice for Scotland's citizens.

### Acas and Early Conciliation

The Advisory, Conciliation and Arbitration Service (Acas) is a non-departmental UK Government body. It provides free, impartial online information and advice and operates a Helpline for employment queries from employers and employees. It publishes statutory codes of practice and guidance to assist employers. It also provides individual and collective conciliation and mediation services, which are best known for brokering agreements between employers and trade unions.<sup>24</sup>

Beginning in April 2014, it became mandatory for anyone wishing to bring a claim to an employment tribunal to first notify Acas, who will offer a free system of early conciliation. This is a mechanism that aims to resolve disputes between employees and employers before an employment tribunal by discussion and negotiation. However, taking up the offer and undergoing the process is voluntary. If no agreed settlement is reached, a claim can still be brought to an employment tribunal.

Figures for the first six months of the operation of the early conciliation system show that the substantial majority of people accept the offer to participate, with only 10% of offers rejected by employees and a further 10% rejected by employers.<sup>25</sup> The take-up of this service by both employees and employers is encouraging, although it

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<sup>24</sup> About us – Acas <http://www.acas.org.uk/index.aspx?articleid=1342>

<sup>25</sup> Early Conciliation Update: April – September 2014 – Acas, November 2014  
<http://www.acas.org.uk/index.aspx?articleid=5069>

should be noted that there is little disincentive for employees to participate, as taking part in early conciliation 'stops the clock' on a potential tribunal claim<sup>26</sup> and no fees are payable for the service.

From early figures for the outcomes of cases, it is not possible to make definitive judgements on the success of the system in resolving disputes between employees and employers. Just under one in five (18%) of cases resulted in a formal written settlement (known as a COT3) between the employer and employee. Almost a quarter (24%) of cases using early conciliation still progressed to an employment tribunal claim, although some of these cases were settled by an Acas conciliator before the tribunal hearing. The majority of cases that progressed to early conciliation in the first three months resulted in neither a written settlement nor a Tribunal claim being made (58%).<sup>27</sup> This could include a wide range of outcomes, from a negotiated settlement that did not include a COT3, a case being dropped by the employee, or a case being unresolved but the employee being unable to afford the fee to take the case to tribunal.

Feedback from CAB advisers who have dealt with cases where a client has used the early conciliation system is generally positive about the service. Advisers have seen some cases resolved quickly and with an agreeable resolution. However, they also report incidences of employers frustrating the process by not engaging and ignoring correspondence and of cases where the month of early conciliation passes with very little discussion or progress occurring.

On the whole, Citizens Advice Scotland believes early conciliation has the potential to make a positive contribution to resolving problems at work without employees having to go to an employment tribunal. However, CAS also believes that the system should not be seen as a substitute for the employment tribunal or its existence as justification for charging fees. Whilst some employers will engage constructively with the early conciliation process, in other instances the process can end without resolution and, there is not necessarily any incentive for employers to reach a settlement, as they can gamble that a worker will be dissuaded by Tribunal fees and not take the claim further.

## **Trade Unions**

Joining a trade union is a way for employees to assert their rights at work. The Scottish Trades Union Congress, which represents over 620,000 workers in Scotland reports that workers in unions are paid 8% more than non-union workers. The STUC reports that employers who do not recognise unions dismiss two and a half times as many workers compared with employers who recognise unions. Trade unions represent their members when they have a problem at work and can

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<sup>26</sup> The normal time limit for making a claim in most employment cases is three months, minus one day. Taking part in Early Conciliation extends this by one month, and by a further 14 days if there is a reasonable prospect of settling in that time.

<sup>27</sup> Early Conciliation Update: April – September 2014 – Acas, November 2014

represent their members at an Employment Tribunal.<sup>28</sup> Some unions will also pay the fees to bring a Tribunal claim in a union-supported case.<sup>29 30</sup>

However, the majority of employees are not trade union members. The latest estimates from the UK Government indicate that 32% of employees in Scotland were members of a union in 2013, the lowest recorded level since 1995. They are increasingly likely to be older, work in the public sector and born in the UK. Those in administrative, elementary and sales/customer service occupations were less likely to be in a trade union, as were those in part-time work.<sup>31</sup>

## Fair Work Convention

Although not appearing to be strictly speaking a way for people to enforce their rights at work, the Scottish Government announced the establishment of a Fair Work Convention in October 2014.<sup>32</sup> The new body, which was a key recommendation of the independent Working Together Review which investigated industrial relations in Scotland,<sup>33</sup> aims to provide leadership on industrial relations matters and fair work, and encourage dialogue between unions, employers, public sector bodies and government.

The new Convention activities will include providing a framework to develop joint training for unions and management and explore the potential to extend collective bargaining and workplace democracy in Scotland. It will also look to exert greater Scottish influence over the Minimum Wage and champion payment of the Living Wage.

## HMRC

HM Revenue and Customs (HMRC) play an important role in the enforcement of two elements of employment law – payment of the National Minimum Wage and ensuring employers pay their employees' income tax and national insurance contributions.

Their Pay & Work Rights helpline and Complaint Form allows employees to make confidential complaints about their employer not paying the National Minimum Wage,

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<sup>28</sup> Why join a union? – STUC <http://www.stuc.org.uk/organising-and-rights-at-work/myrights/why-join-a-union>

<sup>29</sup> Employment tribunal fees – UNISON, June 2013 <http://www.unison.org.uk/news/employment-tribunal-fees>

<sup>30</sup> Employment law – need help? – Unite the Union <http://www.unitetheunion.org/how-we-help/legalservices/employmentlawneedhelp/>

<sup>31</sup> Trade Union Membership 2013: Statistical Bulletin – Department for Business, Innovation and Skills, May 2014 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/313768/bis-14-p77-trade-union-membership-statistical-bulletin-2013.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/313768/bis-14-p77-trade-union-membership-statistical-bulletin-2013.pdf)

<sup>32</sup> Fair Work Convention created – Scottish Government, October 2014 <http://news.scotland.gov.uk/News/Fair-Work-Convention-created-115d.aspx>

<sup>33</sup> Working Together Review: Progressive Workplace Policies in Scotland – Scottish Government, August 2014 <http://www.scotland.gov.uk/Publications/2014/08/4647>

as well as working time limits being exceeded and employment agency problems.<sup>34</sup> These reports enable HMRC to investigate and if a breach is proven, require the employer to pay the worker the money they are due and levy a fine on the employer. As highlighted elsewhere in this report, HMRC conducted 1,455 investigations into employers who had failed to pay the minimum wage in 2013/14 and has recently begun to 'name and shame' offenders.

In a similar vein, HMRC's Tax Evasion Hotline enables people whose employers are not paying Income Tax and National Insurance to report it in confidence.<sup>35</sup> Significantly, the service acknowledges the difficult situation employees face when asserting their rights at work, by actively encouraging workers to make confidential reports, stating "for your own safety you shouldn't try to find out more about the fraud, let anyone know you're making a report, encourage anyone to commit a crime so you can get more information".

However, HMRC's role is limited to these areas, rather than taking a proactive role in tackling other violations of employment law. It also is believed to be under-resourced to perform these functions, with a recent report from the TUC estimating at least 250,000 workers in the UK are not being paid the National Minimum Wage, and calling for substantial additional investment in the service, and increased awareness-raising.<sup>36</sup>

Nonetheless, these services could form a useful model for other enforcement agencies, as we will explore in the next part of this report.

Despite this range of options, with a number of advantages for each, there are clearly still gaps which unscrupulous employers have exploited as shown by the cases brought to citizens advice bureaux. Individuals can find barriers to justice when their basic rights at work are not respected, and there is no one agency with responsibility for actively promoting fair employment and rooting out the rogues. In the next section, we make some recommendations for how the enforcement of people's rights at work can be improved to promote fair employment in Scotland.

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<sup>34</sup> Pay & Work Rights Complaint Form – Directgov <https://payandworkrights.direct.gov.uk/complaints/>

<sup>35</sup> Declare or report cash in hand pay – Gov.uk <https://www.gov.uk/report-cash-in-hand-pay>

<sup>36</sup> Enforcing the National Minimum Wage – Keeping up the Pressure – TUC, January 2015 <http://www.tuc.org.uk/workplace-issues/employment-rights/minimum-wage/enforcing-national-minimum-wage>

## How should the system be improved?

As we have seen, employees in Scotland regularly encounter serious problems at work, including violations of their basic employment rights by employers who are either unaware of their duties or who seek to gain an advantage by exploiting vulnerable workers. A number of barriers stand in the way of some workers being able to assert their rights, and there are gaps in the enforcement landscape. Citizens Advice Scotland has a number of recommendations for how the system can be improved, ensuring that bad employers do not gain an unfair advantage over good ones, best practice can be promoted, and Scotland's employees can be treated fairly at work.

### Improvements to the Employment Tribunal system

- **No fees should be charged to bring a claim before the Employment Tribunal.**

Citizens Advice Scotland has consistently opposed Employment Tribunal fees and believes them to be an unreasonable barrier to justice. The mounting evidence of their negative impact continues to grow, and we believe they should be removed.

- **The system of enforcement of Tribunal awards in Scotland should be strengthened. The Scottish Government and Parliament should work together with the UK Government to address this as it overlaps devolved and reserved issues.**

Only 41% of successful claimants receiving their award in full is clearly unacceptable. Citizens advice bureaux in Scotland have seen employers fail to pay awards of several thousand pounds to clients who have been wronged. Action should be taken to significantly improve payment and collection of awards for claimants.

As an example of changes that have been made elsewhere, a 'fast track system' for enforcing Employment Tribunal awards has been introduced in England and Wales which allocates a High Court Enforcement Officer at the beginning of the enforcement process in an attempt to speed up the process. A fee is payable but remission is possible.<sup>37</sup> CAB advisers who have advised clients who enforce their judgement against an employer based in England have spoken positively about their experience of using it anecdotally in addition to the case cited earlier. The Scottish Government should explore a range of options for improving the system of enforcement in Scotland, compatible with Scots law.

- **Employment Tribunal awards, expenses or fees unable to be enforced due to insolvency or phoenix trading should be able to be claimed from the National Insurance Fund.**

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<sup>37</sup> I have an Employment or Employment Appeal Tribunal award but the respondent has not paid – HM Courts and Tribunals Service <http://hmctsformfinder.justice.gov.uk/courtfinder/forms/ex727-eng.pdf>

As we have seen, CAB clients have been successful in challenging unfair employment at a Tribunal, only for their ex-employer to make the company insolvent and restart as a 'phoenix company' to avoid paying them. To ensure the integrity of the system, it is important that employees in this situation are not disadvantaged and ensuring they receive the money they are due should be explored as a priority by being able to claim full award from National Insurance fund. We would support the suggestion made by the TUC of barring employers who are found guilty of this practice from being company directors.

- **The length of time an employee is required to have worked for an employer to be able to bring an Employment Tribunal claim for unfair dismissal should be reduced from two years to one.**

As shown in this report, workers are often dismissed in circumstances which would appear to be unfair, but are unable to have their case heard by a tribunal because they have worked for their employer for less than two years. As well as enabling employers to get away with some very unfair practices, this creates an unfair barrier to justice for employees who may be substantially disadvantaged in finding a new job because of the lack of a reference from an employer who they have spent a fair length of time working for. Reducing the length of time required to bring an unfair dismissal claim to one year working for the employer, as was the case prior to 2012, would deter some of the most unfair practices.

- **The Acas Early Conciliation system has the potential to make a positive difference to the enforcement landscape, and ongoing evaluation of its effectiveness should be conducted. However, it should not be viewed as a replacement for the Employment Tribunal system, nor as a justification for levying fees to bring a Tribunal claim.**

As we have seen in the previous section, the new early conciliation system is generally well-received and well-used. However, despite some anecdotal evidence of successful resolution of cases, detailed evaluation of its effectiveness should take place. It should also not be seen as justification for the continuance of the tribunal fee regime as it cannot resolve every case, and unfair employers can frustrate its good work by refusing to engage constructively.

### **Enforcing employment law and promoting fair employment**

- **A new statutory body, an Employment Commission, should be created to oversee the enforcement of employment law, with the legislative teeth to target rogue employers.**

The enforcement landscape for fair employment is patchy, and no one body has responsibility for actively challenging unfair employment and unscrupulous employers. A new body could bring together a number of functions to effectively promote fair employment.

For instance, whilst individuals can be successful in their employment tribunal claim, or at early conciliation, others will suffer in silence because of a fear of further

detriment for raising the issue with their employer – justifiably as many of the cases in this report demonstrate. For those who are paid less than the National Minimum Wage, or believe their employer is not paying their Income Tax or National Insurance contributions, they can report this in confidence to two HMRC services, the Pay and Rights Helpline and the Tax Evasion Hotline. These reports can be actively investigated. Employers who do not comply with the law in these areas could be fined, required to pay the employee the money they are due, and can now be publicly ‘named and shamed’.

An Employment Commission could bring together these functions to either augment or replace the stretched and under-resourced HMRC services, and could roll out the same approach to tackle other unfair employment practices. The Commission could allow workers to confidentially report unfair treatment such as breaches of their maternity, holiday, sickness, pay, dismissal, redundancy and other rights. They could bring this information together with outcomes of employment tribunal judgements, non-payment of the National Minimum Wage and tax and reports from other agencies, such as Acas, citizens advice bureaux, trade unions and other advice and representation agencies.

Legislation could give the Commission power to investigate these reports, and identify rogue employers who ignore their legal responsibilities and treat their employees extremely unfairly. They could have the power to require unfair employers to undertake training on basic employment rights and to compensate employees who have suffered poor treatment. For the worst offenders, the Commission could have power to levy fines and ‘name and shame’ unfair employers, in the same manner as those who underpay the Minimum Wage currently can be.

However, the new body need not be all stick and no carrot. They could build on the good work carried out by Acas and others and help employers and employees understand workplace rights, actively promote best practice and aim to address problems before they arise.

- **Continuing additional resources for the enforcement of payment of the National Minimum Wage should be provided to ensure that its payment is promoted and all reports of underpayment can be actively investigated.**

Recently, enforcement of the National Minimum Wage has taken a step in the right direction with increased fines for underpayment and the advent of ‘naming and shaming’. However, as we have seen from this report and from reports from others such as the Trade Union Congress (TUC) there are still too many instances of underpayment. The UK Government’s recent announcement of additional funding for Minimum Wage enforcement is welcome, but this must continue to enable awareness to be promoted and all reports of underpayment to be investigated, whether continuing as a function of HMRC or as part of a new statutory Employment Commission.

- **Efforts and resources to tackle employers not paying employees’ Income Tax and National Insurance should be increased.**



HMRC's Tax Evasion Hotline is a good example of a system that allows employees who have been unfairly treated to report wrongdoing, but more must be done. It cannot be right that the first workers know of their employer not passing on their tax and National Insurance payments to the authorities is when they receive a large tax bill several years later. Increased public education on what workers should look out for and promotion of the reporting mechanism should take place, whether as part of HMRC's responsibilities or as part of a new Employment Commission.

- **Scotland's Fair Work Convention is a welcome development. The Scottish Government should examine the possibility of extending its role once it is fully established.**

The establishment of the Convention has the potential to actively promote fair employment in Scotland, and it could play a bigger role in future years. For instance, the Fair Work Convention could work with Acas, trade unions and other stakeholders, such as the Citizens Advice Service to promote awareness of basic rights at work and how to assert them for employees and employers alike. The Fair Work Convention could also take on a role overseeing enforcement of employment law under Scots law, such as the proposed administrative devolution of employment tribunals.

- **When an employee is dismissed, an employer should have a legal duty to communicate the redress systems that are open to the employee, should they wish to contest the decision.**

This suggestion has been made by CAB advisers who have advised clients who have been dismissed in very harsh circumstances. This move would help improve fairness and transparency. If employers are free to sack people, then the redress systems should, at the very least, be made expressly clear to the employee.

### **Strengthening the rights of zero hours contract 'workers'**

- **Protection from unfair dismissal should be extended to 'workers' as well as 'employees'.**

The differences in the basic employment rights afforded to those classed as 'workers' compared with 'employees' has gained prominence with the increase in misuse of zero hours contracts. This option would strengthen the rights of workers on zero hours contracts by giving them some redress in situations where the amount of work provided is dramatically cut in an apparent attempt to 'get rid of them'. The announcement of a wide-ranging UK Government review of the employment status of 'workers' is particularly encouraging in this regard, and CAS would urge the review to carefully consider this option, and to take action based on its findings.<sup>38</sup>

- **Full rights to parental leave and pay should be extended to 'workers' as well as 'employees'.**

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<sup>38</sup> Employment review launched to improve clarity and status of British workforce – Department for Business, Innovation and Skills, October 2014 <https://www.gov.uk/government/news/employment-review-launched-to-improve-clarity-and-status-of-british-workforce>



Citizens advice bureaux have reported cases where workers are denied paid maternity leave, including those on zero hours contracts. This reduces the flexibility of the individual engaged on a zero hours basis. One step to address this could be to extend the parental leave and pay rights currently enjoyed by employees to workers. As above, the welcome review of employment statuses has the potential to make a difference in this regard, and we encourage action to be taken based on its findings.

- **‘Workers’ and ‘employees’ on a zero hours contract should be given a statutory ‘right to request’ a contract that guarantees hours, without suffering dismissal or detriment for making the request.**

One of the reasons that misuse of zero hours contracts occurs is because they are issued in situations for which they are not suitable. One possible remedy to this would be to give workers the right to request their contract be altered to one that is more suitable, such as a flexible part-time arrangement, without fear of being dismissed or disadvantaged by making the request. There would be no obligation on the employer to grant the request, but by giving reasons for declining it would encourage them to consider the implications of the contract on the worker, whether it is appropriate and alert them to the worker’s desire for a more stable working pattern.

The UK Government has commented that in its view, workers would be able to use new rules on flexible working to make this request.<sup>39</sup> Publication of statutory guidance to make this clear to employees, employers and advice agencies would be welcome.

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<sup>39</sup> HC Deb 6 November 2014, col 552

## Conclusion

It is in the interests of individuals, government and society as a whole that fair employment is promoted. The effects of unfair employment have a negative impact on health outcomes and an individual's quality of life. And if rogue employers are seen to get away with meting out unfair practices on their staff, other employers will rightly feel disadvantaged for complying with the law and treating their staff fairly.

Evidence from Scotland's CAB network shows that more must be done to promote fair employment. From dodgy dismissals, to workers not being paid, to the denial of holiday or sick pay, to discrimination against pregnant women or migrant staff, citizens advice bureaux see far too many instances of unfair employment practices, and far too many instances of employees unable to enforce the basic rights they have.

The time has come for action to ensure that Scotland's workers get a fair deal at work. An Employment Commission with overall responsibility for promoting fair employment and ensuring the law is enforced will challenge poor practices and root out employers who ignore their legal responsibilities. And action to remove barriers to accessing justice through the employment tribunal system will not only strengthen the rights of workers, but will ensure the law is upheld. Promoting fair employment will benefit good employers who care about their staff, ensure employment law passed by Parliament is respected, and most importantly will improve the quality of life for thousands of Scotland's citizens.



Citizens Advice Scotland (CAS), our 61 member bureaux and the Citizen Advice Consumer helpline form Scotland's largest independent advice network.

Advice provided by the Scottish CAB Service is free, independent, confidential, impartial and available to everyone. We are champions for both citizens and consumers and In 2012/13 we helped over 314,000 people deal with over a million issues. Our financial gain for clients in this year was £120,705,471.

Our bureaux deliver frontline advice services through more than 200 service points across the country, from the city centres of Glasgow and Edinburgh to the Highlands, Islands and rural Borders communities. This network of dedicated staff and volunteers is ideal to represent and assist the consumers in Scotland in all transactions and services they operate in.

Our vision is paramount to all our goals in the consumer landscape as well as being simple but robust:

*"A fairer Scotland where people  
as citizens and consumers are  
empowered and their rights  
respected."*

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The Scottish Association of Citizens Advice Bureaux - Citizens Advice Scotland (Scottish charity SC016637)